



Department of  
**Agriculture, Environment  
and Rural Affairs**

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**Department of Agriculture, Environment & Rural Affairs  
Marine & Fisheries Division**

**LICENCE ISSUED UNDER THE MARINE AND COASTAL ACCESS ACT 2009, PART 4, MARINE  
LICENSING**

**MARINE CONSTRUCTION LICENCE**

**Licence to Repair and Extend Southern slipway at Ballyholme Yacht  
Club**

**Licence Number: ML 6\_19**

**Part 1 - Particulars**

**1. Licensee(s) Name & Address:**

Ballyholme Yacht Club  
Seacliff Rd,  
Bangor  
BT20 5HT

**2. Names, and operators, of the vessels to be employed to undertake or support the deposit, relocation or  
removal operations:**

Hugh Ennis  
28 Manse Road  
Kircubbin  
BT22 1DR

**3. Description of works and nature and quantity of all deposits below Mean High Water Springs:**

Work proposed to the southern slipway:

- Remove old repairs and replace with new concrete
- Make the slipway 5 metres wider from top to bottom
- Addition of 120sq metres of concrete
- Extend the length of the slipway by 1.5 metres.

Works due to take place in May and October.

#### **4. Location of works:**

Ballyholme Yacht Club  
Latitude N54 40' 1" Longitude 5 39' 2" W

#### **5. Valid:**

From: 16<sup>th</sup> September 2019  
Until: 30<sup>th</sup> September 2020

**Closed periods:** works must **NOT** take place between the period from **1<sup>st</sup> December to 29<sup>th</sup> February** and also **1<sup>st</sup> June until 15<sup>th</sup> September**.

#### **PART 2: CONDITIONS**

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) authorises **Ballyholme Yacht Club** to deposit in the sea the substances or articles (except for dredge material) used in the execution of works described in Part 1 of this licence. This licence is subject to the under mentioned condition(s):

#### **Licence Condition(s):**

#### **NOTE: FAILURE TO COMPLY WITH THE LICENCE CONDITIONS BELOW MAY RESULT IN ENFORCEMENT ACTION BEING TAKEN**

1. All conditions of this licence bind any persons whom, for the time being, owns, occupies or enjoys any use of the works for which this licence has been granted, in relation to those licensed activities authorized under section 66 of the 2009 Act, whether or not the licence has been transferred to that person.
2. The Licensee(s) must receive written authorisation from the licensing authority to assign or transfer the consent. The licensing authority must confirm in writing to both the original Licensee(s) and any proposed new Licensee(s) that the licence has been transferred/assigned before any works may commence under the new Licensee(s).
3. The licensee must submit a detailed Construction Method Statement to the licensing authority, at least 2 weeks prior to the commencement of construction to ensure effective avoidance and mitigation methodologies have been planned for the protection of the water environment. This should be copied to Water Management Unit Pollution Prevention Team ([nieapollutionprevention@daera-ni.gov.uk](mailto:nieapollutionprevention@daera-ni.gov.uk)) who will be happy to advise.
4. Work should take place from **16<sup>th</sup> September 2019 to 30<sup>th</sup> September 2020**, and **MUST NOT** occur during the period **from 1<sup>st</sup> December to 29<sup>th</sup> February** and also **1<sup>st</sup> June until 15<sup>th</sup> September** period in any year of the licence.

*Reason: To avoid disturbance to over-wintering birds utilising the area to feed and also the application site is adjacent to Ballyholme Bathing Water which is an identified Bathing Water under Directive 2006/7/EC ("The Bathing Water Directive") and a Protected Area under Directive 2000/60/EC ("The Water Framework Directive").*

5. The licensee(s) shall inform the licensing authority of the proposed starting date of licensed work at least **14 days** before commencement.

6. The licensee(s) shall inform the licensing authority of the proposed starting date of any hydraulic breaker work at least **5 days** before commencement and also appoint an approved Marine Mammal Observer (MMO) at the time the hydraulic breaker machinery is in use to ensure there is no disturbance or injury/harm to marine mammals wherever they are present as detailed in the Marine Licence application dated 17/04/2019. If marine mammals are detected in the area, the MMO will issue a delay in the commencement of rock breaking, until they are satisfied that the animals have left the mitigation zone which should be no less than 500 metres, measured from the rock breaking location.
7. The licensee(s) shall inform the licensing authority of the finishing date of the licensed work within **28 days** of completion.
8. The licensee(s) shall not carry out any licensable activity other than that detailed in the Marine Licence application form received by the licensing authority, dated 17/04/2019. The licensee(s) shall contact the Department if it is proposed to vary the materials or methods to be used from those described in the documentation supplied in connection with the Marine Licence application.
9. The licensee(s) shall ensure that a copy of this licence is given to each contractor appointed to carry out part or all of the works. The extent of the works for which the licence has been given and the conditions that are attached to the licence should be made clear to the contractors.
10. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
  - a. The premises of the licensee(s)
  - b. The premises of the operating facility
  - c. The site of the works (including on board vessels)
11. The licensee(s) shall, within **eight weeks** after the completion of the licensed works, make a written report to the licensing authority stating the quantity and description of all articles and substances deposited under the authority of this licence.
12. The licensee(s) must notify The Source Data Receipt team, UK Hydrographic Office, Taunton, Somerset, TA1 2DN (Email: [sdr@ukho.gov.uk](mailto:sdr@ukho.gov.uk); Tel: 01823 337900) at least 4 weeks before commencement of the works, to allow for any necessary amendments to nautical charts. The UK Hydrographic Office must also be notified upon completion of the works. **This office must be copied into all notifications.**
13. The Licensee must ensure that HM Coastguard, in this case [nmcccontroller@hmcg.gov.uk](mailto:nmcccontroller@hmcg.gov.uk), The National Maritime Operations Centre is made aware of the works prior to commencement.
14. The Licensee must issue local notification to marine users.
15. The licensee(s) attention is drawn to Article 42 of the **Historic Monuments and Archaeological Objects (NI) Order 1995** that requires finders of archaeological objects to report within 14 days to a relevant authority. In the event of a discovery of an archaeological object and/or remains during the works the licensee(s) must: (1) record the position and details of the site; (2) not disturb the site further and (3) contact DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast BT7 2JA for further advice.

*Reason: To ensure recovered archaeological material is recorded with the appropriate authority*
16. The licensee(s) must report any recovered wreck material to the Receiver of Wreck (Maritime and Coastguard Agency) in accordance with the **Merchant Shipping Act 1995**.

*Reason: To ensure recovered wreck material is recorded with the appropriate authority*
17. The licensee(s) shall adhere to NIEA's Standing Advice on Pollution Prevention and Discharges:
  - [www.daera-ni.gov.uk/water-environment-standingadvice](http://www.daera-ni.gov.uk/water-environment-standingadvice)

Signed on behalf of the Department:

Dated: 20/8/2019

Departmental Stamp



**NOTE:**

1. The licensing authority would advise that this licence does not negate the licensees' responsibility to gain any other environmental or access permissions that may be required to progress the works.
2. Under Part 4, Chapter 1, paragraph 72 of the **Marine and Coastal Access Act 2009**, the licensing authority may revoke, vary or suspend this licence if it appears to the authority that the holder is in breach of a condition included in it, or if it appears to the authority that the licence ought to be varied, suspended or revoked because of a change of circumstances relating to the marine environment or human health, including a change in scientific knowledge. A revocation, variation or suspension may also be enforced in the interests of safety of navigation.
3. A person who deposits material in contravention of the terms of a licence is guilty of an offence under Section 85 of the Act. It is a defence under paragraph 86 (1) for a person charged with such an offence to prove 'force majeure'. However they are also required to prove that they took steps within a reasonable time to inform the licensing authority of all details pertaining to the incident contained in paragraph 86 (2). The licensing authority shall be obliged to report force majeure cases immediately to the OSPAR Commission.
4. Attention is drawn to the necessity of complying where appropriate with the **Radioactive Substances Act 1960**, the **Prevention of Oil Pollution Act 1971** and to the **Merchant Shipping (Dangerous Goods) (Amendment) Rules 1968**.
5. If within 28 days of the issue of a licence the person to whom it was issued requests the licensing authority to give him notice in writing of the reasons for the inclusion of any provision in it, the Authority shall comply with his request within 28 days of receiving it.
6. Anyone who fails to comply with a condition on a Marine Licence commits an offence under Section 85 of the **Marine and Coastal Access Act 2009**, and may be subject to enforcement action. Possible enforcement actions are compliance notices, remediation notices, fixed monetary penalties and variable monetary penalties. In the worst cases, a person found guilty of an offence on summary conviction may be subject to a fine not exceeding £50,000. In addition, a person found guilty of an offence on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both. Further details can be found at our guidance note
7. <https://www.daera-ni.gov.uk/sites/default/files/publications/doe/marine-licensing-guidance-enforcement-under-part-4-marine-and-coastal-access-act%2C-2009-may-2016.pdf>

**Further information from consultation:**

**1. Northern Ireland Environment Agency – Water Management Unit**

You should be aware that it is an offence under the **Water (Northern Ireland) Order 1999** to discharge or deposit whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and /or three months imprisonment.

The licensee(s) shall ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter.

The licensee(s) shall adhere to the following:

- Works in, near or over watercourses, PPG5 and
- Prevent Pollution, & Construction and Demolition sites: PPG6: Prevent Pollution.

DAERA's Standing Advice on Pollution Prevention and Discharges to the Water Environment, which are available at: [www.daera-ni.gov.uk/water-environment-standingadvice](http://www.daera-ni.gov.uk/water-environment-standingadvice)

**2. DAERA - Inland Fisheries and Sea Fisheries**

It is an offence under Article 47 of the Fisheries Act (NI) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks

**3. Marine and Coastguard Agency**

The Consent Holder should ensure suitable bunding, storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.

**4. DAERA - Marine Conservation & Reporting Team**

**Marine National Protected Species:**

In addition to protection offered under designated sites, certain marine species are also afforded protection throughout their range through the following nature conservation legislation:

- The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended); and
- The Wildlife (Northern Ireland) Order 1985 (as amended).

This includes marine animals such as cetaceans, basking shark and seals. Under this legislation it is an offence to disturb, injure or harm marine protected species, however, the offences that apply will depend on the species, activity and location.

The applicant should be made aware (through the attached informative) that marine animals are transient in nature and could potentially be present adjacent to the site at any time. It is the responsibility of the applicant to ensure that an offence is not committed and to seek advice if needed.

A wildlife licence may be issued to authorise what would otherwise be an offence under the nature conservation legislation. In all cases, it is recommended that mitigation should be used in the first instance in order to reduce the risk of an offence. If there is negligible risk of an offence or mitigation reduces the risk to a negligible level, there is no requirement for a wildlife licence. Given that a marine mammal observer will be appointed for the construction works when the rock hammer is being used, MCR do not anticipate a marine wildlife licence will be required.

While Marine and Fisheries Division will provide assistance and guidance on individual cases, it is the responsibility of the applicant to assess the risk of committing a wildlife offence when carrying out a proposed activity and also the need for a wildlife licence application.

**ASSI:**

Environment (Northern Ireland) Order 2002 Part IV - <http://www.opsi.gov.uk/si/si2002/20023153.htm>

The applicant's attention is drawn to the fact that the site is within the boundary of Outer Ards Area of Special Scientific Interest (ASSI) and precautions should be taken to ensure its integrity will not be damaged by construction vehicles, deposited materials, contaminated run-off, or any other activity during the construction period or thereafter. Any works occurring outside the red line planning application boundary are subject to the Environment (Northern Ireland) Order 2002 (as amended), which makes it an offence to carry out operations likely to damage an ASSI without prior permission from the Northern Ireland Environment Agency, Conservation, Designations and Protection Unit, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA. The maximum penalty for offences is £20,000. In addition to a fine, offenders may be liable for the costs of restoring the damaged area to its original condition.

For Further information please see;

<https://www.daera-ni.gov.uk/topics/land-and-landscapes/areas-special-scientific-interest>

**SPA:**

*The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) Part II paragraph 16 - [http://www.opsi.gov.uk/sr/sr1995/Nisr\\_19950380\\_en\\_3.htm#nsiiconservationnaturalhabitathabitatspecieeuropeansite](http://www.opsi.gov.uk/sr/sr1995/Nisr_19950380_en_3.htm#nsiiconservationnaturalhabitathabitatspecieeuropeansite)*

The applicant's attention is drawn to the fact that the site is within the boundary of the East Coast Marine pSPA and precautions should be taken to ensure its integrity will not be damaged by construction vehicles, deposited materials, contaminated run-off, or any other activity during the construction period or thereafter. Any works occurring within the designated site but outside the red line planning application boundary are subject to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and require consent from the Northern Ireland Environment Agency, Conservation, Designations and Protection Unit, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA.

For Further information please see;

<https://www.daera-ni.gov.uk/articles/special-areas-conservation>

**Marine National Protected Species**

The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended), under which it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5 to the Order. This includes the common seal (*Phoca vitulina*), grey seal (*Halichoerus grypus*), basking shark (*Cetorhinus maximus*), angel shark (*Squatina squatina*), common skate (*Dipturus batis*) short snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), spiny lobster (*Palinurus elaphus*) and fan mussel (*Atrina fragilis*).

Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 (killing or injuring a species listed in Schedule 5 (as amended)) if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and could not reasonably be avoided. A separate marine Wildlife Licence is therefore not required for national marine protected species if a Marine Licence/Planning Permission has been granted, since adherence to the conditions of the Marine Licence should reduce the likelihood of harm to marine national protected species.

Under Article 10 it is an offence to intentionally or recklessly disturb; common seals, grey seals or basking sharks. It is also an offence under Article 10 to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which these animals (Schedule 5') use for shelter or protection; damage or destroy anything which

conceals or protects any such structure; or disturb any such animal while it is occupying a structure or place which it uses for shelter or protection.

Under Article 13 it is an offence to sell or transport any Schedule 7 animal dead or alive at any time<sup>2</sup>.

Any person who knowingly causes or permits an act which is made unlawful under Article 10 or Article 13 shall also be guilty of an offence.

It is the applicant's responsibility to ensure that an offence is not committed. Further advice can be sought from DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast BT7 2JA.

Under the Wildlife (Northern Ireland) Order 1985 (as amended) a licence may be required for any operations which might impact on protected species.

<sup>1</sup> *Common skate and angel sharks in respect to Article 10 (1) only and within 6 nautical miles of coastal water only.*

<sup>2</sup> *Schedule 7 species includes all Schedule 5 species listed in Appendix A, with the exception of the common skate and angel shark. Sea urchin is protected under Schedule 7 only.*

#### **Marine European Protected Species:**

The applicant's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphins, porpoises and whales and the marine turtle species.

(1) It is also an offence to;

- (a) deliberately disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- (b) deliberately disturb such an animal in such a way as to be likely to;
  - (i) affect the local distribution or abundance of the species to which it belongs;
  - (ii) impair its ability to survive, breed or reproduce, or rear or care for its young; or
  - (iii) impair its ability to hibernate or migrate;
- (c) deliberately take or destroy the eggs of such an animal;
- (d) deliberately obstruct access to a breeding site or resting place of such an animal; or
- (e) damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person;

- (a) to have in his possession or control,
  - (b) to transport,
  - (c) to sell or exchange, or
  - (d) to offer for sale or exchange,
- any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

It is the applicant's responsibility to ensure that an offence is not committed. Further advice can be sought from DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast, BT7 2JA.

Under this legislation a licence may be required for any operations which might impact on European Protected Species.

<sup>1</sup> *Following two European Court of Justice cases (C-103/00 and C-221/04) "deliberate actions are to be understood as actions by a person who knows, in the light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action"*

## **5. Department for Infrastructure - Rivers**

We note your proposed works lie within or adjacent to an important designated site. We would ask that due consideration continues to be given on how the proposed works may impact the area.

Within the terms of the Drainage (Northern Ireland) Order 1973, Marine Construction Licence applicants are advised of the following legal requirements for ALL sites as follows:

1. If during the course of developing a site a watercourse is uncovered which was not previously evident, the appropriate DfI Rivers Office should be advised immediately in order that arrangements may be made for the investigation and direction in respect of any possible action necessary to deal with the watercourse. Piped storm drains, culverts, open channels etc. may be considered to be watercourses.
2. Any proposals either temporary or permanent, in connection with the development, which involve interference with any watercourse at the site such as culverting, bridging, diversion, building adjacent or discharge of storm water etc require the written consent (known as "Schedule 6 Consent") from DfI Rivers.
3. Failure to obtain Schedule 6 Consent is an offence under the provisions of the above Order, which may lead to prosecution or other statutory action as provided for.

In this instance the appropriate DfI Rivers office to contact in respect of Schedule 6 applications and any other general enquiries is:

**GBA Area Office,  
Ravarnet House  
15 Altona Road  
Lisburn  
BT27 5QB  
Tel: 028 92 606100**