

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 AUTHORISE CULVERT STRENGTHENING WORKS AT MADAM'S BANK,
LONDONDERRY**

Licence Number: ML2022005 VAR-1

Part 1 - Particulars

1. Licensee(s) Name & Address:

Translink Network Engineering
Milewater Service Centre
25 Duncrue Street
Belfast
BT3 9AR

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

n/a

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

The works include the relining of the existing culvert located under the rail embankment at Madam's Bank. Works also include the installation of a precast headwall to the downstream outfall and installation of rock scour protection.

4. Location of works:

Madam's Bank, Londonderry

Lat 55°00'45"N , Long 419032°42'36"E

As per the Marine Construction licence drawing provide with the application *Reference: 211093-DC-MCL-C-001-002-003-004 Marine Construction Licence*

5. Valid:

From: 7th July 2023

Until: 6th December 2023

PART 2: CONDITIONS

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) authorises **Translink Network Engineering** 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 authorised 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(s) shall inform the licensing authority of the finishing date of the licensed work within **28 days** of completion.
4. 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 13th April 2022. 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.
5. The licensee(s) shall ensure that the Department is informed of any contractor appointed to carry out part or all of the works and a copy of this licence is given to each contractor.
6. The licensee(s) must commence works with **12 months** of the date of this licence.
7. 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.
8. 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)
9. The licensee(s) must notify The Source Data Receipt team, UK Hydrographic Office, Taunton. Somerset, TA1 2DN (Email: 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.**

10. If **impact piling** occurs a Trained Marine Mammal Observer must be employed, regardless of water level, to apply the JNCC protocol for piling; please refer to *Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise*, October 2010 which is found in Annex B of *The protection of marine European Protected Species from injury and disturbance* by JNCC, NE and CCW, October 2010 (draft).
11. If **vibration piling** occurs, when water levels are high enough to reach the piling location at the time of piling then a Trained Marine Mammal Observer must be employed to apply the JNCC protocol for piling; please refer to *Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise*, October 2010 which is found in Annex B of *The protection of marine European Protected Species from injury and disturbance* by JNCC, NE and CCW, October 2010 (draft). This condition does not apply for vibration piling when water levels are low and do not reach the piling location at the time of piling.
12. If impact piling or blasting is required during construction the licensing authority must be notified **one week** in advance of commencement. A noise risk impact assessment must be produced and submitted to the licensing authority for approval before impact piling can begin to prevent disturbance to sensitive receptors.
13. If impact piling or blasting is required during construction the licensee(s) shall maintain a record of the beginning and end times and duration, e.g. hammer energy blow or explosive charges. Records must be submitted to the licensing authority within **eight weeks** of completion of the licensed works.
14. The licensee(s) shall appoint an approved Marine Mammal Observer (MMO) at the time the rock breaker or any other similar breaking 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 13th April 2022. 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.
15. A Method of Works Statement (MOS) should be submitted by the contractor prior to works commencing on site.
16. Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment.
17. The site is within port limits and the licensee(s) should gain the approval/agreement of the responsible local navigation authority or the Harbour Authority/Commissioners/Council. They may wish to issue local warnings to alert those navigating in the vicinity to the presence of the works, as deemed necessary.
18. The licensee(s) shall ensure invasive species biosecurity measures are in place for all stages of the project and all equipment used.
19. 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.
20. 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) report your discovery to and seek further advice from the Department immediately.

Reason: To ensure recovered archaeological material is recorded with the appropriate authority

21. 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

Signed on behalf of the Department:



Dated: 4th July 2023

NOTE:

(1) The licensing authority would advise that this licence does not negate the licensee's 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

<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.

2. DAERA Sea Fisheries

The licensee(s) attention is drawn to to Section 47 of the Fisheries Act (NI) 1966, which covers the licensee(s) responsibilities relating to Penalties for Pollution and the consequences of causing or permitting the release of any Deleterious materials into any waters.

3. DAERA Marine Conservation and Reporting Team

Marine Litter

Marine litter may be created during this proposal. Marine litter is defined as items arising from human activity, deliberately discarded or unintentionally lost, that end up in the sea and on beaches and coastlines. Marine litter is any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment. Marine litter can cause significant impacts to marine ecosystems, including direct damage to wildlife through entanglement, entrapment and/ or ingestion and can also destroy coastal habitats, by interfering with biological production and smothering of the seabed.

Policy Requirement – Marine litter considerations

The Marine Strategy Regulations 2010, as amended, impose a general duty on government departments to take measures to achieve good environmental status in marine waters. They also place a duty on public authorities to have regard to the UK Marine Strategy which has been developed in accordance with the Regulations when exercising their functions. The objective of the UK Marine Strategy is to achieve good environmental status in marine waters. In respect of marine litter, this is ensuring that the properties and quantities of marine litter do not cause harm to the coastal and marine environments.

Draft Marine Plan for Northern Ireland

The Marine Plan for Northern Ireland will inform and guide the regulation, management, use and protection of our marine area. DAERA consulted on the Draft Marine Plan for Northern Ireland in 2018 and work is on-going to further develop it.

The draft Marine Plan for Northern Ireland provides a framework of policies to be considered by public authorities taking decisions which affect or might affect the marine area through decision making processes. It is a material consideration in this regard.

Public authorities must consider the potential risk of litter entering the marine area as a result of proposals. Where a proposal creates the potential for litter to enter the marine area, a public authority may require the proposer to demonstrate:

- a) how the risk has been considered; and
- b) appropriate measures to minimise the risk.

Information on how this is to be achieved is set out in paragraphs 187 to 199 of the Draft Marine Plan for Northern Ireland

<http://www.daerani.gov.uk/sites/default/files/consultations/daera/Marine%20Plan%20for%20NI%20final%2016%2004%2018.PDF>

European and National Marine Protected Areas

The licensee(s) attention is drawn to the fact that the proposed activities are within close proximity to the boundary of several Marine Protected Areas and precautions should be taken to ensure the integrity of these areas will not be damaged by vessels, deposited materials, contaminated run-off, or any other activity during the project or thereafter. Any activities occurring within the designated site but outside the proposed event boundary are subject to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and the Environment (Northern Ireland) Order 2002 (as amended) and require consent from the Northern Ireland Environment Agency, Conservation, Designations and Protection Unit, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA.

Marine National Protected Species – Seals and basking shark

The licensee(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 disturb, capture, injure a Harbour seal (*Phoca vitulina*), Grey seal (*Halichoerus grypus*) or Basking shark (*Cetorhinus maximus*).

It is also an offence to intentionally or recklessly:

- disturb any such animal while it is occupying a structure or place which it uses for shelter or protection,
- damage or destroy, or obstruct access to, any structure or place which any such animal uses for shelter or protection,
- damage or destroy anything which conceals or protects any such structure, or
- to have in possession or control any live or dead wild animal included in Schedule 5 or any part of, or anything derived from, such an animal.

Where impact cannot be avoided or mitigated, a wildlife licence may be required for operations and DAERA Marine Wildlife Team should be consulted.

The Wildlife (Northern Ireland) Order 1985

<http://www.legislation.gov.uk/nisi/1985/171/part/II/crossheading/protection-of-other-animals>

Marine European Protected Species

The licensee(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, disturb, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphin, porpoise and whale and the marine turtle species.

For more information please see:

<https://www.daera-ni.gov.uk/articles/marine-wildlife-licensing#toc-2>

Marine National Protected Species – Fish (inc Sharks) and invertebrates

The licensee(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, injure or kill a wild animal included in Schedule 5 of this Order. This includes ¹Angel shark (*Squatina squatina*), ¹Common skate (*Dipturus batis*), Short snouted seahorse (*Hippocampus hippocampus*), Spiny seahorse (*Hippocampus guttulatus*), Spiny lobster (*Palinurus elaphus*) and Fan mussel (*Atrina fragilis*).

It is also an offence intentionally or recklessly;

- disturb any such animal while it is occupying a structure or place which it uses for shelter or protection,
- damage or destroy, or obstruct access to, any structure or place which any such animal uses for shelter or protection,
- damage or destroy anything which conceals or protects any such structure; or
- to have in possession or control any live or dead wild animal included in Schedule 5 or any part of, or anything derived from, such an animal.

¹ Common skate and Angel sharks in respect to Article 10 (1) only and within 6 nautical miles of coastal water only.

The Wildlife (Northern Ireland) Order 1985

<http://www.legislation.gov.uk/nisi/1985/171/part/II/crossheading/protection-of-other-animals>

Invasive Species

The licensee(s) attention is drawn to Article 15 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to release or allow to escape into the wild any plant or animal which;

- a) is of a kind which is not ordinarily resident in and is not a regular visitor to Northern Ireland in a wild state (or is a hybrid of any animal of that kind), or
- b) is included in Part I of Schedule 9 (or is a hybrid of any plant or animal included in that Part).

Article 15 of the Wildlife (Northern Ireland) Order 1985: <https://www.legislation.gov.uk/nisi/1985/171/article/15>