



Marine Licensing Decision

The Marine and Coastal Access Act (2009)

Applicant: Snowdonia National Park Authority

Application reference no: CML2232

Farchynys

Farchynys Flood Bank Repair

13 October 2022

Contents

Marine Licensing Decision	1
1. APPLICATION DETAILS	4
1.1. The Application.....	4
2. APPLICATION PROCEDURE	6
2.1. The Application.....	6
2.2. Documents considered	6
2.3. Commercial Confidentiality	6
2.4. Publicity and advertising.....	6
2.5. Environmental impact Assessment	6
3. CONSULTATION	7
3.1. Consultees	7
4. BASIS FOR OUR DECISION	8
4.1. The need to protect the environment:.....	8
4.1.1. Water Framework Directive, Groundwater Directive and Water Environment Regulations.....	8
4.1.2. Biodiversity and resilience of ecosystems duty	9
4.1.3. European Protected Sites and Ramsar Sites	9
4.1.4. European Protected Species	11
4.1.5. Marine Conservation Zones	11
4.1.6. Sites of Special Scientific Interest (SSSIs).....	11
4.1.7. The Waste (England and Wales) Regulations 2011.....	12
4.1.8. Other matters considered relevant to the need to protect the environment.....	12
4.1.9. Conclusion of our considerations under the need to protect the Environment	12
4.2. The need to protect human health.....	12
4.3. The need to prevent interference with legitimate uses of the sea.....	12
4.4. Marine Policy Documents	13
4.5.2. Sustainable management of natural resources	14

Application Number: CML2232

5. Conclusions and Recommendations	14
6. AUTHORISATION.....	14

Application Number: CML2232

OUR DECISION

Based on all the information available, and having regard to all relevant considerations NRW has decided to refuse the marine licence sought by the Application.

This decision document:

- explains how the application has been determined, having regard to the relevant legal framework outlined in section 4;
- explains how relevant considerations have been taken into account and how each of the legal requirements have been considered in determining the Application;
- provides a record of the decision-making process; and

1. APPLICATION DETAILS

1.1. The Application

Applicant Name and Address	The Applicant is the person or organisation set out below: Company/organisation name: Snowdonia National Park Authority Address: Awdurdod Parc Cenedlaethol Eryri, Swyddfa'r Parc Cenedlaethol, Penrhyndeudraeth, Gwynedd, LL48 6LF
Application Reference Number	CML2232
Date Application was duly made	13 June 2022
Proposal[s] covered by the application	Farchynys Flood Bank Repair (the Project)
Licensable marine activities	Installation of a pre-cast concrete culvert on a spread foundation in the breach. (the Proposed Activities)
Marine Plan Area	Welsh inshore region and Welsh offshore region
Application documents:	Outline Arrangements and Method Statement – 7174/GA/01 – 27 May 2022 Location Plan – 7174/LP/01 – 27 May 2022 Farchynys Control Structure Design Appraisal – 27 May 2022 Application Form – 27 May 2022

Application Number: CML2232

	Water Framework Directive Draft – 27 May 2022 Farchynys – Flood Bank Repair Habitat Regulations Assessment – 27 May 2022
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Application Number: CML2232

2. APPLICATION PROCEDURE

2.1. The Application

The Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 13 June 2022. This means we considered it was in the correct form and contained sufficient information for us to begin our determination, but not that it necessarily contained all the information we needed to complete that determination, and the documents considered may therefore include documents provided after the Application was first made.

2.2. Documents considered

In reaching its decision, NRW has considered the documents listed in section 1 of this decision document along with such other information provided by the Applicant or received by consultees as NRW considered relevant.

2.3. Commercial Confidentiality

The Applicant made no claim that any information forming part of the Application was subject to commercial confidentiality and we have not received any information in relation to the Application that appears to be commercially confidential.

2.4. Publicity and advertising

As required by s. 68 of the Marine and Coastal Access Act 2009 (the 2009 Act), notice was given to Gwynedd County Council on 27 June 2022.

As required by s. 68 of the 2009 Act NRW has required the Applicant to publish notice of the Application.

Public notice advertising the Project was placed in Cambrian News on 13 July 2022. The application documents were made available to the public on the public register and they could also be requested from Natural Resources Wales Marine Licensing Team, Ty Cambria, 29 Newport Road, Cardiff, CF24 0TP.

The public were given a period of 28 days from the date of the Public Notice to provide comments on the application.

No public responses were received in response to the Public Notice.

2.5. Environmental impact Assessment

Council Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment aims to protect the environment and the quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an environmental impact assessment (EIA) before permission is granted.

The Marine Works (Environmental Impact Assessment) Regulations 2007 ("the Regulations") transpose the EIA Directive in Wales and England for marine licence applications.

Having considered the Application NRW has determined that it does not constitute a development requiring EIA under the Regulations.

3. CONSULTATION

3.1. Consultees

NRW considered it appropriate to consult the bodies listed in the table below on 27 June 2022, due to their particular expertise. These bodies were consulted for a period of 28 days. For those bodies which responded to the consultation an 'Y' can be found in the response received column, and those which did not respond to the consultation an 'N':

Consultee	Response received (Y/N)	Date(s) of receipt
The Crown Estate	Y	05 July 2022
NRW	Y	25 July 2022
MoD - Safeguarding Defence	N	
Maritime & Coastguard Agency	Y	20 July 2022
Trinity House	Y	25 July 2022
Royal Yachting Association	Y	05 July 2022
Local Biodiversity Officer [Gwynedd]	N	
Local Planning Authority [Gwynedd]	Y	28 June 2022
Local Harbour Authority	Y	28 June 2022
Local Port Authority	N	
Royal Society for the Protection of Birds (RSPB)	N	
Welsh Archaeological Trust	Y	13 July 2022
Royal Commission on Historic Monuments Wales	Y	01 July 2022
Cadw	Y	19 July 2022
Chamber of Shipping	N	
NERL Safeguarding	N	

Consultees who did not provide a response were assumed to have no comment.

NRW has had regard to all consultation responses received in making its decision. Where these have impacted on NRW's decision making, this has been noted in the relevant paragraph in section 4 of this decision document.

4. BASIS FOR OUR DECISION

In determining this application, including the terms on which it was refused NRW has had regard to the factors set out in section 4 below in accordance with the 2009 Act.

Under the 2009 Act NRW is required to have regard to the following:

- the need to protect the environment (see section 4.1);
- the need to protect human health (see section 4.2);
- the need to prevent interference with legitimate uses of the sea (see section 4.3);
- in the case of an application for a licence to authorise construction, alteration or improvement of works within the UK marine licensing area, the effects of any use intended to be made of the works in question when constructed, altered or improved (considered, if relevant in sections 4.1 to 4.5 below);
- any representations which it has received from any person having an interest in the outcome of the application (summarised in section 3 and where relevant considered in sections 4.1 to 4.5 below); and
- such other matters as it thinks relevant (see section 4.5 below).

4.1. The need to protect the environment:

The reference to the “environment” includes the local and global environment; the natural environment; and, by virtue of section 115(2) of the 2009 Act, any site of historic or archaeological interest. The natural environment may include the physical, chemical and biological state of the sea, the sea-bed and the sea-shore, and the ecosystems within it, or those that are directly or indirectly affected by an activity, whether within the marine licensing area or otherwise.

In considering the need to protect the environment we have considered the relevant environmental legislation set out below.

4.1.1. Water Framework Directive, Groundwater Directive and Water Environment Regulations

a) The legal framework

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (**Water Environment Regulations**) implement the requirements of the Water Framework Directive (**WFD**) (Directive 2000/60/EC) which requires consideration as to whether that proposals for development may cause deterioration or prevent a water body from achieving ‘good status’. Proposals likely to cause deterioration or prevent a waterbody from achieving good status should be rejected, unless derogation procedures have been applied.

Under the Water Environment Regulations, NRW must exercise its relevant functions to ensure compliance with the requirements of the WFD, the Environmental Quality Standards Directive (Directive 2008/105/EC) and the Groundwater Directive (Directive 2006/118/EEC).

b) Factors relevant to our determination

Application Number: CML2232

NRW consider that the Proposed Activities has the potential to affect the following WFD waterbodies;

- GB511006407100 Mawddach Transitional Waterbody

As detailed in section 4.1.3 we are unable to rule out potential adverse effect of the works on a Protected Area which is within the WFD waterbody, namely the Pen Llyn a Sarnau SAC. Further detail is provided within section 4.1.3.

A full WFD Assessment has not been completed as the application has been refused on the grounds of HRA as detailed within 4.1.3. Any future application must give consideration to both construction and operational impacts on the saltmarsh feature and future changes to the hydromorphology as a result of the installation of the proposed culvert in order to inform a WFD assessment.

4.1.2. Biodiversity and resilience of ecosystems duty

a) The legal framework

Section 6 of the Environment Wales Act 2016 requires that we seek to maintain and enhance biodiversity in the exercise of our functions, and in so doing promote the resilience of ecosystems, in a manner that is consistent with the proper exercise of our functions.

b) Factors relevant to our determination

NRW is satisfied that in this case, we have taken into account and had due regard to this duty in so far as it is consistent with the function of determining an application for a Marine Licence under the Marine and Coastal Access Act 2009.

4.1.3. European Protected Sites and Ramsar Sites

a) The legal framework

European sites are those designated under the Conservation of Habitats and Species Regulations 2017 (**Habitats Regulations 2017**) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (**Offshore Habitats Regulations 2017**) as Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

The Habitats Regulations 2017 and the Offshore Habitats Regulations 2017 require that any project that is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) must be subject to an appropriate assessment. NRW undertakes a Habitats Regulation Assessment (HRA) to establish whether an appropriate assessment is required.

In addition NRW must exercise its functions under the 2009 Act so as to secure compliance with the requirements of the relevant European Directives. NRW also has a duty under the Habitats Regulations 2017 to support wild birds by protecting habitats and avoiding pollution.

A Ramsar site is a wetland which has been designated under the Ramsar Convention. The Ramsar Convention does not place specific legal requirements on its parties (though Ramsar sites are often SSSIs or SPAs, considered below), however Ramsar status is considered by NRW as matter of policy in its decision making.

b) Factors relevant to our determination

The Project may affect the following European Protected Sites:

Application Number: CML2232

- Pen Llyn a'r Sarnau SAC
- Meirionnydd Oakwoods and Bat Sites SAC
- Afon Eden - Cors Goch Trawsfynydd SAC

A Habitats Regulations Assessment of the Proposed Activities has been undertaken, and NRW (as Statutory Nature Conservation Body) consulted on the HRA.

A Habitats Regulation Assessment (HRA) was carried out and concluded that adverse effects on the integrity of the above designated sites could not be ruled out.

The Scheme will result in permanent direct and indirect loss of the Atlantic Salt Meadow feature of the Pen Llyn a'r Sarnau SAC.

The proposed works seek to install a concrete culvert where a sluice structure used to be. The sluice structure has been degraded for a number of years leading to a breach in the flood bank which has allowed tidal waters to regularly flow on the landward side of the bank. The proposed works would alter this tidal inundation and potentially lead to the long-term degradation of the saltmarsh habitat on the landward side of the defence. As detailed within *Farchynys – Flood Bank Repair Habitat Regulations Assessment November 2021* (page 34) It is estimated that the area on the landward side of the flood bank potentially affected by this change in tidal inundation regime equates to approximately 5.55ha. NRW (A) agreed that the works are in contrast to the conservation objectives of the site which seeks for restoration of the feature, and any restriction to the water flow may lead to deterioration of the saltmarsh on the landward side.

As well as impact on the landward site the proposed works have the potential to directly impact the saltmarsh during the construction phase, and based on *Farchynys – Flood Bank Repair Habitat Regulations Assessment November 2021* there is approximately 0.8ha of Saltmarsh within the footprint of the works which could be effected.

In addition, saltmarsh habitat is present on the seaward side of the proposed works. The proposed works could lead to increased inundation and erosion with the potential for habitat loss on the seaward side of the structure. Additionally, due to the maintenance of the defence, this could lead to further loss of habitat in the long term from sea level rise and coastal squeeze. However, no information to understand the level of potential salt marsh loss as a result of coastal squeeze has been presented.

The works lie within Policy Unit 11.13 of the West of Wales Shoreline Management Plan (SMP). The Policy in the area is Managed Realignment, which indicates that the shoreline should be allowed to move backwards and forwards, with management to control or limit the movement. The corresponding Habitat Regulation Assessment carried out for the West of Wales SMP considered this policy and the allowing for saltmarsh habitats to move landward in the long-term. As the proposed works will be effectively holding the line in the location, further assessment is required to understand the impact coastal squeeze may have in the long term on the saltmarsh habitat. Moreover, in line with NRW Guidance Note 062, the works are not considered as maintenance, as the current structure has been degraded for a number of years, but rather as enhancement/new works. Therefore, a project specific coastal squeeze assessment would be required.

Based on the information available the applicant concludes within *Farchynys – Flood Bank Repair Habitat Regulations Assessment November 2021* that adverse effects on the integrity of the Pen Llyn a'r Sarnau SAC could not be avoided, NRW (A) as the SNCB agree with this conclusion.

We therefore considers that in light of the conclusion of an appropriate assessment and taking account of the advice received from protected site advisors, it has not been ascertained that the project will not adversely affect the integrity of the site. Approval for the project therefore cannot therefore be given in accordance with regulation 63(5) of the Habitats Regulations 2017.

Application Number: CML2232

Any future application will need to fully assess the level of losses on both the seaward and landward side of the defence and provide sufficient information in order to allow us to consider whether the project satisfies the requirement of regulation 64 of the Habitats Regulations 2017. This includes - consideration of alternatives, over-riding reason of public interest and proposed compensatory measures. This information has not been provided with the current application.

Further impacts to Pen Llyn a'r Sarnau SAC, Meirionnydd Oakwoods and Bat Sites SAC and Afon Eden - Cors Goch Trawsfynydd SAC were outlined in the response received from NRW Advisory dated 25 July 2022, including impacts to lesser horseshoe bats, Atlantic Salmon and Otter and based on the information currently presented adverse impact cannot be ruled out.

4.1.4. European Protected Species

a) The legal framework

The Habitats Regulations 2017 and the Offshore Habitats Regulations 2017 also confer protection on certain designated species (European Protected Species). A licence (EPS licence) must be obtained in order, whether deliberately or accidentally, to capture, kill, disturb or injure such a species, damage or destroy their breeding or resting places or obstruct access to their resting or sheltering places.

b) Factors relevant to our determination

NRW considers that no protected species are likely to be impacted by the Project.

Any determination made as part of this decision are without prejudice to the consideration NRW is required to give an EPS licence application as the body with a statutory responsibility for its determination and do not constrain or bind NRW in exercising this function. Should an application for an EPS licence in relation to the Project be made it will be determined by NRW based on all the relevant information available to NRW at that time.

4.1.5. Marine Conservation Zones

a) The legal framework

Marine Conservation Zones (MCZ) were established under the 2009 Act to protect nationally important, rare or threatened habitats and species. The only currently designated MCZ in Wales is Skomer.

Under the 2009 Act, NRW must exercise its functions in the manner which it considers best furthers the conservation objectives stated for any MCZ or, where that is not possible, in the manner which it considers least hinders the achievement of those objectives.

b) Factors relevant to our determination

NRW is satisfied that there is no significant risk of the Proposed Activities on the Skomer MCZ due to the distance between the proposed works and the MCZ.

4.1.6. Sites of Special Scientific Interest (SSSIs)

a) The legal framework

Sites of Special Scientific Interest are designated under the Wildlife and Countryside Act 1981 (**1981 Act**) and protected by law to conserve their wildlife or geology. NRW must take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of

Application Number: CML2232

the flora, fauna or geological or physiographical features by reason of which an SSSI is of special scientific interest.

b) Factors relevant to our determination

NRW is satisfied that there is no impact pathway to any SSSI. No comments from NRW Advisory were received regarding a SSSI in this instance.

4.1.7. The Waste (England and Wales) Regulations 2011**a) The legal framework**

The Waste (England and Wales) Regulations 2011 (as amended) establish a legal framework for treating waste. This is designed to protect the environment and human health by emphasising the importance of proper waste management, recovery and recycling techniques to reduce pressure on resources and improve their use. Waste generated by a project or activity must in general terms be dealt with in an environmentally friendly way. To achieve this the Regulations describe a waste hierarchy which gives an order of preference for how waste is dealt with (prevention, re-use, recovery for other purposes such as energy, and finally disposal).

b) Factors relevant to our determination

NRW is satisfied that the Proposed Activities meet the requirements of The Waste (England and Wales) Regulations 2011.

4.1.8. Other matters considered relevant to the need to protect the environment

No comments or representations were received in relation to other matters considered relevant to the need to protect the environment.

4.1.9. Conclusion of our considerations under the need to protect the Environment

IN SUMMARY, having considered the need to protect the environment, NRW considers that the impacts of the Project on the environment (either alone or in combination with other plans or projects) are not acceptable and that the application should therefore be refused due to being unable to rule out adverse effect on the Atlantic Salt Meadow feature of the Pen Llyn a'r Sarnau SAC outlined further in Section 4.1.3.

4.2. The need to protect human health

No comments or representations were received in relation to the need to protect human health and no other concerns in this regard have been identified.

4.2.1. Conclusion of our considerations under the need to protect human health

IN SUMMARY, having considered the need to protect human health, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the application.

4.3. The need to prevent interference with legitimate uses of the sea

Legitimate uses of the sea include (but are not limited to): navigation (including taking any steps for the purpose of navigational safety); fishing; mineral extraction; and amenity use.

Application Number: CML2232

No comments or representations were received in relation to the need to prevent interference with legitimate uses of the sea and no other concerns in this regard have been identified. However, NRW Permitting Service considers it appropriate to include licence conditions to ensure the safety of navigation which includes ensuring all relevant parties are notified prior to the commencement of Licensed Activities.

4.3.1. Conclusion of our considerations regarding the need to prevent interference with legitimate uses of the sea

IN SUMMARY, having considered the need to protect interference with legitimate uses of the sea, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the application.

4.4. Marine Policy Documents**a) The Legal framework**

NRW is required to take its decision in accordance with the appropriate marine policy documents unless relevant considerations indicate otherwise.

UK Marine Policy Statement 2011 (MPS)

The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment.

Welsh National Marine Plan (WNMP)

The WMNP is the Marine Plan for the Welsh inshore region and the Welsh offshore region and sets out the Welsh Government's policies for and in connection with the sustainable development of this area.

Shoreline Management Plan

Shoreline Management Plan (SMP) SMPs are non-statutory policy documents with the purpose of providing a large-scale assessment to support coastal support management planning.

b) Our determination**UK Marine Policy Statement 2011**

This decision has been taken in accordance with marine policy as set out in the UK Marine Policy Statement 2011.

Welsh National Marine Plan

The WNMP Policy Soc_08 Resilience to Coastal Change and flooding - encourages consideration of the Shoreline Management Plans (SMP) which provide an important context for decision making on the coast by setting out preferred policies for how the coast should be managed. WNMP details that developments will not normally be permitted in areas at risk of flooding or erosion and with a "no active intervention" or "managed realignment" policy in the SMP for any epoch relevant to the lifetime of the development. More information on the SMP is included below.

Shoreline Management Plan (SMP)

Application Number: CML2232

The works lie within Policy unit 11.13, of the West of Wales SMP which is Managed Realignment the proposed works look to hold the line in this location and therefore are considered to go against this SMP policy unit. Further justification would be required in order to further understand the divergence from the SMP policy. We would also advise that you consider contacting the relevant Coastal Group in order to consider a policy change if appropriate.

Other matters NRW thinks relevant**4.5.1. Well-being of Future Generations (Wales) Act 2015****a) The legal framework**

In making its decision, NRW is required to take all reasonable steps to meet its published well-being objectives, which are designed to maximise NRW's contribution to achieving each of the well-being goals set out in the Well-being of Future Generations (Wales) Act 2015. NRW must also act in accordance with the principles of sustainable development.

b) Our determination

NRW has taken into account its well-being objectives and is satisfied that its decision is consistent with meeting those objectives.

NRW is also satisfied that its decision is consistent with the sustainable development principle i.e. seeking to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

4.5.2. Sustainable management of natural resources**a) The legal framework**

NRW's general purpose is to pursue the sustainable management of natural resources in relation to Wales and applying the principles of sustainable management of natural resources as set out in section 4 of the Environment (Wales) Act 2016 so far as consistent with the proper exercise of its functions.

b) Our determination

NRW is satisfied that this decision, when implemented in accordance with the attached conditions, is consistent with its general purpose of pursuing the sustainable management of natural resources in relation to Wales, and applying the principles of sustainable management of natural resources.

5. Conclusions and Recommendations

Based on all the information available, and having regard to all relevant considerations including the consultation responses, NRW's decision is to refuse the Marine Licence sought by the Application. We have reached this decision having had regard to the relevant legal framework outlined in section 4 and have also explained in section 4 how each of the legal requirements have been considered. NRW has determined that a Marine Licence for the Proposed Activities should be refused.

6. AUTHORISATION

Application Number: CML2232

Report by: Jodie Pullen Position: Marine Licensing Officer	Date: 07 September 2022	Signed: 
Authorised by: Emmer Litt Position: Marine Licensing Team Leader	Date: 03 October 2022	Signed: 