

Marine Licensing Variation Decision

The Marine and Coastal Access Act (2009)

Applicant: For the Love of The Sea Limited

DEML2151v1

**Câr-y-Môr - Seaweed and Shellfish IMTA site in
Ramsey Sound, Pembrokeshire**

10 November 2023

Application Number: DEML2151v1

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OUR DECISION

Based on PEDW Appeal Decision (CAS-02246-C1H3Q3 - Appendix 1), and having regard to all relevant considerations NRW has decided to issue a variation to the Existing Marine Licence. Details of the variation are set out in Appendix 2.

This decision document:

- sets out the reasons for any conditions imposed in connection with any marine licence granted pursuant to the Variation.

1 VARIATION DETAILS

1.1 The Variation

Applicant name and address	The Applicant is the person or organisation set out below: Company/organisation name: For the Love of the Sea Limited (trading as Câr-y-Môr) Company number (if available): RS008172 Address: Câr-y-Môr, Clegyr Uchaf, St. Davids, Haverfordwest, Pembrokeshire, SA62 6QN
Variation Application reference number	DEML2151v1
Existing Marine Licence reference number	DEML2151
Date Variation Application was duly made	N/A
Description of variation	Inclusion of monitoring conditions and extension of licence to 20 years duration following outcome of Appeal. Appeal reference CAS-02246-C1H3Q3 decision dated 15/09/2023 (refer Appendix 1).
Proposal[s] covered by the Variation Application	A three hectare Integrated Multi-Trophic Aquaculture (IMTA) Seaweed and Shellfish site in Ramsey Sound, Pembrokeshire named Câr-y-Môr (the Project)
Licensable marine activities	The deposit, maintenance and removal of mooring and growing equipment including; anchors, lines, chains, baskets, buoys and monitoring equipment to allow the cultivation of the following species; Sugar Kelp (<i>Saccharina latissima</i>) Oarweed (<i>Laminaria digitata</i>) Laver (<i>Porphyra</i> sp.) Dulse (<i>Palmaria palmata</i>) Scallop (<i>Pecten maximus</i>) Native Oyster (<i>Ostrea edulis</i>) Mussels (<i>Mytilus edulis</i>) Deposit of infrastructure will be completed in two Phases. Phase 1 in the first year and Phase two in the second year. Deposit and Removal of Navigational buoys, markers and lighting as required.

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	Deposit and Removal of Monitoring Equipment and associated infrastructure. (the Proposed Activities)
Marine Plan area	Welsh inshore region and Welsh offshore region
Variation Application documents:	N/A

2 MARINE LICENCE VARIATION

2.1 Appeal Decision

Câr-y-Môr made an appeal under Section 73 of the Marine and Coastal Access Act 2009 against the granting of a marine licence subject to conditions. The appeal was against NRW decision to grant a marine licence valid for a 5 year period rather than the 20 year period requested in the application. A virtual hearing was held by PEDW on behalf of Welsh Ministers on 15 August 2023 and an Appeal Decision provided on 15 September 2023 (Appendix 1). As set out within the Appeal Decision (Appendix 1) NRW acting on behalf of the Licensing Authority is directed to grant a licence for a 20 year period, and to include conditions in respect of monitoring as detailed in Annex 1 of the Appeal Decision.

This document is a record of the outcome of the Appeal decision (CAS-02246-C1H3Q3) and the subsequent Marine Licence Variation to extend the timeframe of the Marine Licence to 20 years and to incorporate the necessary amendments for the Marine Licence conditions as set out in Appendix 2.

NRW has considered the documents listed in Annex 1 of this decision document and the updated Habitats Regulations Assessment (HRA) as detailed in section 2.3 below.

2.2 Commercial Confidentiality

The Applicant made no claim that any information forming part of the Appeal and subsequent Marine Licence variation was subject to commercial confidentiality and we have not received any information in relation to the outcome of the appeal that appears to be commercially confidential.

2.3 European Protected Sites and Ramsar Sites

An updated HRA of the Proposed Activities has been undertaken, and NRW (as Statutory Nature Conservation Body) consulted on the HRA.

NRW considered the information presented within the application and the Appeal Decision. NRW concluded that increasing the duration of the licence to 20 years, as directed in the Appeal Decision, would not lead to an adverse effect on Site integrity, either alone or in-combination, on any marine features of designated sites subject to the mitigation below.

- Adherence to a Monitoring Programme that will monitor potential interaction of the project infrastructure with reef features of the SAC. If impacts are identified through the monitoring scheme, then mitigation will need to be proposed and implemented. If sufficient mitigation cannot be provided, then infrastructure will need to be removed from the site prior to significant long term alteration or impact to the feature (refer to condition 3.17 of Marine Licence and as detailed in Appendix 2).

Further details are described within the Habitats Regulations Assessment.

3 Conclusion

Having regard to all relevant considerations NRW's decision is to issue the variation to the Existing Marine Licence as directed by the outcome of the Appeal.

Conditions have been attached to the Marine Licence as set out in Appendix 2.

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AUTHORISATION

Report by: Seran Davies Position: Marine Licencing Officer	Date: 06/11/2023	Signed: S.Davies
Authorised by: Nicholas Bettinson Position: Permitting Service Manager	Date: 10/11/2023	Signed: 



Penderfyniadau Cynllunio ac Amgylchedd **Cymru**

Planning & Environment Decisions **Wales**

Appeal Decision

by Siân E Worden BA DipLH MCD MRTPI
an Inspector appointed by the Welsh Ministers
Decision date: 15/09/2023
Appeal reference: CAS-02246-C1H3Q3
Site address: Ramsay Sound, Pembrokeshire.

- The appeal is made under section 73 of the Marine and Coastal Access Act 2009 against a grant of a marine licence subject to conditions.
 - The appeal is made by Justin Davis of For the Love of the Sea Ltd, Câr-y-Môr against the decision of Natural Resources Wales on behalf of the Licensing Authority.
 - The application (ref: DEML2151), dated 20 September 2021, was approved by Marine Licence dated 22 March 2022.
 - The licence is for a three hectare Integrated Multi-Trophic Aquaculture (ITMA) Seaweed and Shellfish site in Ramsay Sound, Pembrokeshire.
 - The disputed factor is that limiting the duration of the operation to five years.
 - A virtual hearing was held on 15 August 2023.
 - A site visit was made on 27 August 2023.
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Decision

1. The appeal is allowed and the decision to issue the licence is quashed in part. The Licensing Authority is hereby directed to grant a licence for a 20-year period, to add Condition 3.17 in respect of monitoring, and to replace condition 3.21 regarding decommissioning with Condition 3.18 set out in the attached Schedule. Conditions 3.5 to 3.20 of the existing licence should be imposed on the new licence and numbered accordingly. Existing conditions 3.1 to 3.4 should not be imposed.

Procedural Matters

2. The duration of the licence is not a condition attached to it. The details of the licence's period of validity are set out in the first part of the licence.
3. On the licence application form, the appellant requested a licensable period of 20 years beginning in December 2021. This was confirmed at the hearing as correct despite the references to twenty-five years in some of the documents.
4. With regard to handling marine licences, Welsh Government (WG) has received legal advice to the effect that Inspectors cannot be the competent authority. If an Inspector is Ref: CAS-02246-C1H3Q3

minded to make a decision on a marine licence appeal which would require an HRA, they would, therefore, conduct a shadow HRA to inform NRW. NRW would carry out its own HRA before issuing the licence. I shall follow this advice in this case.

Background

5. The seaweed and shellfish farm that is the subject of the appeal licence is located in Ramsay Sound just off St Justinian to the north. It covers an area of three hectares. There are two existing, smaller, trial sea farms; one is located at Carn ar Wig, also in the Ramsey Sound, and the other around the headland in Porthlysgi Bay. Câr-Y-Môr is a community benefit society which was registered in 2019.

6. The facility is a typical ITMA installation consisting of riser chains attached to Trinity House special marker buoys, in between which are strung lines of smaller, floating buoys. The seaweed and shellfish are grown on ropes and in lantern nets suspended from these. Various parts of the structure, including some suggested monitoring equipment, are held on the seabed by heavy weights and anchors.

7. The marine licence application was made to Natural Resources Wales (NRW) in October 2021 by Câr-Y-Môr. The application was for a twenty-year marine licence that would allow Câr-Y-Môr to scale up from the trial sites that had been in operation for just over two years. In March 2022 the application was allowed and a licence granted but with a validity period of five years instead of the twenty requested.

8. Câr-Y-Môr considered that NRW's decision was unreasonable and made the appeal against the imposition of a five-year licence period which is the subject of this appeal.

Policy

9. The Marine and Coastal Access Act 2009 (the Act) allows marine plan authorities to prepare a marine plan. This is a document which states the authority's policies for and in connection with the sustainable development of the area; it must conform with the marine policy statement (MPS) for the area. The Welsh National Marine Plan (WNMP) was published in November 2019. The Act states that public authorities must take any authorisation or enforcement decision in accordance with the appropriate marine policy documents, in this case the WNMP, unless relevant considerations indicate otherwise.

10. The aquaculture sector objective of the WNMP is to facilitate the development of sustainable aquaculture in Welsh waters, including promoting innovative finfish, shellfish and marine algal businesses and associated supply chains. Accordingly, Policy AQU_01 supports proposals for new aquaculture developments, such as that operated in this case, where they contribute to the objectives of the plan; proposals should comply with the relevant general policies and sector safeguarding policies of the WNMP and any other relevant considerations.

Main Issue

11. Whether the disputed validity period of the licence is necessary to protect the integrity of the Special Area of Conservation (SAC).

Reasons

Effect on the SAC

12. The ITMA is located in the Pembrokeshire Marine SAC. The Regulation 37 advice provided by NRW summarises it as encompassing areas of sea, coast and estuary that support a wide range of different marine habitats and wildlife, some of which are unique in Wales. The features for which it is designated include reefs which are Annex 1

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habitats, that is, those considered to be most in need of conservation at a European level. It is an area of reef which has the potential to be most vulnerable to harm resulting from the installation and operation of the sea farm. 13. The appellant published its *Environmental Impact statement and document to inform a Habitats Regulation Assessment* in August 2021 to support its licence application. For reefs within the area of the sea farm, this identified that there was an impact pathway and significant effects could not be ruled out. The document thus provided an appropriate assessment of the potential effect on this feature. Its conclusions included that:

- Any initial impact on the reef from the anchor and/or chains would be minimal and have no adverse effect;
- The oyster baskets would contact the seabed, but the area of impact would be small and only slightly greater than the actual size of the basket (1m x 0.5m). The baskets would be lowered gently to the seabed to avoid any damage to them and would be similar in size and shape to lobster and crab pots. Studies have shown that potting has no significant effect on reef features;
- The scale of the multi-species sea farm would have little or no impact on the seabed communities in the area as continual and significant tidal currents would prevent detritus accumulation and the smothering of existing marine life.

14. NRW's specialist advisors responded to consultation on the marine licence, including the appellant's environmental assessment, in November 2021. NRW disputed that the impact of the oyster baskets would be small and localised; it considered that water movements would cause the baskets to move around such that a larger area of seabed would be modified or degraded. In addition, and exacerbating the effect, the duration of deployment of the oyster cages would be semi-permanent and they would have a more significant impact as the seabed would be unable to recover. Their impact would be greater than that of traditional potting where the pots would usually be in place for between 12- 48hrs and not often in exactly the same location.

15. NRW also noted inconsistency with the appellant's assessment of the large shallow inlets and bays feature. In that section, contrary to the assessment of the reef feature, the appellant clearly states that there will be a small loss of habitat resulting from the baskets and anchors.

16. In the light of its assessments in respect of benthic ecology, NRW's position was that it could not be certain that there would be no harmful impact on the reef feature during the 20-year licence period proposed. It notes that 20 years of impact is regarded as a permanent loss of the feature. NRW therefore recommended that the licence period should be reduced to 5 years to allow for monitoring and review of any impacts. This measure would ensure that there would not be an adverse effect on the integrity of the site or, consequently, the SAC.

Monitoring

17. The appellant notes that impacts to the seabed, seaweed and shellfish quality, ecology and other features continue to be monitored using a variety of equipment and techniques, all of which comply with industry standards. The appellant points out that its monitoring partners Plant Ecology Beyond Land (PEBL) are experts in IMTA monitoring. Moreover, PEBL is partially funded by WWF UK who thus require regular reporting and validation of monitoring results.

18. With regard to future monitoring, Câr-Y-Môr is collaborating with WWF Cymru, PEBL and Swansea University to carry out additional environmental monitoring focussing on the

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benefits multitrophic aquaculture delivers. Amongst other operations this would include regular inspections with cameras and remotely operated vehicles to observe the benthic ecology for any changes in its biodiversity. 19. As a result of the amount of data being collected the appellant considered that a monitoring condition could be imposed on a licence, instead of limiting that licence's duration, in order to adequately protect against adverse impacts on the integrity of the SAC.

20. NRW stated that a marine licence issued for activities such as deposition and construction in the sea over a longer period, such as 20 years, would typically be subject to the requirements of a rigid monitoring programme, with agreed reporting timescales, specific methodologies and the frequency of surveys conditioned within the Marine Licence and approved by NRW. NRW noted that the appellant had provided information regarding current and ongoing monitoring at the two trial sites which was being carried out by Bangor University and PEBL. NRW did not consider, however, that there was sufficient relevant or comparable evidence to permit the granting of a longer licence with including a monitoring condition.

21. NRW was also concerned that the appellant, from its own description, is a small, community-led project with limited funds and mostly staffed by volunteers, albeit those who are skilled and experienced in marine operations in this area. Monitoring at the Carn y Wig trial site was carried out by university and grant-funded bodies and there was no evidence it would continue at the appeal site. The appellant had stated that the feasibility of establishing a monitoring protocol was dependent upon university funding and research projects which were, at that time, unknown. NRW therefore decided not to compel the appellant to adopt a robust monitoring programme of benthic habitats and physical processes as, in NRW's opinion, it might not have been able carry this out.

22. In addition, NRW pointed out that as the farm is a new and emerging industry, at least within Wales, there is a lack of evidence to inform an understanding of the potential long term impacts of the site. NRW did not consider that the evidence from the trial sites was adequate as it was from different locations, and from smaller scale installations using different equipment. NRW also noted that the monitoring parameters collated by PEBL at the trial sites were related to the growth of the seaweed and shellfish, rather than assessing the impact on the Annex 1 features of the SAC.

23. It seemed to me at the hearing that there was a certain amount of confusion and disagreement as to the communication that had taken place between the appellant and NRW during the application process, and the amount and type of information that had been exchanged. The appellant was unsure what additional information was required or how it should be organised and, perhaps because of this, had not submitted further monitoring evidence.

24. In response to NRW's concerns about monitoring, my conclusions are as follows. That monitoring at the trial sites and the appeal site is being carried out in collaboration with specialists, including from universities and PEBL, is not, to my mind, a disadvantage. The amount of marine, aquaculture and monitoring expertise available to the appellant should ensure that a rigorous, comprehensive and fit-for-purpose monitoring protocol is drawn up. This would need to focus on the impacts of the ITMA on the SAC, particularly the reef feature. Whilst not directed to that effect, the monitoring information and presentation by PEBL, submitted prior to the hearing, demonstrate a good level of relevant knowledge and experience which could be utilised in developing an appropriate monitoring protocol.

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25. Once a satisfactory monitoring regime was established, the consistency and comparability of data could be maintained, even if temporary staff, volunteers or students were involved in the process. Monitoring the growth and condition of the shellfish and seaweed would not be necessary for the licence condition but would need to continue for commercial and business purposes.

26. Furthermore, during the licensing process the appellant has addressed other matters of concern such as the potential impact on marine species which could occur if porpoise, grey seal, bottlenose dolphin, and other marine mammal species became entangled with the seaweed farm's infrastructure. As the licence decision document states, to mitigate for this a Marine Mammal Entanglement Protocol (MMEP) will be adhered to and is included as a condition within the marine licence.

27. Similarly, a Biosecurity Plan, which will limit the spread of non-native species, has been developed and is also the subject of a condition imposed on the marine licence. That such concerns were satisfactorily addressed by the appellant and taken into account in the licencing process gives me confidence that a similar approach could be applied in respect of monitoring.

28. NRW's criticism with regard to the relevance of evidence from the trial sites is somewhat undermined by the advice from the statutory nature conservation body (SNCB) that the potential change the sea farm could have on local hydrodynamics should be explored further, including by drawing on experience from the trial sites.

29. Although the appellant may have previously been doubtful about the ability and funding to do so, I am confident that an appropriate and focussed monitoring system could be implemented and sustained, if necessary for the terms of the licence. It would be appropriate to require that reporting back to NRW with the results of monitoring at the site took place at annual intervals. Consequently, any mitigation necessary could be implemented following the reports and therefore sooner than if the current five-year licence remained in place. If monitoring was not carried out in a timely and accurate manner, for whatever reason, the appellant would have failed to comply with the licence conditions and NRW could take appropriate action.

Revocation of licence

30. The appellant made the point that section 72 (3) of the Act allows NRW to vary, suspend or revoke a licence. Appropriate reasons for doing this are listed as:

- a) because of a change in circumstances relating to the environment or human health;
- b) because of increased scientific knowledge relating to either of those matters;
- c) in the interests of safety of navigation;
- d) for any other reason that appears to the authority to be relevant.

31. Any of these, but particularly a) or b), could potentially apply in this case. NRW explained at the hearing, however, that the revocation of a licence would be a measure of last resort; to have to employ this sanction would indicate that something had gone seriously amiss during the licencing process.

32. I can understand this position and appreciate that the possibility of revoking a licence should not be used as a routine safety measure. On the other hand, where other appropriate mitigation measures are in place, such as an approved monitoring and review regime, it would be a reassuring and valuable safeguard in the event that those measures failed.

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Other relevant considerations

33. The appellant referred to several difficulties for the aquaculture business which would result from the limited licence period.

34. It is not currently possible for the appellant to produce a realistic, longer-term business plan beyond the length of the marine licence, a serious deficiency for any business and which is likely to severely restrict funding from coming forward. Uncertainty makes finances overall difficult to plan and manage.

35. The lack of certainty as to what would happen beyond the 5 year licence period would make the purchase of new juvenile stock unfeasible. Native oysters and scallops, which are approved for the sea farm, take 4-5 years to reach a marketable size; it takes about 1½ - 2 years to develop the stock of mussels. In order to avoid unsustainable waste, therefore, stock which takes a long time to mature could not be bought after year one. Seaweed grows quickly but could not be purchased in the fourth year in case a new licence was not granted. The lack of stock continuity would be severely detrimental to the prospects of building up and maintaining a reliable customer base.

36. Another major implication for the appellant would be the impact the 5 year licence period would have on its research and development activities. Research is currently being carried out into the potential cultivation of high value species, such as native dulse. It is not viable for the appellant to continue funding such research if there is a limited likelihood of having an area in which to produce new species longer term.

37. A final and significant problem is that the existing licence could not be renewed without repeating the application process, taking up valuable time and staff resources which could be better employed elsewhere. NRW advised the appellant that process should be started a year before the marine licence expired but if there were delays, which the appellant's experience with its marine licence applications to date indicates would be likely, the existing sea farm infrastructure would all have to be removed from the water. This would be a highly detrimental and wasteful exercise, especially if the licence was then approved.

Other examples

38. The appeal project is the first sea farm of this kind in Wales but there are several elsewhere in the UK. The appellant drew my attention to seaweed farms in North Devon and North Cornwall, granted 25 year and 40 year marine licences respectively, and a seaweed and mussel cultivation operation, also in Cornwall, which had been given a 29 year marine licence. The position in Scotland is that there is an intention to standardise the aquaculture marine licence period at 25 years.

39. I have been provided with little detail about the quoted examples and can draw no helpful comparisons with them. In any event, each case must be considered in line with the specific circumstances and policies pertaining to it, as I have done in this appeal. The non-marine examples of leases and licences granted to a biking centre, a holiday resort and forestry operations have very limited relevance to this case and I have not given any weight to them.

Conclusions on licence validity period

40. Section 22 of the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011 (the Regulations) permit the appointed person determining an appeal against a decision to either dismiss the appeal or allow it and quash the licence in whole or in part. Where the licence is quashed, the appointed person can direct the Licensing Authority, that is NRW in this case, to grant a marine licence on such terms or subject to

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such conditions as the appointed person may direct. The Regulations thus empower me to direct NRW to issue a marine licence for a different period and with additional and/or altered conditions. 41. The precautionary principle establishes that the burden of proof is to show on the basis of objective evidence that the operation in question would not adversely affect the integrity of European sites, such as a SAC, in the light of their conservation objectives. There is much case law on the subject including the Waddenzee judgement which found that competent authorities should issue an authorisation, such as a licence, for operations which would affect a protected site only if they had made certain that it would not adversely affect the integrity of the site. Such certainty amounts to there being no remaining, reasonable scientific doubt as to the absence of such effects.

42. The WNMP states that the precautionary principle should be applied where there are reasonable grounds for concern that human activities may bring about harm to living resources and marine ecosystems, or damage amenities or interfere with other legitimate uses of the sea. A high level of precaution may be necessary in relation to particularly sensitive or vulnerable habitats.

43. As NRW granted a licence for five years it cannot consider that the seaweed farm would inevitably harm the integrity of the SAC. Sufficient evidence was available to result in an adequate HRA and AA for a 5 year licence and to satisfy the precautionary principle. As NRW stressed, to grant a licence contrary to the findings of an HRA would be unlawful.

44. In granting the licence for a 5 year period, NRW advised that this would allow for monitoring of the impact on SAC features, namely the Annex 1 reef, using an adaptive management approach which would support future applications. The WNMP describes adaptive management as a process which allows for the management of uncertainty to be optimised and reduced over time. The process entails monitoring, reviewing and feeding back into continuing management decisions, and should be considered where there is an identified opportunity to manage such uncertainty.

45. It was not completely clear to me, either from NRW's written submissions or from what was said at the hearing, why a monitoring condition had not been imposed on a longer licence or why a short-term licence was considered the safer option. I appreciate that NRW was not satisfied with the information that had been provided to date but it seemed to express the opinion at the hearing that shortcomings with the available evidence, for example a possible lack of baseline data, could be overcome. In addition, I do not find that the reasons for not granting a longer licence with a monitoring condition as set out in NRW's statement of case are compelling.

46. It is my opinion, therefore, that the differences between the approaches of the main parties are minor and not significant; neither would result in harm to the integrity of the SAC. This would be protected by a longer licence period as long as a rigorous monitoring protocol was applied and adhered to by the appellant. In the event that it was not, NRW could take enforcement action including, as a last resort, revoking the licence. The longer licence period with monitoring condition would, however, be greatly advantageous to the appeal business. Indeed, it could make the difference between its success and failure. In that respect it would be consistent with the WNMP's Sector Objective of facilitating the development of sustainable aquaculture in Welsh waters and, consequently, with Policy AQU-01 which supports proposals for new aquaculture developments where they contribute to the objectives of the WNMP.

47. Overall, on the matter of the licence duration I conclude that a new licence for a period of 20 years should be issued, subject to the imposition of a monitoring and reporting condition.

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Other matters

48. The infrastructure at both trial sites is attached to two rows of large black buoys which are clearly visible in views from the coastal path. Although the appeal site is larger, it has far fewer of the black buoys and, instead, mainly uses smaller, lighter coloured buoys which appear as dispersed in a fairly random arrangement. These are more in character with the buoys used for mooring boats, as at nearby St Justinian, and the appeal site is thus less prominent from land than the trial sites. In any event, neither the appeal site nor the trial sites are so apparent and visible as to be intrusive or harmful to the appearance of the surrounding area or SAC.

49. The signs providing information about the sea farm, which are located on the stiles and gates nearest to each site, are of a modest size, durable, and professional in appearance. As such, they are not unduly conspicuous, out of place or visually detrimental to the coastal path.

New and amended conditions

50. The practicality of imposing a monitoring condition on a licence was mentioned at the hearing with NRW expressing the view that, as the operation was already in place, this would present problems. The position would be the same, however, if the appellant applied for a new licence prior to the expiration of the current one as NRW suggests. I am therefore directing in the new monitoring condition that the Monitoring Programme should be submitted within 6 months of the determination date of the licence. If it is not, NRW has the authority to compel the sea farm to cease operation and, if the matter is not resolved, for it to be removed.

51. In the light of the 20 year licence period the decommissioning condition must be altered to reflect that. As the sea farm is already in place and operating there is no need for the four conditions requiring the notification of various bodies. The remaining conditions should therefore be renumbered.

Appropriate Assessment

52. As noted in a procedural matter above, the current legal advice is that inspectors cannot be the competent authority. In this case, my decision that the appeal should be allowed requires an AA. I have therefore conducted a shadow AA (shAA), as follows, to inform NRW. In doing so I have focused only on the matter in dispute, namely the validity period of the licence which is influenced by the likely effects on the Annex 1 reef feature.

53. The salient characteristics and designated features of the Pembrokeshire Marine SAC are described elsewhere in this document, as are the development itself and its likely significant effects. The conservation objectives are set out in the Regulation 37 advice. The fundamental objective for the habitat features, such as the reef in this case, is that their overall distribution and extent within the site is stable or increasing.

54. NRW's position is that the specified licence period of five years would allow for adequate monitoring and assessment of results in order to avoid long term impact on site features. NRW states that this would not have an adverse effect on the integrity, in terms of its structure and function, of the site.

55. I have considered NRW's reasons for not imposing mitigating conditions on a longer term licence and found that they were not decisive or compelling. The monitoring condition I have directed here will detect potential harm in a timely manner. It will thus provide effective protection by enabling the Licensing Authority to instruct the appellant to cease production and remove any harmful infrastructure if it is not satisfied by the survey and monitoring reports that it will receive throughout the licence period.

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I am, therefore, satisfied that a 20 year licence which includes this monitoring and reporting condition will not have an adverse effect on the integrity of the site. 56. Mindful of the requirements of Regulation 63(3) I have had full regard to the position of NRW, in its role as appropriate nature conservation body, on the issue of the shAA. As I have been able to fully understand its position from the evidence presented orally and in writing to the hearing it has not been necessary for me to seek further advice.

57. Having adopted the precautionary principle in carrying out my shAA, I conclude that it is beyond reasonable scientific doubt that the scheme would not have an adverse effect on the integrity of a European Site, namely the Pembrokeshire Marine SAC. This conclusion is predicated on securing the identified mitigation measures through the imposition of the licence conditions, as amended by this decision.

Conclusion

58. For the above reasons, and having regard to all other matters raised, I find that the appeal should succeed to the extent that the licence should be amended to have a lifetime of 20 years; conditions 3.1, 3.2, 3.3 and 3.4 should be removed; a new monitoring condition 3.17 should be added; and the existing condition on decommissioning, renumbered as 3.18, should be amended.

59. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

Síân Worden

Inspector

Annex 1 Schedule of Conditions

3.17 Monitoring

3.17.1 The Licence Holder must submit a detailed Monitoring Programme to the Licensing Authority for written approval within 6 months of the determination date of this licence. The Monitoring Programme must set out full details of the location and specification of the infrastructure of the ITMA including the monitoring infrastructure; the methodology; other monitoring equipment, the timetable and other details for assessing, recording and reporting to the Licensing Authority the effect of the licensed ITMA on the designated features of the Pembrokeshire Marine SAC.

3.17.2 The Licence Holder must ensure that all the requirements of the Monitoring Programme outlined in Condition 3.17 are implemented as approved in writing by the Licensing Authority. The Licence Holder must submit its first report to the Licensing Authority within one year of the determination date of this licence. Thereafter subsequent reports shall be submitted to the Licensing Authority every twelve months. Any proposed changes to the Monitoring Programme must be submitted to, and agreed in writing by NRW acting on behalf of the Licensing Authority, prior to any changes being enacted.

3.18 Decommissioning

3.18.1 The Licence Holder must ensure that all infrastructure and associated equipment are decommissioned within 20 years of the determination date of this licence, or within 2 months from the cessation of operations, whichever is the sooner

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Appendix 2 – Variation to the Marine Licence following Appeal Decision

Licence End Date

Licence end date has been changed in section 1.3 of the Marine Licence from 22 March 2027 detailed in DEML2151 to 22 March 2042 in DEML2151v1.

Notification of Commencement

The removal of conditions 3.1, 3.2, 3.3 and 3.4 relating to notification of commencement of works.

Monitoring

The addition of the following condition;

3.17 Monitoring

3.17.1 The Licence Holder must submit a detailed Monitoring Programme to the Licensing Authority for written approval within 6 months of the determination date of this licence. The Monitoring Programme must set out full details of the location and specification of the infrastructure of the ITMA including the monitoring infrastructure; the methodology; other monitoring equipment, the timetable and other details for assessing, recording and reporting to the Licensing Authority the effect of the licensed ITMA on the designated features of the Pembrokeshire Marine SAC.

3.17.2 The Licence Holder must ensure that all the requirements of the Monitoring Programme outlined in Condition 3.17.1 are implemented as approved in writing by the Licensing Authority. The Licence Holder must submit its first report to the Licensing Authority within one year of the determination date of this licence. Thereafter subsequent reports shall be submitted to the Licensing Authority every twelve months. Any proposed changes to the Monitoring Programme must be submitted to, and agreed in writing by NRW acting on behalf of the Licensing Authority, prior to any changes being enacted.

Decommissioning

The following condition has been amended from

The Licence Holder must ensure that all infrastructure and associated equipment are decommissioned prior to 22 March 2027.

to

3.18.1 The Licence Holder must ensure that all infrastructure and associated equipment are decommissioned prior to 22 March 2042, or within 2 months from the cessation of operations, whichever is the sooner.

In relation to the Decommissioning condition above a minor amendments has been made to the condition proposed by the Planning Inspector in Annex 1 of the Appeal Decision, in order to make clear that decommissioning must take place prior to the end date of the licence which has been extended to 22 March 2042.