



**Cyfoeth  
Naturiol**  
Cymru  
**Natural  
Resources**  
Wales

## **Marine Licensing Decision**

The Marine and Coastal Access Act (2009)

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**Applicant: Milford Haven Port Authority**  
**Application reference no: CML2031**

**Milford Haven**

**Flap valve replacement and wall repairs**

**03 September 2020**

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## **OUR DECISION**

Based on all the information available, and having regard to all relevant considerations NRW has decided to grant the marine licence sought by the Application subject to the conditions set out in Annex.

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

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**1 APPLICATION DETAILS**

Applicant Name and Address	The Applicant is the person or organisation set out below:  Company/organisation name: Milford Haven Port Authority  Address: Gorsewood Drive, Hakin, Milford Haven, Pembrokeshire, SA73 3EP		
Application Reference Number	CML2031		
Date Application was duly made	17 July 2020		
Proposal[s] covered by the application	Replacement of outfall flapvalve, laying of rockstone mattress beneath the outfall and localised mortar repairs to quay wall at Milford Haven		
Licensable marine activities	Flap valve replacement and wall repairs at Milford Haven		
Marine Plan area	Welsh National Marine Plan		
Application documents:	7c mitigating measures	16 July 2020	1
	WFD report	16 July 2020	1
	Highways specification	16 July 2020	1
	Coordinates location	16 July 2020	1
	Flapvalve spec	16 July 2020	1
	Section and elevation	16 July 2020	1
	Slaix rock mattress	16 July 2020	1
	Plan and general arrangement	16 July 2020	1

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## **2 APPLICATION PROCEDURE**

### **2.1 Application Acceptance**

The Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 17 July 2020. 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 Pembrokeshire County Council on 27 July 2020.

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 the Western Telegraph on the 29 July 2020. The application documents were made available to the public at 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.

The Application was not considered by NRW to 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 July 2020, due to their particular expertise. These bodies were consulted for a period of 28 days. Those bodies have responded to the consultation a 'Y' can be found in the response received column, those who did not respond to consultation an 'N' can be found in the response received column:

Consultee	Response received (Y/N)	Date(s) of receipt
The Crown Estate	Y	17/08/2020
NRW	Y	03/09/2020
MoD - Safeguarding Defence	Y	30/07/2020
Maritime & Coastguard Agency		
Trinity House	Y	31/07/2020
Royal Yachting Association	Y	28/07/2020
Local Biodiversity Officer (Pembrokeshire)	Y	21/08/2020
Local Planning Authority (Pembrokeshire County Council)		
Local Harbour Authority	Y	27/07/2020
Local Port Authority		
Royal Society for the Protection of Birds (RSPB)		
Welsh Government Marine Enforcement Officers		
Welsh Archaeological Trust	Y	17/08/2020
Royal Commission on Historic Monuments Wales		
Cadw		
Department for Transport (DFT)		
Chamber of Shipping		
NERL Safeguarding	Y	31/07/2020

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 granted, and the conditions attached to it, 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 sub-section 4.1);
- the need to protect human health (see sub-section 4.2);
- the need to prevent interference with legitimate uses of the sea (see sub-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 sub-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 sub-sections 4.1 to 4.5 below); and
- such other matters as it thinks relevant (see sub-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**

NRW has considered the potential effect of the Proposed Activities on the following WFD waterbodies:

- Hubberston Pill

A Water Framework Directive Compliance Assessment has been undertaken for the Proposed Activities and taken into account in this decision. This assessment concludes that the project does not have the potential to cause deterioration in the status for Hubberston Pill Headwaters to Tidal limits. Works area is small, negligible and will be undertaken within a temporary cofferdam.

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Based on this assessment it is considered that the Proposed Activities when considered alone and in combination, will not pose a risk to deterioration in the status of any of the above listed waterbodies or jeopardise their attainment of good surface water status.

Further details are described within the Water Framework Directive Compliance Assessment.

### **4.1.2 Biodiversity and resilience of ecosystems duty**

#### **(a) The legal framework**

Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities to seek to maintain and enhance biodiversity in the exercise of their functions, and in so doing promote the resilience of ecosystems, having regard to biodiversity lists published under section 7, the State of Natural Resources Report and any area statement published under section 11.

#### **(b) Factors relevant to our determination**

NRW has considered its duties under section 6 of the 2016 Act and is satisfied that the Proposed Activities would not reduce biodiversity when undertaken in accordance with appropriate conditions.

### **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 is located in the following European Protected Site

- Pembrokeshire Marine SAC

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

The following conclusions of the HRA have been considered by NRW in making this decision. The project has been screened for likelihood of significant effects and, taking account of the advice received from protected sites advisors, is considered not likely to have a significant effect on any Natura 2000/Ramsar site.

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Further details are described within the Habitats Regulations Assessment.

NRW is therefore satisfied that the Proposed Activities, either alone or in combination with other plans or projects, will not adversely affect the integrity of European Site(s) when undertaken in accordance with appropriate conditions.

### **4.1.4 Marine Conservation Zones**

#### **(a) The legal framework**

Marine Conservation Zones 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 Island.

Under the 2009 Act, NRW must exercise its functions in the manner which it considers best furthers the conservation objectives stated for any Marine Conservation Zone 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 Marine Conservation Zone due to the distance between the MCZ and the location of the licensed activities

### **4.1.5 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 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 has considered the impact of the Project on the following sites:

- Milford Haven Waterway SSSI

NRW is satisfied that the Proposed Activities do not have the potential to impact on Milford Haven Waterway SSSI

Appropriate consultation has been undertaken within NRW, as set out in section 3, and the response indicated that NRW is satisfied that the Proposed Activities are not operations likely to damage the SSSI and that the method statement proposed as part of the Application appropriately addresses any risks arising from the Proposed Activities.

### **4.1.6 Waste Framework Directive**

#### **(a) The legal framework**

The Waste Framework Directive (2008/98/EC) establishes a legal framework for treating waste in the EU. 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 Directive establishes 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).

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**(b) Factors relevant to our determination**

NRW is satisfied that the Proposed Activities meet the requirements of the Waste Framework Directive.

**4.1.7 Other matters in 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.

**4.1.8 Conclusion of our considerations under the need to protect the Environment**

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

**4.2 The need to protect human health**

No comments or representations were received in relation to the need to project 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.

No comments or representations were received in relation to the need to prevent interference with legitimate uses of the sea. Standard conditions were included within the licence to ensure there will be no impact to legitimate uses of the sea.

**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.

**(b) Our determination**

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

### **Welsh National Marine Plan**

This decision has been taken in accordance with marine policy as set out in the Welsh National Marine Plan.

#### **4.5 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 satisfied that the carrying out of the Proposed Activities in accordance with the terms of the marine Licence and conditions proposed would contribute to meeting the objective of "Ensuring land and water in Wales is managed sustainably and in an integrated way" for the reasons set out in paragraphs 4.1.1-4.1.7.

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.

In particular, NRW acknowledges that it is a principle of sustainable management of natural resources to take action to prevent significant damage to ecosystems. NRW is satisfied, for the reasons set out in paragraphs 4.1.2 to 4.1.4 that appropriate action will be taken as part of the Project, when implemented in accordance with the conditions in marine licence CML2031.


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### **Conclusions and Recommendations**

Based on all the information available, and having regard to all relevant considerations including consultation responses, NRW's decision is to grant 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 granted.

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5 AUTHORISATION

<p>Report by:</p> <p>Joe Thomas</p> <p>Position: Permitting Officer</p>	<p>Date:</p> <p>03 September 2020</p>	<p>Signed:</p> 
<p>Authorised by:</p> <p>Wendy Dodds</p> <p>Position: Permitting Team Leader</p>	<p>Date:</p> <p>04 September 2020</p>	<p>Signed:</p> 