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**Natural
Resources**
Wales

Marine Licensing Decision

The Marine and Coastal Access Act (2009)

Applicant: Natural Resources Wales- All Wales Marine
Advice Team

Application reference no: DEML2049

Milford Haven waterway

**Phase 2 Wales Native Oyster Restoration Project –
Cultch and broodstock laying trial within inner
Milford Haven Waterway**

15 February 2021

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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 1.

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.

Application Number: DEML2049**1 APPLICATION DETAILS**

Applicant Name and Address	The Applicant is the organisation set out below: Natural Resources Wales- All Wales Marine Advice Team Maes y Ffynnon Penrhosgarnedd Bangor Gwynedd LL57 2DW
Application Reference Number	DEML2049
Date Application was duly made	4 December 2020
Proposal[s] covered by the application	Wales Native Oyster Restoration Project (NORP)- Phase 2- introduction of cultch (clean shell) material for a juvenile oyster broodstock laying trial at two locations (Beggars reach and Burton) within the inner Milford Haven waterway, Pembrokeshire Marine SAC.
Licensable marine activities	Deposit of cultch in subtidal zone over an area of 30m x20m at two locations using a vessel and temporary marker buoys to delineate area for purpose of deposit.
Marine Plan area	Welsh National Marine Plan
Application documents:	NORP Phase 2 Marine Works Licence Application Form- FINAL (13/11/2020) Environmental Appraisal NORP Phase 2- FINAL (13/11/2020) WFD Assessment NORP- Phase 2 (02/12/2020) Beggars Reach coordinates X Y (24/11/2020) Burton Ferry Coordinates X Y (24/11/2020)

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2 APPLICATION PROCEDURE

2.1 Application Acceptance

The Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 04 December 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 21 December 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 Pembrokeshire Observer on 15 January 2021. The application documents were made available to the public online via the NRW 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.

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 21 December 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	22/12/2020
NRW	Y	04/01/2021
MoD - Safeguarding Defence	Y	05/01/2021
Maritime & Coastguard Agency	Y	18/01/2021
Trinity House	Y	28/01/2021
Royal Yachting Association	Y	14/01/2021
Local Biodiversity Officer	N	-
Local Planning Authority (Pembrokeshire County Council)	N	-
Local Harbour Authority (Milford Haven)	Y	06/01/2021
Local Port Authority (ABP-Ports)	Y	21/012/2020
Royal Society for the Protection of Birds (RSPB)	N	-
Welsh Government Marine Enforcement Officers	N	-
Welsh Archaeological Trust	Y	08/01/2021
Cadw	Y	14/01/2021
Chamber of Shipping	N	-
NERL Safeguarding	Y	22/12/2020
Welsh Fisheries	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.

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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:

- *Milford Haven Inner (Western Wales GB531006114100)*

A Water Framework Directive Compliance Assessment has been undertaken for the Proposed Activities and taken into account in this decision. This assessment concluded that it is not considered likely that the proposed activity would have a significant effect on the WFD waterbody.

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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.

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*

Restoration of the native oyster (habitat and species), which is identified as a typical species and habitat component of several Annex 1 features for which the Pembrokeshire Marine SAC is designated (i.e. Reef, Estuary and Large Shallow Inlet and Bay), is connected to the management of the site (Article 6.3 of Council Directive 92/43/EEC ('the Habitats Directive')). Additionally, the Pembrokeshire Marine SAC conservation objectives 'restoration and recovery' section (p78) specifically states: 'There is also need for some restoration of the populations of several typical species of the Milford Haven waterway complex that are severely depleted with respect to historical levels as a consequence primarily of human exploitation'.

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The proposed works are therefore considered as being connected to the management of the Natura 2000 site for the purpose of conserving the habitats or species for which the SAC site is designated; therefore, it was determined that a HRA was not required.

NRW consultation

NRW requested further evidence as to why cultching was the best method for this regeneration scheme and also further evidence as to proof of avoidance of areas of rocky reef and herring spawning grounds (concerns regarding smothering of these habitats with the cultch).

MLT provided this further information from the applicant to NRW and this is summarised below:

Cultching- *It is well documented that the introduction of cultch (clean shell material) can potentially enhance the recruitment of oyster spat and increase population numbers, in areas where the adult oyster population numbers are low and availability of clean settlement material is limited (Baggett et al., 2013; Lenihan, 2001; Lowe et al., 2011; Sawusdee et al., 2015¹)*

A recent report funded by NRW Ermgassen, 2017 - Milford Haven Native Oyster Regeneration Project - Stage One (current status and practicalities), identified that the current most likely contributors to the low oyster densities and recruitment in Milford Haven are: lack of broodstock, Bonamia and low quality cultch.

Through a series of trial experimental plots the Wales Native Oyster Restoration Project (Phase 1 & 2) is investigating the potential barriers to oyster restoration in this area – which includes the challenges around lack of broodstock, Bonamia and trial introduction of cultch. The project will assess whether the additional of cultch improves both survival of introduced broodstock as well as recruitment oyster spat – which in turn contributes to better reproductive success and therefore future oyster habitat creation. Without substrate to settle on and attach, young oysters fall on unsuitable or sediment laden substrates and die.

The introduction of cultch and subsequent height increase above the seabed also serves to elevate the introduced broodstock making them less susceptible to smothering from sedimentation as well as increasing the recruitment of spat (Lenihan and Peterson, 1998; Lenihan 1999²).

Herring spawning- *Herring spawning grounds are known to be present across certain areas of the proposed restoration site at Burton Ferry. Close attention to specific location of the trial cultch and broodstock laying trial areas will ensure that there is no overlap and potential impact on these herring spawning habitats. Evidence used to identify suitable site locations will include still images and drop-down video footage obtained in 2020 from the current Native Oyster restoration Project as well as Ermgassen 2017. This information will be used in conjunction with the information contained in the Milford Haven Herring interim Report 2018 to ensure that impact on this habitat is avoided. We have not finalised the exact locations of the trial restoration sites but I can confirm that site selection information including known areas of herring spawning grounds as well as Annex 1 reef habitats have been used as part of the process. As such, we can ensure that there will be no overlap / intersect with the proposed trial restoration plots and the sensitive features mentioned. Once the sites have been finalised, we will share exact locations with the MLT and NRW Advisory.*

¹ Lenihan, H.S., Peterson, C.H., Byers, J.E., Grabowski, J.H., Thayer, G.W., Colby, D.R. (2001) Cascading of habitat degradation: oyster reefs invaded by refugee fishes escaping stress. *Ecological Applications* 11, 764-782.
Lowe, M., S. Stokes & G. Gereffi. 2011. Restoring Gulf oyster reefs - opportunities for innovation. Center on Globalization, Governance & Competitiveness. Durham, NC: Environmental Defense Fund. 57 pp
Sawusdee, A., Jensen, A.C., Collins, K.J., Hauton, C. (2015) Improvements in the physiological performance of European flat oysters *Ostrea edulis* (Linnaeus, 1758) cultured on elevated reef structures: Implications for oyster restoration. *Aquaculture* 444, 41-48

² Lenihan, H.S., Peterson, C.H. (1998) How habitat degradation through fishery disturbance enhances impacts of hypoxia on oyster reefs. *Ecological Applications* 8, 128-140
Lenihan, H.S. (1999) Physical-biological coupling on oyster reefs: How habitat structure influences individual performance. *Ecological Monographs* 69, 251-275.

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Following submission of this further clarification from applicant, NRW responded that they were satisfied the project would have a reasonable chance of success and would not be likely to cause a significant effect on the features of the Pembrokeshire Marine SAC.

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.

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 of the location, the scale and the type of the proposed 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 is satisfied that there is no impact pathway to any SSSI.

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).

(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

Archaeology

CADW (and the Welsh Archaeological Trust) both provided responses relating to the scheduled monument Burton Beach. With Cadw providing the following;

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'Scheduled monument PE531 Burton Beach Overlord Hard is located inside the boundaries of the Burton area. The monument consists of a World War II Overlord hard, an embarkation point specifically designed to embark the great quantities of personnel, vehicles and supplies required for the invasion of France in 1944. The hard was built in late 1942 and was operational until December 1944. The surviving structures include the hard, the foundations of the hard jetty and part of the original dedicated access road, together with the remains of three Royal Naval detachment offices and storage buildings. It is located in the intertidal area on the northern side of the Burton area and its presence is not mentioned in the information submitted with the application.

The information contained in the application indicates that the scheduled monument would not be a suitable area for the deposition of the Cultch: However, it should be noted that depositing material on a scheduled monument requires scheduled monument consent before being carried out and any changes to the structure itself would also need consent.

Having considered the information submitted with the application it is our opinion that the proposed works will not have an impact on scheduled monument PE531, but a note should be attached to any licence granted for this project noting its position inside the application area (the exact location can be found at <https://cadw.gov.wales/advice-support/cof-cymru/search-cadw-records>) and that any works in the designated area will require scheduled monument consent before they are carried out.'

Following discussion with the applicant, MLT are satisfied that the cultch laying will take place entirely within the sub-tidal zone and will not overlap the boundary of the scheduled monument.

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 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.

MCA

Comments received from the MCA stating no objection to consent provided all maritime safety legislation is followed and the applicant must complete a marine emergency action card and submit this to oelo@mcga.gov.uk (this has been provided to the applicant with the instruction to complete included within the marine licence cover letter) and also inform the local coastguard of the works prior to commencement (this has been included as a condition-refer Annex 1). Also, the site is within port limits and the applicant 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.

Email received from Marine Director & Harbour Master confirms direct liaison with NRW and also confirms they have fed into both the project design and the timing of the works. The applicant is also liaising with the harbour master with regard to the notification of the works.

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Trinity House

A response from trinity house confirmed there to be no objection to the trial and confirmed that any site marker buoys should be yellow spherical and that as works fall within the jurisdiction of Milford Haven Port Authority they should be informed/consulted.

The applicant confirmed all buoys would comply with MCA/TH requirements and to note that the buoys would only be temporary for the cultch installation and would then be removed for the duration of the trial.

Email received from Marine Director & Harbour Master confirms direct liaison with NRW and also confirms they have fed into both the project design and the timing of the works.

RYA

Comments were received concerning if the trial were successful and a permanent area was to be established then this could impact on other activities in the area and several points pertaining to this were raised. These have all been passed to the applicant for consideration if the trial areas were to become permanent but are not relevant to this application and have such not been considered further herein.

Advisory if the trial becomes permanent but not relevant to this Marine Licence application- information has been passed to applicant for future reference.

No other comments or representations were received in relation to the need to prevent interference with legitimate uses of the sea.

The conditions included within the licence will 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

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.

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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.

In particular, 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 "improving the resilience and quality of our ecosystems" for the reasons set out in paragraph 4.1.2.

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 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.

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5 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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6 AUTHORISATION

Report by: Seran Davies Position: Senior Permitting Officer	Date: 11/02/2021	Signed: 
Authorised by: Wendy Dodds Position: Permitting Team Leader	Date: 15/02/2021	Signed: 

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ANNEX 1

Conditions imposed and reasons for those conditions

Condition	Comments	Condition Number in Marine Licence
The Licencee must ensure that HM Coastguard, in this case zone28@hmcg.gov.uk, is made aware of the works prior to commencement.	It is acknowledged that the applicant is in continuous communication with the Harbour Authority but a condition has also been included with regard to notification of HM Coastguard.	3.4