

## Report on the Stella Maris of Newquay Appeal case

### Officers' Recommendations

a) That Members note the report
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### Background

On 4<sup>th</sup> October 2022, HHJ Linford delivered his Judgment in the Appeal case, *D&S IFCA v Manning and Baker*. The Appellants were convicted at Plymouth Magistrates' Court on 15<sup>th</sup> November 2018 of 16 offences relating to illegally fishing within the Start Point to Plymouth Sound and Eddystone Site of Community Interest.

HHJ Linford's ruling to stay proceedings in the case was solely based on the Appellant's medical evidence that identified the Master as not well enough to attend court and neither he nor the Owner could therefore receive a fair trial. HHJ Linford sets out that '*the case does not set any precedent; is highly fact specific and exceptional.*'

The Judge also recognised that proceedings had nearly reached six years duration and to continue was not in the public interest. HHJ Linford was also critical of D&S IFCA's evidence.

D&S IFCA's Officers accept the basis for HHJ Linford's ruling that the ill health of an Appellant prevented him from attending court. However, D&S IFCA officers do not accept some of the facts and opinion stated in the Judgment but took the view that, in the light of the Appellant's health, it was not in the public interest to appeal the Judgment and to prolong proceedings any further.

### Matters of challenge in the Judgment

#### *Insufficient D&S IFCA evidence - No case to answer*

The Judgment sets out HHJ Linford's view that '*before evidence can be used there must be other evidence capable of supporting the prosecution case. Here Mr Mathews concedes, this is the only evidence of fishing in the restricted zone. In my view a prosecution founded on this evidence alone is likely to fail at the conclusion of the prosecution case*'

D&S IFCA's Officers are clear that other evidence was used to support the analysis of the VMS data. When D&S IFCA's case and evidence was heard in the Magistrates' court, there was no application to stop proceedings by the defence. A 'no case to answer' submission is made by the defence at the conclusion of the prosecution's case, when the defence argue that the prosecution evidence is insufficient to secure a conviction on the charges. It is the task of the Judge or Magistrates to determine whether based on the prosecution's evidence a conviction could be achieved. If the Judge or Magistrates agree with the defence submission, they would stop the trial

The decision to stay proceedings in the Crown Court meant that the D&S IFCA's case and evidence was not heard in that Court and HHJ Linford acknowledged that he had only read the D&S IFCA's skeleton argument and summary of the case; he had not examined D&S IFCA's evidence in full.

There has never been a 'no case to answer' submission by the defence to challenge D&S IFCA's evidence in any of the cases brought to trial or where the defendants have challenged D&S IFCA's evidence when they have been offered disposal through the acceptance of a

Financial Administrative Penalty (FAP). D&S IFCA's Compliance and Enforcement Strategy requires D&S IFCA to proceed to prosecution if the FAP is declined so the same evidential test must be passed irrespective of whether the case proceeds to court or with the offer of a FAP.

D&S IFCA is aware that in previous cases many fishers have instructed highly experienced barristers and solicitors to represent them and D&S IFCA's evidence has not been challenged. There has been an acceptance by the defence that there was a case to answer in all cases.

In the most recent case in October 2021, IVMS data were used as a component of D&S IFCA's evidence against a fisher that had used a demersal trawl illegally in a Marine Protected Area. D&S IFCA's evidence would undoubtedly qualify as an 'IVMS only' case in the eyes of those challenging D&S IFCA's approach to enforcement. D&S IFCA's evidence was not challenged with a submission of 'no case to answer' by the fishers' barrister. After a trial which included hearing evidence from the Master and Owner, they were found guilty on all six charges by the District Judge. No appeal against conviction was made.

#### *Adjournment in the Magistrates' Court*

The Judgment is incorrect when it states that the proceedings in the Magistrates' Court were delayed by D&S IFCA. D&S IFCA's solicitor and the Deputy Chief Officer (Mat Mander) were present when the case was heard in the Magistrates' Court in 2017. The application to adjourn proceedings was made by the Defence's solicitor. It was the Defence solicitor that raised the matter of the Crown Court case (to be heard later that year in Gloucester) and in view of the technical nature of both cases he invited the Magistrates to consider adjourning the trial. D&S IFCA was ready for trial and stated so but indicated that they would not oppose adjournment if the Magistrates felt that was the best way to proceed.

#### *Video evidence showing Stella Maris of Newquay fishing*

The Judgment sets out HHJ Linford's view that *'I think it more likely than not that a video existed but I am sure that the prosecuting authority do not have it and therefore cannot hand over what they do not have. I think it likely, highly likely, probable that the prosecuting authority started this case based upon the report of Mr TAPPER and wanted him to support it. I have no doubt that the rug was pulled from beneath their feet when he withdrew his support for the prosecution (if he ever supported it) but there is nothing intrinsically offensive or objectionable about that.'*

D&S IFCA's Officers do not accept HHJ Linford's opinion.

D&S IFCA received a report from Mr Tapper that his pots had been illegally towed away by the Stella Maris of Newquay PH97 on the morning of 6<sup>th</sup> September 2016 in the area known as the East Rutts at 1000hrs. Officers emailed Mr Tapper on 7<sup>th</sup> September 2016, and he was asked to provide the position of his pots before they were lost. D&S IFCA did not receive a response to this request and at no point in time did Mr Tapper provide or indicate that he was in possession of a video recording of the Stella Maris of Newquay PH97 until the Appellants raised the matter of the video on 3<sup>rd</sup> October 2022, over six years later. At no point in the proceedings in the Magistrates' Court was the matter of a video raised by the Defence.

During the Master's interview, the Officers were satisfied that his account was consistent with VMS data analysis that the Stella Maris of Newquay PH97 had intercepted Mr Tapper's pots whilst fishing legally outside of the closed areas and had only entered the closed area to deposit the pots that had been caught by the trawls.

No charges were brought by D&S IFCA in respect of this reported incursion and reported loss of pots. The Judgment suggests that the lack of the video evidence was catastrophic to the D&S IFCA's case, but this matter had been dismissed through the analysis of the VMS data

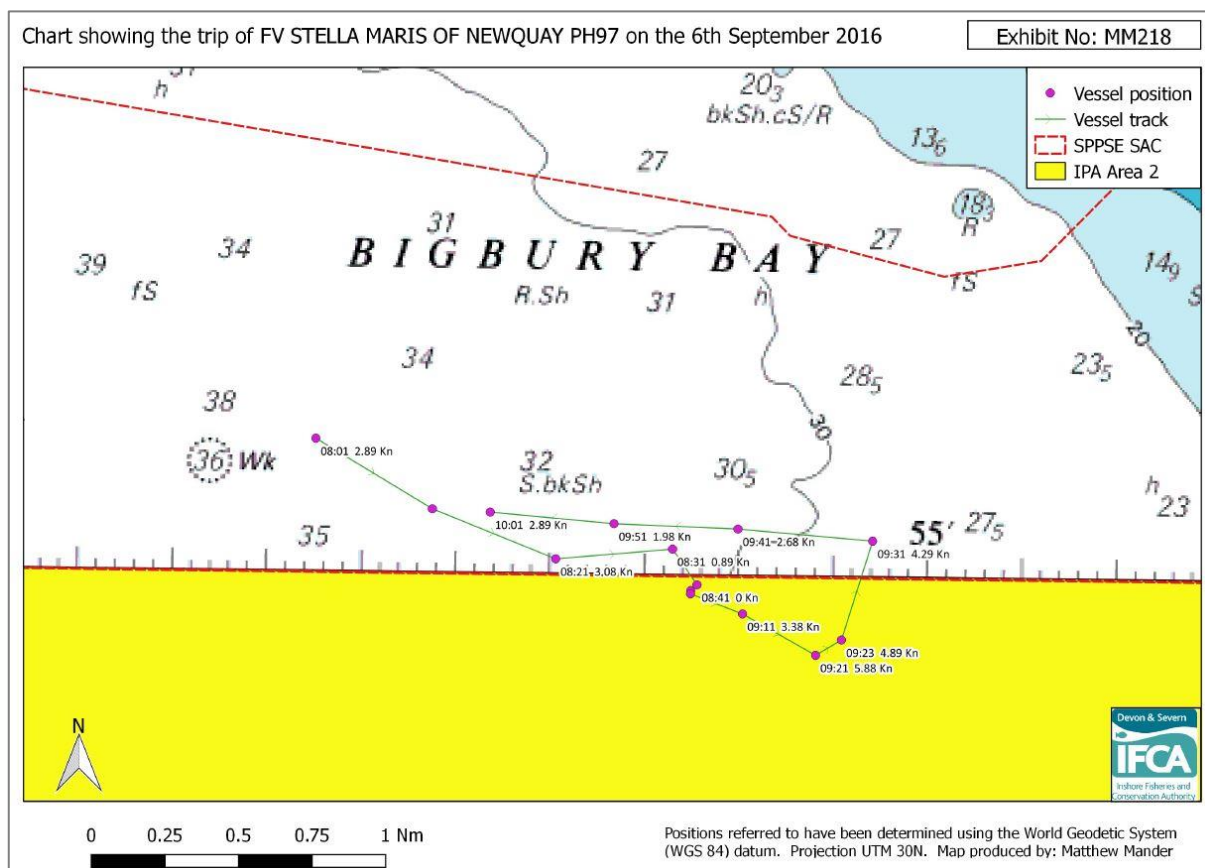
and was confirmed by the Master at interview. Rather than undermine D&S IFCA's case it demonstrated how VMS data was able to identify the fishing activities of the vessel.

The chart MM218 below, produced for trial in the Magistrates' Court, shows that at some point in time between 0821hrs and 0831hrs the Stella Maris of Newquay PH97 slowed from fishing speeds to very low speed indicating that the vessel had hauled. The subsequent changes in course and slow speeds indicates that the crew were likely sorting a problem on deck. The vessel did enter the closed area (marked yellow), but the speed and course of the vessel was consistent with the vessel dumping pots and then steaming back out of the closed area to start fishing again.

This was the only time during the period 5<sup>th</sup> to 9<sup>th</sup> September 2016 that the VMS data recorded that the Stella Maris of Newquay PH97 had entered the closed area around the East and West Rutts where Mr Tapper reported losing his pots.

The VMS evidence shows that if a video of Stella Maris of Newquay was taken in the area of the East and West Rutts on 6<sup>th</sup> September 2016 then the video would have shown that the vessel was fishing legally outside the closed area.

If D&S IFCA had received a video of the Stella Maris of Newquay fishing, then there are legal procedures that would have been followed to introduce that video evidence even if Mr Tapper no longer wished to make a statement or support D&S IFCA's prosecution.



## Review of proceedings in the Crown Court

### Appeal process

An appeal against conviction and sentencing was submitted to the Courts by the Appellant's solicitor on 3<sup>rd</sup> December 2018.

The grounds for the appeal were that;

- the Magistrates had placed too much weight on the D&S IFCA's evidence and too little on the evidence of the Owner and the other defence witness.
- The master had recovered sufficiently to give evidence in court
- The appellants had appointed an expert to review the VMS data evidence.

However, when the defendants changed their legal team, a number of technical challenges to D&S IFCA's evidence were raised by the Master and the appointed experts at Pre Trial-Hearings, which required numerous adjournments of proceedings in order for D&S IFCA to respond.

The issues raised by the appellants, leading to adjournments, included;

- That D&S IFCA had not plotted the VMS data correctly referring to the legal requirement for all mapping work to be compliant with EU INSPIRE Regulations.
- That D&S IFCA had plotted the VMS data using the incorrect datum, the defence arguing that D&S IFCA should have used ETRS89 rather than WGS84
- That D&S IFCA should have used vector rather than raster charts
- That D&S IFCA had not proved the accuracy of the positional information from the VMS data and that the VMS device had been functioning correctly.
- That D&S IFCA's drafting of the permit conditions meant that the co-ordinates used to define the closed area in Bigbury Bay had not been set out properly.
- The ground within the closed area was too rough and boulders were present that prevented the use of a demersal trawl.
- The vessel could not have fished as close to the reef as the D&S IFCA had indicated it did.

After D&S IFCA had responded to these matters, in 2021 D&S IFCA was provided with the Appellant's expert medical evidence relating to the Master. D&S IFCA instructed four experts to respond to these challenges and it was these adjournments and then the Appellants and their legal team not being ready for trial that were the main factors for the appeal taking so long and the cause of most of D&S IFCA's costs.

HHJ Linford stated in his Judgment '*These proceedings have on the contrary been delayed and delayed by the approach of the appellants or their earlier legal teams taking and abandoning issues and then being unready for trial*'

Throughout the delayed appeal process, D&S IFCA's officers questioned why the Appellants and their legal teams spent so much time and money to bring these challenges to D&S IFCA's evidence when they were seemingly very confident that D&S IFCA's case was based on 'VMS only' evidence and would not survive an application of 'no case to answer'

D&S IFCA recognises that fishers and their defence teams are focussing their challenges more on technical points rather than on the evidence itself. In the most recent case brought by D&S IFCA, heard in September 2022, relating to a towed gear vessel operating in the District without a fully functioning IVMS device, the fishers legal team challenged D&S IFCA

on whether the Byelaw and the permit conditions were properly drafted. This case was heard in front of a District Judge and when the challenge was rejected the fishers proceeded to plead guilty to the offences.

## Costs relating to the case

There was a significant cost to D&S IFCA in taking proceedings in this case. It is also acknowledged that HHJ Linford's decision to stay proceedings also meant that the Defendant's expenses for both the appeal and the original Magistrates' Court trial were reimbursed through central, public funds (not D&S IFCA).

At the end of proceedings in the Magistrates' Court, the D&S IFCA's legal costs were £18,357.30.

The majority of D&S IFCA's costs were incurred at the appeal stage and were the result of the requirement to instruct four experts to deal with the matters that had been raised by the Appellants and for the Authority's fishing expert to continue to review their evidence in preparation for trial only for matters to be adjourned.

At the point that the decision to stay proceedings was made by HHJ Linford, the total D&S IFCA costs, including the trial in the Magistrates' Court were £78,850.57. Legal costs were £38,164.27 and expert evidence, including bathymetric survey was £40,86.30

## Legal Implications of the Case

The case has no long-term legal implications. The decision's grounds (the '*ratio decidendi*') were based solely on the ill health of the appellant and thus the inability of the other appellant to receive a fair trial. All other comments of the Judge are what is referred to as '*obiter*' and do not form part of the decision. Moreover, the Crown Court is not a court of precedent, and its decisions are not binding on other courts, who are at liberty to come to an entirely different conclusion on similar facts in the future. An article (Annex 1), by Andrew Oliver Partner at Andrew Jackson Solicitors, published by the Fishing News 8<sup>th</sup> December 2022 and provided as an attachment to this paper, confirms that the Judgment sets no precedent for prosecutions.

## Media Reporting

There has been a considerable amount of reporting and commentary regarding the case across social media, in the written press and on television. Unfortunately, some of the reporting and comments have been factually incorrect and have led to greater uncertainty and concern across the commercial catching sector.

Officers have already responded to many of the issues that have been raised, along with responding to an Environmental Information Regulation request, and this paper intends to provide further clarity regarding the case.

## Future Plans for D&S IFCA and Fishers

The agreed vision for the Authority recognises innovation and the championing of technology, and the Enforcement and Compliance Strategy recognises that technology can help to ease budgetary pressures on the Authority associated with effective enforcement. The Authority's approach to Byelaw development and use of Permits caters for the use of current and future technology.

D&S IFCA will continue to use VMS, IVMS and AIS data as a component in its future investigations. In 2018, D&S IFCA introduced permit conditions that increased the required

reporting rate of all towed gear vessels operating when inside Marine Protected Areas to every three minutes. This has enhanced the resolution of the available positional data.

Despite this improvement in data, only 23 of the 48 spatial incursion investigations that D&S IFCA has carried out since 2014 have met the evidential test and could be proceeded with

D&S IFCA's officers have been working on ways in which it can enhance its effectiveness in protecting the marine environment.

D&S IFCA's officers have recently reported on the highly successful achievements of its Remote Electronic Monitoring project. It is expected that the greater use of 'gear in / gear out' sensors and onboard cameras will remove the need for expert evidence in respect of the activity onboard the vessel when operating inside a prohibited area. Similar technology is currently required for the Scottish scallop fleet by Marine Scotland.

D&S IFCA officers intend to submit a bid for Central government funding to continue with this project. If its bid is successful, D&S IFCA's officers would invite other fishers to participate in the project to evaluate the robustness of the cameras and sensors on towed gear vessels.

D&S IFCA will then use the results of the project to consider whether it could financially support the maintenance and ongoing costs of the devices rather than the burden falling on the industry. This may be achievable through the reduction in D&S IFCA's costs of monitoring the towed gear fisheries and by reducing the allocation of its budget to legal fees as the number of cases being taken to court is predicted to be lower.

## Background Papers

[HHJ Linford's Judgment in the Stella Maris of Newquay case, dated 4<sup>th</sup> October 2022](#)

Annex 1 - Andrew Oliver's Article for Fishing New, dated 8<sup>th</sup> December 2022

[D&S IFCA's Enforcement & Compliance Strategy](#)