

Dr James Stewart
Devon and Severn IFCA
18th June 2021

Ref. Hinkley Point C, Appeal APP/EPR/573

Dear Mr Moorhouse,

Thank you for agreeing with the PINS Inspector, Mr Robins, to act as a conduit for issues to be raised by Devon and Severn IFCA regarding the Draft South West Inshore Marine Plan (SWMP), and its application to this case.

Due Consideration of the SWMP

During the inquiry session on the morning of 18th June 2021, the representative for the Appellant (Mr Tromans) stated that the Appellant did not know which of the SWMP policies they should consider, and that the Severn Estuary Interests group should highlight which policies are relevant. However, Devon and Severn IFCA would like to draw the Inspector's attention to the following text from a document prepared by the Appellant:

"It is noted that there is a requirement to consider the South West Marine Plan (SWMP) as part of this licence variation application. During consultation with the MMO on 23rd April 2020 (see Section 1.3) advice was sought from the MMO as to the level of consideration required of the SWMP as this is a requirement new to 2020 and the SWMP (at the time of writing) was still available in draft form only. The MMO provided confirmation that the Marine Management Plan (MMP) Assessment itself is a process undertaken by the MMO, but it should be ensured that each of the policies specified within the SWMP are considered within the supporting documentation [emphasis added]"

From this text, included in a Marine Licence variation application submitted by the Appellant, it is clear that the Appellant was aware (at least as early as April 2020) that the SWMP is a material consideration, and that it is the responsibility of the applicant in any case to appropriately consider each of the policies within the plan and their relevance to the project. The above text is available in context in the Marine Licence Application reference number MLA/2012/00259/6. The SWMP is also explicitly considered in the Environmental Statement provided to the MMO for that application.

Furthermore, the SWMP itself is clear that *"Applicants, those developing a proposal, and third parties, such as advisors, as well as public authorities, should consider the South West Marine Plan where relevant. It is the responsibility of the user to determine whether and to what extent the policies are relevant, and to apply them to a proposal in the context of their own processes and current practice"* (SWMP, paragraph 35). SWMP paragraph 48 goes on to state that *"Whilst public authorities will apply the South West Marine Plan to decisions they take, those introducing proposals that require the decision, sometimes in the form of an application for an authorisation, will need to take relevant account of the plan. To maximise benefits the South West Marine Plan should be used throughout the development of proposals and in all stages of decision-making, in line with current best practice"*.

Marine Plan Policies of Relevance to this Case

Paragraph 34 of the SWMP highlights that “*The marine plan must be read as a whole, taking all plan policies together rather than each policy in isolation*”. As outlined above, the Appellant should therefore consider all policies. For the sake of brevity, D&S IFCA would like to highlight one particular policy in addition to those already highlighted as relevant by the Severn Estuary Interests group in inquiry Core Document 6.4.

Policy MPA-1 specifies that “*Proposals that support the objectives of marine protected areas and the ecological coherence of the marine protected area network will be supported. Proposals that may have adverse impacts on the objectives of marine protected areas **must** demonstrate that they will, in order of preference: a) avoid b) minimise c) mitigate adverse impacts, with due regard given to statutory advice on an ecologically coherent network [emphasis added]*”.

Some Policies in the SWMP allow compensation as a last resort: an option (d) for cases in which adverse effects cannot be avoided, minimised, or mitigated. However, there is no such provision for MPA-1. Policy MPA-1 is clear that “*proposals that cannot avoid, minimise and mitigate adverse impacts to marine protected areas [(including European sites)] **will not be supported** [emphasis added]*”. The use of strong language here (e.g. ‘must’) is outlined in the SWMP to be consistent with that used in the Marine Policy Statement.

In the interests of transparency, D&S IFCA will highlight that the Technical Annex to the SWMP does state that “*This policy [MPA-1] does not remove the provisions for derogations that are present in primary legislation and regulations*”. D&S IFCA’s understanding of this statement is that it *potentially* includes the IROPI route under Section 64 of The Conservation of Habitats and Species Regulations 2017. D&S IFCA is not well-placed to determine whether Section 64 provides a relevant derogation in this case. D&S IFCA would suggest that such an approach may be against the spirit of MPA-1, but also that a project deemed to have an adverse effect on an MPA may have to re-consider appropriate mitigation (in this case the Acoustic Fish Deterrent), or the IROPI route for continuation with *appropriate* compensation.

On the issue of compensation, the Managing Natura Sites guidance document defines Compensatory Measures *sensu stricto*: “*they are intended to compensate for the effects on a habitat affected negatively by the plan or project. For example, general tree-planting to soften a landscape impact does not compensate for the destruction of a wooded habitat with quite specific characteristics*”. This latter caveat will have broad implications for the ability to compensate in a complex and dynamic marine environment.

It should also be noted that Policies MPA-1 and NG-1 (the latter raised by the Severn Estuary Interests group), are highlighted in Table 3 of the SWMP as among those Policies that apply to all proposals.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Stewart', with a stylized flourish at the end.

Dr James Stewart

Senior Environment Officer

Devon and Severn Inshore Fisheries and Conservation Authority