



Llywodraeth Cymru
Welsh Government

PUBLICATION, DOCUMENT

Habitats Regulations Assessment: addendum to technical note

Updates the conclusions of the Strategic Resource Areas and Marine Planning Notices Habitats Regulations Assessment Technical Note.

First published: 13 March 2024

Last updated: 13 March 2024

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Strategic Resource Areas and Marine Planning Notices: Habitats Regulations Assessment (HRA) Technical Note: addendum

This addendum updates the conclusions of, and should be read alongside, the [Strategic Resource Areas and Marine Planning Notices Habitats Regulations Assessment Technical Note](#) (15th August 2022). The conclusions of the 2022 Technical Note were based on a set of fundamental characteristics of the MPN and the associated marine plan policies. This addendum has been produced to determine whether the HRA screening conclusions apply equally to Marine Conservation Zones.

Background

In line with the Welsh National Marine Plan (WNMP), Welsh Government are progressing the identification of potential Strategic Resource Areas (SRAs) and activation of WNMP policy SAF_02. The policy safeguards areas of resource from significant adverse impacts from any new proposals that are being considered by other sectors within these areas. SRAs will be given effect through publication of Marine Planning Notices (MPNs).

As set out in the 2022 HRA screening Technical Note, SRAs are simply intended to safeguard resources and facilitate proactive dialogue between sectors when planning future activities. SRAs are intended to operate with WNMP policy SAF_02 in order to identify sector specific resource areas for safeguarding for potential future use with no inference regarding the acceptability or unacceptability of specific developments, therefore:

- they do not confer rights for use or development by any sector

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- they will provide no direct support or planning benefit for development (e.g., a ‘tidal stream’ proposal will not be considered more acceptable or more likely to be permitted because it is in a tidal stream SRA)
- they do not prevent use of an area by other sectors (so, for example, an aggregates proposal in a ‘tidal stream’ SRA would simply need to demonstrate (inter alia) that acceptable compatibility can be achieved with the potential for sustainable tidal stream developments to be delivered in that area)
- they do not imply any particular scale or rate of development or resource use

HRA screening opinion conclusions

On 15th August 2022 Welsh Government published the **Strategic Resource and Marine Planning Notices: Habitats Regulations Assessment** (Wood Group UK Limited, 2022) based on these fundamental characteristics of the MPN and the associated marine plan policies. The key conclusions from this screening exercise are:

- the MPN has been considered against the requirements of Article 6 and 7 of the Habitats Directive (reflected through the application of Regulations 63 (and potentially 64) of the Conservation of Habitats and Species Regulations 2017)
- SRAs do not guide development either to or away from an area or confer or suggest development suitability; nor do they provide planning policy support or benefit for development or sterilise an area from development by other activities
- all proposals coming forward within an SRA must follow normal authorisation and consenting procedures. All environmental regulation (and policies within the WNMP) will need to be applied in full for any development progressed within any SRA (as they are within all other locations). Certain human activity may not be appropriate in an SRA because of the requirement to protect

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- Marine Protected Area (MPA) features or for other reasons
- SRAs will not conflict with the designation of MPAs or the completion of Wales's contribution to an ecologically coherent network of MPAs. Maintenance or achievement of 'favourable conservation status' for European sites (both MPAs and terrestrial sites) within or outside the SRAs would be a "clear and convincing reason for proceeding" with nature-conservation proposals that might otherwise be incompatible with an SRA designation
 - the safeguarding provided by SAF_02 does not take precedence over the protection provided by the Habitats Regulations; incompatibility with an SRA cannot be relied on for a "no alternatives" derogation argument, and the avoidance of adverse effects on a European site would always be a "clear and convincing" reason for 'non-compatible' proposals to nevertheless occur within an SRA
 - the screening for HRA of the SRA MPN has concluded that it does not introduce any mechanisms by which significant effects on any European sites would be likely, alone or in combination, due to the fundamental characteristics that will be common to SRA MPNs across all sectors
 - an SRA MPN will not have likely significant effects on European sites necessitating assessment under the Habitats Regulations (SEA Directive Article 3.2b / SEA Regulation 5(3))

Under these considerations the technical note concluded that there is no formal requirement to complete an 'Appropriate Assessment' in accordance with Regulation 63 of The Conservation of Habitats and Species Regulations 2017 and Regulation 28 of The Conservation of Offshore Marine Habitats and Species Regulations 2017.

This conclusion nests with the WNMP Habitats Regulations Assessment (Wood Group, 2019) conclusions that:

- "... there will be no adverse effect on the integrity of any European sites, alone or in combination, as a result of the plan's implementation"

- “All future project-level proposals will be subject to a project-level HRA as part of the consenting procedure, and the general cross-cutting protective policies within the plan will reinforce existing safeguards for European sites.”

It was recommended that the HRA screening and provisional conclusions be kept under active review by Welsh Government to reflect any changes once further information on the content of the SRA MPN is finalised.

HRA screening opinion addendum: Marine Conservation Zone Assessment

Part 5 of the Marine and Coastal Access Act 2009 makes provision for the designation of Marine Conservation Zones (MCZs). Section 125 places general duties on public authorities to exercise their functions in a manner which furthers the conservation objectives stated for the MCZ or, where this is not possible, to exercise them in a manner which the authority considers least hinders the achievement of those objectives. If any such functions would or might significantly hinder the achievement of the MCZ conservation objectives, the appropriate statutory conservation body must be notified.

Section 126 makes provision for situations where the person seeking the authorisation is not able to satisfy the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ. In such situations the person needs to satisfy the authority that:

1. there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives,
2. the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and
3. the person seeking the authorisation will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the

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damage which the act will or is likely to have in or on the MCZ.

Section 127 relates to advice and guidance by conservation bodies on such matters.

The mechanisms by which an MPN introducing an SRA could affect an MCZ are the same as for MPAs subject to HRA. As such, despite the different steps within 'appropriate assessment' and 'section 126' assessment, the HRA screening conclusions, the underpinning rationale and the findings set out in this addendum also apply to MCZs. MPNs introducing SRAs do not introduce any mechanisms by which significant effects on any MCZ would be likely, alone or in combination, due to the fundamental characteristics that will be common to SRA MPNs across all sectors.

Conclusion

The SRA MPN will therefore have no significant effect, alone or in combination, on any European sites or MCZs. This conclusion has been accepted by Natural Resources Wales.

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