



Welsh Government policy clarification note

Use of the National Habitat Creation Programme in delivering Flood and Coastal Erosion Risk Management projects

1. Context

- 1.1 This document is intended for colleagues within Welsh Government and all Risk Management Authorities. It clarifies the application of the Conservation of Habitats and Species Regulations 2017 in relation to the Shoreline Management Plans (SMPs) and Flood and Coastal Erosion Risk Management (FCERM), utilising the National Habitat Creation Programme.
- 1.2 This note is jointly owned by Flood and Coastal Erosion Risk Management, Biodiversity and Marine teams on behalf of the Welsh Government.

2. Shoreline Management Plans (SMPs)

- 2.1 SMPs are non-statutory, high-level policy documents for coastal flood and erosion risk management planning, covering the whole of the Welsh and English coast. There are four plans that relate to the Welsh coast. Whilst non-statutory, they are key to the Welsh Government's strategic approach to managing coastal risk. SMPs do not set policy for anything other than FCERM but are a material consideration in other forms of development which rely on coastal planning, and referenced in Planning Policy Wales and associated advice (TAN15).
- 2.2 The first round of SMPs were completed in the early 2000s. A second round of plans followed, with a baseline date of 2005 and were agreed by the Minister for Natural Resources in 2014.
- 2.3 SMPs provide a high-level assessment of the risks from coastal erosion and coastal flooding to individuals, communities, the natural environment and heritage. They forecast the increasing risks due to climate change, such as sea level rise, and provide sustainable, long-term coastal management policies, taking into account social, economic and environmental assets. Preferred management scenarios are proposed over the short (0-20 years i.e. 2005 to 2025), medium (20-50 years i.e. 2025 to 2055) and long term (50-100 years i.e. 2055 to 2105). The SMPs are live documents and subject to change, depending on the latest data.

SMPs identify four flood and coastal risk management policy options which are:

- Hold The Line of existing defence (HTL)
- Advance The Line of existing defence (ATL)
- Managed Realignment/retreat (MR)

- take No Active Intervention (NAI)¹

2.4 SMPs are a basis for future coastal management decisions. Before any interventions are implemented, the proposed works would be subject to individual project approval.

3. Habitats Regulations Assessment

- 3.1 Under the Conservation of Habitats and Species Regulations 2017, any plan or project assessed by the Competent Authority as likely to have a significant effect on a Special Area of Conservation (SACs) and/or Special Protection Areas (SPAs) and/or Ramsar sites, must be subject to an appropriate assessment. If that assessment cannot establish that the plan or project will not adversely affect the integrity of any protected site, then it may only proceed if there are no alternative solutions and it satisfies the Imperative Reasons of Overriding Public Interest test (IROPI). If a project is to proceed on the basis of IROPI any compensatory habitat needed must be provided to secure the coherence of the new national site network.
- 3.2 The SMPs were subject to appropriate assessments which concluded that adverse effects could not be ruled out, due to the anticipated effects of coastal squeeze in HTL policy areas. Therefore, SMPs progressed on the basis of no alternative solutions, recognising the risk of flooding to populated areas had to be managed, and an IROPI case was submitted to the European Commission. This case gave an overview of the potential impact SMP policies could have *if* flood defence schemes are implemented in line with the preferred management options in each SMP, alongside a strategic approach to securing compensatory measures.
- 3.3 Plans or projects which give effect to the policies in the SMPs are subject to assessment (including appropriate assessment if applicable) at the time they come forward for approval.
- 3.4 Provided that an individual project/plan is demonstrably consistent with the relevant SMP policy, the statutory notice to WG from NRW shall include a short confirmation of the fact and therefore the plan/project is justified on grounds of no alternative solutions and the existing SMP IROPI.
- 3.5 The potential habitat loss attributable to a plan or project would be assessed by the Competent Authority through the appropriate assessment and will help inform national compensatory habitat requirements. Recent research² on what constitutes coastal squeeze will help such assessments become more consistent.
- 3.6 The compensatory measures necessary to offset those losses can be delivered as part of a strategic approach to address the adverse effects of implementing SMP policies, through the National Habitats Creation Programme (NHCP). Key to the success of the NHCP, and compliance with the Conservation of Habitats and Species Regulations 2017, is a programme of ongoing monitoring and review to

¹ NAI may still involve significant management activity, for example, consulting with landowners and communities who may benefit from the defence and de-commissioning the defence in a safe way without causing detriment.

² https://assets.publishing.service.gov.uk/media/6038fafde90e07055c14049b/FRS17187_What_is_coastal_squeeze_report_1.pdf

determine any actual loss, detriment or accretion (gain) of protected habitat.

4. Purpose of the National Habitat Creation Programme (NHCP)

4.1 The National Habitat Creation Programme (NHCP) was set up by the Welsh Government to scope for and provide any necessary coastal habitat compensation as a result of plans or projects funded through its FCERM programme related to SMP policies. The NHCP is delivered by NRW on behalf of the Welsh Government.

4.2 NHCP complements the SMP IROPI 'monitor and review' approach by updating models of potential coastal squeeze using data from plans or projects' detailed assessments and validating against any actual habitat loss, ensuring targets remain up-to-date to inform an appropriate provision of compensatory habitat.

4.3 The NHCP targets are developed as follows:

- the potential impact of flood risk management plans and projects were initially assessed through the HRA of the SMPs;
- targets are refined through ongoing monitoring and taking into account assessments at individual project level, provided by the applicant and verified by NRW;
- anticipated habitat losses identified from those assessments are the basis for defining the scale, location and type of compensatory measures that need to be delivered strategically through the NHCP;
- NHCP targets will be kept under review in light of: potential losses identified through further assessments; monitoring to assess the extent and location of actual habitat loss attributable to new plans or projects (flood risk management interventions) and; the periodic re-evaluation of predicted habitat loss based on updated rates of sea level rise (e.g. UKCP18).

4.4 The NHCP enables Wales to provide any necessary compensatory habitat in a holistic and joined up manner, being more beneficial to the habitat in question than providing a piecemeal approach.

5. The Welsh Government's Position

5.1 Plans or projects that put into effect policies under SMPs will be determined on a case-by-case basis by the relevant decision maker. While it is for the relevant Competent Authority to determine when an appropriate assessment would be required to assess the possible impacts of a plan or project, we would expect the following general points to apply to flood or coastal risk management projects.

5.2 A new flood defence that is likely to have a significant effect upon the designated features of the new national site network will be considered against the requirements of regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017. Likewise, any plan or project to extend the footprint of an existing flood defence seawards, which may have a significant negative effect upon a site, should be subject to the same requirements. A screening exercise will be necessary to

determine whether the works will require an appropriate assessment.

- 5.3 The screening and any appropriate assessment required should be proportional to the scale of works and only consider likely significant effects related to the new intervention (plan or project) and not the original or existing defence or structure.
- 5.4 In any of the above examples, if an appropriate assessment identifies that an FCERM intervention will adversely affect the integrity of a national site network, and proceeds on the basis of IROPI, then necessary compensatory measures must be secured. The most effective way to do this would be through the NHCP. This allows work to proceed without the individual Risk Management Authority needing to source compensatory measures. However, the provision of land, qualitative habitat improvements or support to NHCP would strengthen their business case and may provide wider biodiversity and amenity benefits. The scheme promoter will be expected to identify the likely requirements as part of the appropriate assessment. The responsibility for monitoring loss and managing an adequate and timely supply of land through NHCP remains with NRW.
- 5.5 The Welsh Government does not consider section 63(1) of the Conservation of Habitats and Species Regulations 2017 to apply to any coastal squeeze attributed to the existence and maintenance of a historic flood defence, for example through the interaction of a historic defence and sea level rise.
- 5.6 The Welsh National Marine Plan (WNMP) sets out the Welsh Government's commitment to Sustainable Development and through a plan-led system it supports proportionate and risk-based decision making. In line with the WNMP and in the spirit of Article 18 of the Marine Licensing (Exempted Activities)(Wales) Order 2011, routine maintenance and like-for-like repairs to existing defences carried out within the existing boundary of a defence, should not trigger an appropriate assessment or the IROPI process as these works are not considered a plan or project which is likely to have a significant effect on a European site or a European offshore marine site under 63(1) of the Conservation of Habitats and Species Regulations 2017.

6. Individual Flood and Coastal Erosion Risk Management (FCERM) projects and the National Habitat Creation Programme (NHCP)

- 6.1 The NRW Marine Licensing Team, as the regulator for marine licensing and as Competent Authority under the Conservation of Habitats and Species Regulations 2017, must satisfy itself in respect of the requirements of the Regulations when assessing applications for a marine licence, having regard also to other matters, for example, relevant Welsh Government policy.
- 6.2 The National Habitat Creation Programme (NHCP) was established following direction from the former Environment Minister in 2009 to help provide a strategic response to coastal squeeze issues related to FCERM schemes.
- 6.3 NRW manage the NHCP and are responsible for reporting back to the Welsh Government on its progress annually. NRW also remain responsible for the supply of land to NHCP for compensatory measures and the ongoing monitoring that demonstrates the Programme is ahead of any losses brought about by coastal

squeeze associated with FCERM schemes. This does not preclude applicants from providing compensatory land or qualitative improvements (see 6.7 and 6.8).

- 6.4 NHCP remains the agreed way to provide compensatory habitat to balance loss and detriment caused or likely to be caused by FCERM schemes. Its use has been supported by the European Commission in their response to UK Government (July 2012) and presented at Floods Directive Working Group (October 2015).
- 6.5 'Access' to NHCP should be triggered if the scoping and appropriate assessment of a new FCERM scheme has concluded that there is likely to be loss or detriment to a site, or sites, within the national site network. The losses (adverse effects due to coastal squeeze) calculated within the Habitat Regulation Appraisal (HRA) process should be recorded by NRW Marine Licencing and provided to the NHCP team. The HRA and IROPI process can then proceed, with compensatory measures delivered strategically by NHCP. NRW shall inform Welsh Government Flood officials when FCERM applications trigger this process and include details in its annual report.
- 6.6 Flood and Coastal Erosion Risk Management Authorities in Wales benefit from NHCP as they do not have to delay a coastal/flood scheme in order to secure compensatory habitat for applications, which are likely to impact upon the national site network. In many cases, there is no such appropriate land within the applicant's administrative boundaries. Even where possible, landowner discussions and/or guarantees over future provision would significantly delay most applications. NHCP allows applications to progress as the Government's approved method for providing that land and meeting the Conservation of Habitats and Species Regulations 2017.
- 6.7 Risk Management Authorities are still encouraged to support the provision of compensatory habitat where this is possible, by helping secure appropriate sites, stakeholder engagement and other appropriate assistance. Where business cases for grant funding identify provision of land for NHCP, this will be considered as a wider benefit to the scheme and as such will be considered within the prioritisation of the FCERM programme.
- 6.8 If there is an immediate requirement for compensatory habitat (a new flood scheme leading to immediate loss of habitat) then that land must already be 'banked' in the NHCP, or provided by the applicant, otherwise the scheme cannot proceed.
- 6.9 Like-for-like repairs and maintenance works which do not extend the footprint of the defence seawards should not trigger an appropriate assessment or IROPI process, as they do not constitute a plan or project which is likely to have a significant effect on a European site or a European offshore marine site under 63(1) of the Conservation of Habitats and Species Regulations 2017.
- 6.10 Maintenance and/or repairs to existing coastal defences is a crucial task and should be carried out in accordance with preferred policies in the SMPs. Maintaining defences will not always exacerbate or worsen coastal squeeze against a 'do nothing' scenario, as those defences will remain in place for a considerable length of time without major maintenance and/or may be adjacent to urban infrastructure or topography that inhibits intertidal habitat developing. Doing nothing may also lead to considerable social, economic and environmental losses on the landward side of defences. As such, maintenance and like-for-like repairs to flood defences would be

expected to be screened out and not subject to appropriate assessment or the IROPI process. Exceptions to this may be works which extend the footprint of existing defences seawards, or associated development which would lead to detriment or loss of a protected area.

- 6.11 NHCP is not designed to provide compensatory habitat to offset habitat losses attributable to third party assets such as those, which are the responsibility of infrastructure providers, energy or rail companies. However, third parties may be able to contribute to and benefit from NHCP on an exceptional basis.
- 6.12 Two key parts of ensuring compensatory measures are in place prior to losses occurring are (i) the modelling of potential losses in coastal strategies and major schemes combined with (ii) ongoing monitoring of intertidal habitats through NHCP, coastal groups and the Wales Coastal Monitoring Programme.
- 6.13 NHCP targets should be further refined through modelling data presented in the application and assessments for new schemes and verified against actual losses or accretion associated with coastal schemes.
- 6.14 A national monitoring programme ensures overall loss (related to new FCERM projects) does not overtake the amount of compensatory habitat provided through NHCP, or is otherwise balanced by agreed enhancements to the quality of a protected site³. To date (March 2021) no losses have been reported to Welsh Ministers and, as such, the Welsh Government assumes that NHCP remains in credit. Effective monitoring will continue to inform the requirements for provision of compensatory habitat with respect to coastal squeeze associated with new FCERM projects, in line with the National Strategy for FCERM in Wales⁴.
- 6.15 NHCP is not intended to cover all natural loss or deterioration relevant to the Conservation of Habitats and Species Regulations 2017 (and previously defined under Article 6 (2) of the Habitats Directive) related to sea-level rise, but only those related to FCERM interventions, in line with the requirements of the Regulations, and these notes should be read and interpreted in that context.
- 6.16 Further details are available in the National Strategy for FCERM in Wales: strategic environmental assessment (2020).

³ See EU scoping document on the interaction between the Floods Directive and Nature Directives including examples of qualitative improvements along the Salzach River.

⁴ NRW will develop and establish an appropriate monitoring programme to support and inform the National Habitat Creation Programme and report to the Welsh Government annually.