

Strategic Resource Areas and Marine Planning Notices

Habitats Regulations Assessment

1. Context

1.1 The Wales Marine Plan

- 1.1.1 Welsh Government (WG) published the Welsh National Marine Plan¹ (the 'Marine Plan') on 12th November 2019. It applies to the inshore and offshore Welsh marine plan regions and was prepared and adopted under the Marine and Coastal Access Act (MCAA) 2009 in accordance with the UK Marine Policy Statement (MPS). The Marine Plan seeks to guide the sustainable development of Wales' marine area by setting out how proposals will be considered by decision makers, and by providing tools to facilitate spatial planning in the marine environment.
- 1.1.2 The Marine Plan was subject to a 'Habitats Regulations Assessment' (HRA) in accordance with Regulation 113 of The Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') and Regulation 28 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 (the 'Offshore Habitats Regulations'). This concluded that the Marine Plan implementation would not result in adverse effects on the integrity of any European sites^{2,3}, alone or in combination with other plans, programmes or projects.

¹ [Welsh Government \(2019\) Welsh National Marine Plan.](#)

² The Conservation of Habitats and Species Regulations 2017 were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 to reflect the UK's exit from the EU. These largely carried forward the provisions and terminology of the 2017 Regulations, and so the term 'European site' is currently retained and for all practical purposes the definition is essentially unchanged. European sites are therefore: any Special Area of Conservation (SAC) from the point at which the European Commission and the UK Government agreed the site as a 'Site of Community Importance' (SCI) (if this was before 31 Jan 2020); any classified Special Protection Area (SPA); and any candidate SAC (cSAC). However, the term is also commonly used when referring to potential SPAs (pSPAs), to which the provisions of Article 4(4) of Directive 2009/147/EC (the 'new wild birds directive') applied; and to possible SACs (pSACs) and listed Ramsar Sites, to which the provisions of the Habitats Regulations are applied a matter of Government policy (TAN5 para. 5.2.2) when considering development proposals that may affect them. "European site" is therefore used in this note in its broadest sense, as an umbrella term for all of the above designated sites. Note, it is likely that this term will be supplanted at some point in the future (e.g. the NPPF in England has adopted the term 'Habitats sites' to refer collectively to those sites defined by Regulation 8) although an appropriate UK-wide alternative has not yet been agreed.

³ Note, the UK European sites are no longer legally part of the 'Natura 2000' network of protected sites, with this being replaced in the UK by the 'national site network' which comprises all existing SACs and SPAs and any new SACs and SPAs designated under the 2019 Regulations (Ramsar sites do not form part of the network). This also has relevance if compensation measures are required for an adverse effect, as the relevant metric is the overall coherence of the 'national site network'. The 2019 Regulations establish management objectives for the 'national site network' which contribute to

1.2 Marine Planning Notices and Strategic Resource Areas

- 1.2.1 The Marine Plan includes provision for WG, as the marine planning authority, to introduce supplementary planning documents known as **Marine Planning Notices** (MPNs). MPNs provide guidance on the interpretation or application of the existing Marine Plan policies; they do not introduce new policy. They will be a relevant consideration in determinations under s.58 of the Marine and Coastal Access Act (MCAA) 2009.
- 1.2.2 WG is developing MPNs to define '**Strategic Resource Areas**' (SRAs) and guide their application in marine planning. SRAs, when introduced, will identify discrete areas of natural resource (not activities) that have the potential to support future sustainable use by a specific sector, to which a degree of safeguarding is applied through [Marine Plan policy SAF_02](#). SRAs are currently proposed for the following sectors:
- wave energy resources;
 - tidal stream energy resources;
 - tidal range energy resources;
 - floating offshore wind energy resources;
 - aggregate resources; and
 - aquaculture (shellfish and seaweed) resources.
- 1.2.3 Further information on the development of SRAs is provided in the [Strategic Resource Areas: guidance](#). In summary, the SRAs are simply intended to safeguard resources and facilitate proactive dialogue between sectors when planning future activities. The HRA of the Marine Plan concluded that safeguarding policy SAF_02 would have no significant effects on any European sites, alone or in combination; this was because the policy made no provision for any changes that could conceivably affect a European site, and this conclusion is consistent with the assessments of similar safeguarding policies in other plans (notably minerals safeguarding policies in Minerals Plans).

1.3 This Technical Note

- 1.3.1 Habitats Regulations guidance and case-law support a broad interpretation of the term 'plan' and it is not typically appropriate to limit the scope or applicability of Regulation 63 according to the type of document at hand; and a 'relevant plan' under Regulation 28 of the Offshore Habitats Regulations is simply one that is likely to have a significant effect on a European site or European offshore marine site.
- 1.3.2 A 'plan' is therefore typically considered to be any formal statement or similar requiring authorisation (other than general statements of policy or aspiration) that identifies an intended course of action, or which sets out how an activity or action might be planned, delivered or regulated. WG, as the marine planning authority and, therefore, the competent authority for the Marine Plan, considers it necessary to determine whether the

the conservation of UK habitats and species that are also of pan-European importance, and to the achievement of their favourable conservation status within the UK.

SRA MPN(s) will require an 'appropriate assessment' in accordance with Regulation 63 of the Habitats Regulations and Regulation 28 of the Offshore Habitats Regulations.

- 1.3.3 The process of determining whether appropriate assessment is required is typically referred to as 'the test of significance' or 'HRA screening'; **this technical note sets out the approach and proposed conclusions, at this stage of the SRA MPN development process, for the screening of the SRA MPN(s).**
- 1.3.4 The MPNs and SRAs have not yet been finalised and so the conclusions of this technical note are necessarily provisional, based on the information currently available. **However, it is considered that a formal HRA undertaken at adoption will be able to conclude that the SRA MPN(s) will have no likely significant effects, alone or in combination, on any European sites based on:**
- the fundamental characteristics of the MPN;
 - the intent for SRAs to be a 'safeguarding' designation conferring no planning (etc.) benefit; and
 - case-practice from HRA in other sectors.
- 1.3.5 The basis for this conclusion is set out in the following sections, with potential effect pathways reviewed and tested. Additional information is presented in the Appendices.

2. Screening

2.1 Requirement for HRA

- 2.1.1 As noted, WG considers that tests set out in Regulation 63 of the Habitats Regulations and Regulation 28 of the Offshore Habitats Regulations apply to MPNs (i.e. they are deemed to be 'plans' within the meaning and scope of the Regulations, and so are not excluded from consideration).
- 2.1.2 Regulation 63(1)(b) of the Habitats Regulations and Regulation 28(2)(c) of the Offshore Habitats Regulations provide exemptions for plans that are "directly connected with or necessary to the management of" the European site(s) affected by that plan⁴. SRA MPNs are not intended to be plans "directly connected with or necessary to" the management of any specific European sites and the Regulation 63(1)(b) and 28(2)(c) exemptions do not therefore apply to the SRA MPNs.
- 2.1.3 Whilst the SRA MPNs are not excluded or exempt from the relevant tests in the Regulations, they might be 'eliminated' from further consideration (in accordance with current industry guidance⁵ and practice) if they meet certain criteria. Typically such plans will either be "general aspirations or expressions of political will"; or will not contain "...any

⁴ Note, the Regulations refer to 'the site' or 'that site' when considering management measures, and so do not exempt plans that are "directly connected with or necessary to the management of" a specific European site but which affect other, 'non-target' European site(s) also.

⁵ For example, DTA (2021). [The Habitats Regulations Handbook \[online\]](#). [Accessed 18.11.21].

strategies or policies, or make any proposals or provisions for any changes, that could conceivably affect a European site”⁶. These aspects are explored in the following sections.

2.2 SRA MPN characteristics and potential effect pathways

SRA MPNs

- 2.2.1 The boundaries of the SRAs, and the associated MPNs, have not been finalised at this point; however, the intended purpose and overarching characteristics of these are evident in outline, based on:
- statements and policies within the Marine Plan including Policy SAF_02 and Paragraphs 46 – 49, notably:
 - ▶ paragraph 47 (“SRAs are a tool to improve the management of marine activities, space and resources, helping to support the management of sector-sector interactions and providing a focus for further strategic planning”);
 - ▶ paragraph 48 (“...SRAs...do not...confer development suitability nor... sterilise an area from development by other activities [or] ... imply any particular scale or rate of development or resource use...[etc]”);
 - draft templates for SRA MPNs provided by Welsh Government, incorporating stock text intended for use in all MPNs (see **Appendix A1** and **A2**); and
 - information on SRAs and their development published by Welsh Government including:
 - ▶ Welsh Government (2021). Proposed approach to developing Strategic Resource Areas to support implementation of [WNMP safeguarding policy design principles \[online\]](#). Welsh Government, Cardiff.
 - ▶ Welsh Government (2021). [Welsh National Marine Plan Strategic Resource Area \(SRA\) Identification: Design Principles \[online\]](#). Welsh Government, Cardiff.
- 2.2.2 These documents demonstrate that all SRA MPNs (regardless of sector or geographical extent) are intended to have the following fundamental and inherent characteristics:
- The MPNs will be entirely supplementary to and contingent on the Marine Plan; they will not introduce any new policies, and cannot conflict with the Marine Plan policies.
 - The SRAs are intended to operate with SAF_02 as a designation that safeguards resources against inappropriate sterilisation and which facilitates proactive dialogue between sectors when planning future activities; they do not safeguard resources for development, or promote any development.
 - All proposals coming forward within an SRA must follow normal authorisation and consenting procedures. The SRAs will have no bearing on the acceptability (or not) of specific developments; nor will they confer rights, support, planning determination

⁶ DTA (2021). [The Habitats Regulations Handbook \[online\]](#). [Accessed 18.11.21].

benefit (etc.) for development by a particular sector; nor imply any scale or rate of development or resource use. For example, a 'tidal stream' proposal will not be considered more acceptable or more likely to be permitted because it is in a tidal stream SRA; likewise, an aggregates development would not be precluded as a matter of principle from a tidal stream SRA⁷.

- 2.2.3 It should be noted that the definition of the SRA boundaries will consider application of evidence in relation to environmental receptors, but no commitments regarding the potential overlap of SRAs with European sites are made in the SRA Design Principles, or in the draft SRA MPNs (although it is noted in the Marine Plan that overlap is likely, if only due to the number and extent of European sites in Welsh waters). It would be possible to delineate an SRA such that it does not coincide with any European sites, although there is no obvious benefit to European sites from this approach⁸, and similar safeguarding designations in other plans (notably Minerals Safeguarding Areas (MSAs) in Minerals Plans) do not typically exclude European sites. However, as an approach with regards to coincidence of SRAs and European sites has not yet been defined, the consideration of the potential effect pathways reflects both scenarios (i.e. SRAs drawn to avoid European sites, or not).

Potential Effect Pathways

- 2.2.4 SRAs will not be identified beyond the geographical boundaries of the Marine Plan, and so the European sites potentially exposed to the outcomes of an SRA designation will be the same as those identified within the Marine Plan HRA⁹, plus any new UK sites meeting the criteria set out in Section 5 of the Marine Plan HRA that are designated prior to adoption of each MPN. The interest features and conservation objectives of these sites have been considered when identifying potential effect pathways.
- 2.2.5 It is evident that the SRA MPNs are tools for safeguarding that facilitate dialogue between sectors and are not intended to contain "...any strategies or policies, or make any proposals or provisions for any changes..." that would result in development or other material changes on the ground. However, it is appropriate to explore whether the designation of SRAs introduces any pathways for unintended secondary or indirect effects

⁷ Note, SAF_02 states that "Proposals which may have significant adverse impacts upon the prospects of any sector covered by this plan to engage in sustainable future strategic resource use (of resources identified by an SRA) must demonstrate how they will address compatibility issues with that potential resource use. Proposals unable to demonstrate adequate compatibility must present a clear and convincing case for proceeding". It is likely that the MPNs will contain guidance for decision-makers balancing the interests of competing or non-compatible sectors or proposals (see Appendix A2), which might (depending on implementation) ultimately afford some priority for a target sector in 'its' SRA when, and solely in relation to, considering incompatible non-target sector proposals. Whilst the overall net effect of this might be to make (for example) aggregates development in an aggregates SRA **relatively** more likely than an aquaculture development in an aggregates SRA, this is will not have any bearing on the overall likelihood of an aggregates development proceeding – i.e. the SRA still provides no planning determination benefit or support (etc.) for aggregates in this regard in line with WNMP policy.

⁸ The SRAs will not facilitate or increase the likelihood of development in these areas or enhance its acceptability; and the risks to European sites from development would not obviously be reduced by excluding overlaps due to the nature of the marine environment, the likely proximity of European sites to any development in any case (over 70% of Welsh waters are covered by MPAs), and the presence of highly-mobile and wide-ranging interest feature species.

⁹ [Marine Plan HRA](#)

on any European sites. This has been done through an examination of case-practice in analogous plans and policy documents¹⁰ and their HRAs; and through discussion with Natural Resources Wales (NRW) and the Marine Planning Stakeholder Reference Group (MPSRG).

2.2.6 These analyses have identified four theoretical pathways by which the designation of SRAs might alter the likelihood of European sites being affected by development:

- The act of defining an area on a plan might be interpreted as a representation of planning and permitting intent, similar to 'areas of search' that provide a focus for future development by particular sectors and which indicate the intent of the planning authority.
- An SRA might arguably introduce passive 'blocking effects' whereby the perceived complexity of siting 'non-target'¹¹ development or activities within an SRA incidentally displaces such development to locations where the risk of conflict with European sites might be higher.
- An SRA might create a barrier for delivery of conservation management proposals, creating a potential conflict between safeguarding a resource against sterilisation, and the achievement (etc.) of favourable conservation status at a European site.
- Safeguarding might be interpreted as providing a basis for a 'no alternatives' argument in the event of a development (etc.) having an adverse effect on a European site (either for target-sector activities within the SRA or non-target activities outside the SRA).

2.2.7 These pathways are discussed briefly below.

Planning Intent

2.2.8 As noted, the Marine Plan is clear that the designation of an SRA does not signal planning intent (Paragraph 48: "SRAs do not necessarily confer development suitability nor do they sterilise an area from development by other activities. Unless specified, SRAs do not imply any particular scale or rate of development or resource use and certain human activity may not be appropriate in an SRA because of the requirement to protect MPA [Marine Protected Area] features").

2.2.9 This is reinforced by the MPN draft templated text (**Appendix A**):

- Paragraph 8: "SRAs do not guide development or confer development suitability, do not provide planning policy support for development and do not sterilise an area from development by other activities".
- Paragraph 9: "All proposals coming forward within an SRA must follow normal authorisation and consenting procedures. All environmental regulation (and policies

¹⁰ For example, Minerals Plans and their designation of Minerals Safeguarding Areas (MSAs).

¹¹ i.e. development by sectors other than that for which the SRA is designated.

within the WNMP) will need to be applied in full for any development progressed within any SRA (as they are within all other locations)."

- 2.2.10 Similar safeguarding designations in other plans (notably MSAs in Minerals Plans) are not considered to implicitly support or encourage minerals development or make such development more likely; nor is it argued that the act of refining the 'total minerals resource' into an MSA has some inherent significance for planning decisions – the significance (or not) is connected solely to the associated policy and not the act of drawing a 'line on a map'.
- 2.2.11 Taken together, it is evident that designating an SRA is not intended to direct development (either to or away from an SRA) nor imply that a particular type of development is likely to be acceptable, and this does not therefore create a mechanism for significant effects.

Displacement

- 2.2.12 The SRAs do not direct development towards or away from these areas or suggest that some developments are more suitable or more likely to be permitted in an area, but incidental displacement of non-target development away from SRAs might nevertheless occur due to the perceived complexity of addressing the SRA requirements in applications. This might increase the relative likelihood of development occurring outside an SRA.
- 2.2.13 It should be noted that a 'no overlap with European sites' position for delineating SRAs might increase the risk of this mechanism being realised, as areas outside SRAs (to which activity would theoretically be displaced to) would, by definition, be more likely to include European sites.
- 2.2.14 However, examination of similar safeguarding plans and policies, and the Marine Plan and draft MPNs, suggests that this is a hypothetical rather than real risk. This is because:
- any development passively 'displaced' in this manner would still need to comply with the protective policies in the Marine Plan (notably ENV_02), as well as the legislative requirements of the Habitats Regulations;
 - the need to avoid adverse effects on a European site elsewhere would, potentially, be a legitimate reason for development within a safeguarded area;
 - the threshold for meeting the SAF_02 requirements is not particularly high (certainly not high enough to indirectly but systematically exclude non-target activities); and
 - (assuming SRAs do not exclude European sites) at the strategic level it is not obvious that the risks to European site interest features would be notably and systematically increased given the prevalence of MPAs in Welsh waters, the nature of the marine environment, and the extensive use of non-designated areas by highly-mobile and wide-ranging species.
- 2.2.15 Furthermore, even if this risk were considered notable enough to explore further, there is no practical way for an HRA of an SRA MPN to assess the effects of hypothetical future non-target development(s) that might be sited in an undefined location due to any perceived bureaucratic burden of the safeguarding policy.

Conservation Delivery

- 2.2.16 It might be argued that activating the safeguarding policy through introduction of an SRA could create a barrier for conservation management proposals required for a European site to retain or achieve favourable conservation status; for example, changing sea levels might require infrastructure interventions to maintain certain habitats, which might then need to be justified if within a safeguarding area. There might then be a potential conflict between safeguarding the resource in the SRA against sterilisation, and the achievement (etc.) of favourable conservation status at a site.
- 2.2.17 The policies in the Marine Plan do not explicitly address this potential tension, although the following should be noted:
- Policy ENV-01 explicitly notes that “Proposals that contribute to the protection, restoration and/or enhancement of marine ecosystems are encouraged”; this support is unqualified.
 - Policy SAF-02 does not exclude development (etc.) within an SRA, but simply states that “Proposals unable to demonstrate adequate compatibility must present a clear and convincing case for proceeding”.
 - Para. 172 states that “Welsh Government is committed to designating further MPAs, as needed, to complete its contribution to an ecologically coherent network. The existence of SRAs must not hinder the designation of MPAs or the completion of Wales’ contribution to an ecologically coherent network of MPAs”; measures required to achieve favourable conservation status would inherently contribute to “...an ecologically coherent network of MPAs”.
- 2.2.18 This potential tension is therefore considered somewhat more theoretical rather than real, and conservation works or activities required solely¹² to maintain or achieve ‘favourable conservation status’ and so contribute to “...an ecologically coherent network of MPAs” would always be a “clear and convincing” reason for ‘non-compatible’ works within an SRA.

No Alternatives Arguments

- 2.2.19 Safeguarding might be interpreted as providing a basis for a ‘no alternatives’ argument in the event of a development (etc.) having an adverse effect on a European site (either for target-sector activities within the SRA or non-target activities outside the SRA). As above, this is not an argument typically encountered in other safeguarding scenarios as European site integrity would always override any safeguarding policy, and would not be expected for an SRA either. In particular, the safeguarding policy clearly does not present an impermeable barrier to non-target development within an SRA.

¹² Note, whilst measures to maintain (etc.) the favourable conservation status of European sites would eclipse resource safeguarding, the compatibility of any mitigation or enhancement works that are required in an SRA to support a ‘non-target’ development proposal would need to be justified as part of that proposal; mitigation or enhancement for a development proposal would not necessarily be approved if the case for ‘sterilisation’ of a resource cannot be made (in which case the scheme itself would not proceed).

2.3 Conclusions and Recommendations

- 2.3.1 It can be concluded, based on the analyses above, that an SRA MPN that follows the draft template in **Appendix A1** (and with the potential additions noted in **Appendix A2**), and which is consistent with the policies of the Marine Plan 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.
- 2.3.2 In particular, the SRA MPNs will not contain "...any strategies or policies, or make any proposals or provisions for any changes that could conceivably affect a European site". The SRAs are used to implement Policy SAF_02 (itself considered a 'no significant effects' policy in the Marine Plan HRA) that:
- do not confer rights for use or development by any sector;
 - do not provide any direct or indirect support, or planning determination benefit, for development by a particular sector;
 - do not categorically prevent use of an area by other sectors or activities;
 - do not imply any scale or rate of development or resource use;
 - will not result in indirect or secondary effects on European sites by creating a perception of support, inadvertently displacing activities, impeding conservation measures or by providing indirect support for development that might adversely affect a European site.
- 2.3.3 It is likely that the MPNs will include guidance for decision-makers that have to balance the interests of competing or non-compatible sectors or proposals when considering SAF_02 (see **Appendix A2**). The inclusion of such guidance does not introduce any new mechanisms for effects beyond the four identified above, and would not alter the absolute likelihood of any proposal proceeding in 'its' SRA.
- 2.3.4 A templated 'HRA statement' is provided in **Appendix B** which is intended, with appropriate review during the SRA development, to be suitable for Welsh Government to use to document the assessment against Regulations 63/28 when publishing the SRA MPN(s).
- 2.3.5 Although the Marine Plan policies and text, and the draft MPN text, are clear regarding these aspects, a residual perception of tension between Marine Plan policies, SRA designation and European site conservation objectives might remain. There may therefore be some merit in the MPN text being explicit in certain areas, particularly in relation to what the SRA does and does not facilitate and support. For example the SRA MPN could contain the following statements or similar (in addition to those within the current SRA MPN template) to remove any risk of misinterpretation regarding the relationship of SRAs and European sites (note, text in red is new):
- 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 Marine Protected Area (MPA) features or for other reasons.
- SRAs will not conflict with the designation of MPAs or the completion of Wales' 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.

2.3.6 It should be noted that the suggested inclusions above are simply points of clarification and not avoidance or mitigation measures from the perspective of the 'People over Wind' (PoW)¹³ case-law; i.e. they are not included to manage or reduce an effect that would otherwise be 'significant', and not including these clarifications would not alter the fundamental 'no significant effect' characteristics of the safeguarding policy SAF_02 and the associated SRA MPNs.

¹³ *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17)

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Document revisions

No.	Details	Date
1		
3	Final draft	11.02.22
4	Tracked Final version	22.02.22
5	Final Issued	22.02.22

Appendix A1

Draft SRA MPN Template

Welsh National Marine Plan 2019

<Date>

Marine Planning Notice - Introduction of Strategic Resource Areas and Activation of Safeguarding Policy For <Sector A>, <Sector B> (<Insert Reference Number>)

Introduction

1. The Welsh Ministers, as the marine plan authority for the Welsh inshore and offshore marine area, have determined, from the date of issue of this Marine Planning Notice (MPN), to introduce Strategic Resource Areas (SRA) and to activate, in relation to those SRAs, Welsh National Marine Plan (WNMP) safeguarding policy SAF_02 for <Sector A>, <Sector B>.

Use of this MPN in decision making

2. This MPN is, from the date of its issue, a relevant consideration in determinations taken by public authorities under section 58 of the Marine and Coastal Access Act (2009) (MCAA). The activation of safeguarding policy SAF_02 within the mapped SRA boundaries must, from this date, be considered in all decisions by Public Bodies or Public Authorities (PAs) who make decisions with the potential to affect the marine plan area¹.
3. The maps describing the SRA for:
 - a. <Sector A> are presented in Appendix A.
 - b. <Sector B> are presented in Appendix B.
4. All maps are also published on the Wales Marine Planning Portal <hyperlink>.
5. This MPN should be read in conjunction with the WNMP and the Implementation Guidance on the WNMP <hyperlink to IG>.
6. xxx Any additional text on implementing policy SAF_02. xxx

Strategic Resource Areas

7. Paragraphs 46-61 of the Welsh National Marine Plan 2019 make provision, through the publication of MPNs, of SRAs which activate and focus WNMP safeguarding policy SAF_02.

¹ This includes all decisions which are open and/or undetermined at the date of adoption.

8. Strategic Resource Areas (SRAs) are discrete areas of natural resource with potential to support future sustainable use by a specific sector to which a degree of safeguarding is applied through WNMP policy SAF_02.

Policy SAF_02: Safeguarding strategic resources

Proposals which may have significant adverse impacts upon the prospects of any sector covered by this plan to engage in sustainable future strategic resource use (of resources identified by an SRA) must demonstrate how they will address compatibility issues with that potential resource use.

Proposals unable to demonstrate adequate compatibility must present a clear and convincing case for proceeding.

Compatibility should be demonstrated through, in order of preference:

- Avoiding significant adverse impacts on this potential strategic resource use, and/or
- Minimising significant adverse impacts where these cannot be avoided; and/or
- Mitigating significant adverse impacts where they cannot be minimised.

9. SRAs do not guide development or confer development suitability, do not provide planning policy support for development and do not sterilise an area from development by other activities.
10. 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 Marine Protected Area (MPA) features or for other reasons.
11. Implementation Guidance on the application, in relation to an SRA, of WNMP safeguarding policy SAF_02 in decision making can be found at <hyperlink to IG>.

Development of SRAs

12. In determining to introduce SRAs, the Welsh Ministers have, in line with the criteria in paragraphs 50-55 of the WNMP, had regard to the overall need for and benefit of the approach, together with the extent to which technical considerations allow identification of a realistic, focussed and meaningful SRA.

13. These considerations, and identification and refinement of SRAs boundaries, have been progressed in line with specific Design Principles <hyperlink to SRA derivation report>, and have been informed and underpinned by extensive evidence and analyses, as set out within <hyperlink to SRA derivation methodology> and <hyperlink to SRA derivation report>. Proposed SRAs were subject to plan level assessments, including Strategic Environmental Assessment [screening] <hyperlink to report> and Habitats Regulations Assessment [screening] <hyperlink to report> and public consultation <hyperlink to report>, with Welsh Ministers having due regards to representations received in taking the decision to introduce SRAs for sector x, sector x etc..

Amendment and withdrawal of this MPN

14. The SRA maps for Sector x at Appendix A , Sector x at Appendix B etc., and the activation of safeguarding policy SAF_02 in relation to these SRAs, are valid from the date of this MPN until such time that they are amended or withdrawn by Welsh Ministers through the revision or withdrawal of this MPN.
15. Welsh Ministers may, based upon appropriate evidence and consultation and having regard to any representations received, decide to amend or withdraw any of the SRAs introduced via this MPN, through the revision or withdrawal of this MPN. Any amendments to this MPN , the SRAs introduced through this MPN or the application of safeguarding policy SAF_02 will be progressed in line with the provisions of the Welsh National Marine Plan.
16. Welsh Ministers will consider, at least every five years from the date of publication of this MPN, the ongoing effectiveness of the MPN and whether there is a need to amend or withdraw this MPN.

Appendix A2

Potential Approaches for Balancing Sector Interests

SAF_02 states that “Proposals which may have significant adverse impacts upon the prospects of any sector covered by this plan to engage in sustainable future strategic resource use (of resources identified by an SRA) must demonstrate how they will address compatibility issues with that potential resource use. Proposals unable to demonstrate adequate compatibility must present a clear and convincing case for proceeding”.

During discussions with stakeholders, the potential need for the MPNs to include guidance on this aspect for decision-makers balancing the interests of competing or non-compatible sectors or proposals was identified. Accordingly, Welsh Government is currently considering whether it might be appropriate to pursue one or both of the following approaches:

- Set out, within implementation guidance on SRAs, high-level and/or sector-specific criteria which should be considered as part of a case for proceeding, in line with policy SAF_02, where adverse impacts cannot be avoided, minimised or mitigated. Such criteria would provide a structured framework to support the consideration of the extent to which the benefit of proceeding with the proposal would outweigh adverse impacts on the ability of the SRA’s focus sector to engage in future resource use within that SRA. Any criteria would need to be evidence based, proportionate and in line with WNMP objectives and, also, reflect wider Government policy objectives and priorities; and/or
- Set out, either in the MPN or within implementation guidance on SRAs, with respect to all SRAs or certain SRAs or areas within SRAs, the relative priority which should be afforded to different sectors where there is evidence they may not be compatible. Any prioritisation between sectors in a particular area would need to be evidence based, proportionate and in line with WNMP objectives and, also, reflect wider Government policy objectives and priorities.

Further to this Welsh Government considers it necessary for an MPN (or associated implementation guidance) to

- provide guidance on what constitutes ‘adequate compatibility’ for a proposal seeking to locate in an SRA; and
- provide clarity on the requirements for a case for proceeding, where there are residual adverse impacts on the target sector’s ability to engage in sustainable future strategic resource use of safeguarded resource (once the avoid, minimise, mitigate steps have been completed).

This guidance could provide explicit direction on how decision makers should prioritise between the interests of different sectors (where there is a residual adverse impact) which could potentially lead to an MPN or associated implementation guidance prioritising the interests of one sector above another when applying Policy SAF_02. Equally, it could also (or alternatively) involve setting



criteria to be met in order to make a case for proceeding despite residual adverse impacts (as set out above).

The potential for such guidance to introduce significant effects has been considered. In summary, this does not introduce any new mechanisms for effects beyond the four identified in **Para. 2.2.6**, and does not alter the absolute likelihood of any proposal proceeding. Guidance based on these parameters might (depending on implementation) ultimately afford some priority for a target sector in 'its' SRA but only **when considering incompatible non-target sector proposals**. Whilst the overall net effect of this might be to make (for example) aggregates development in an aggregates SRA **relatively** more likely than an aquaculture development in an aggregates SRA, this will not have any bearing on the overall likelihood of an aggregates development proceeding – i.e. the SRA still provides no planning determination benefit or support (etc.) in this regard.

The suggested clarifications / text additions in Section 2.3 will also clarify the interpretation of the above approaches; however, when considering text for this aspect it would be appropriate to reiterate that the references to 'adverse effects' reflect the terminology of SAF_02 rather than the tests of the Habitats Regulations.

Appendix B

Draft HRA Template Text

The Welsh Ministers, as the marine plan authority for the Welsh inshore and offshore marine area, are publishing a Marine Planning Notice (MPN) to introduce Strategic Resource Areas (SRA) and to activate, in relation to those SRAs, Welsh National Marine Plan (WNMP) safeguarding policy SAF_02 for [Sector X].

Welsh Government, as the competent authority for the Marine Plan and the publication of the MPN, considers it necessary to determine whether the SRA MPN for [Sector X] will require an 'appropriate assessment' in accordance with Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') and Regulation 28 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 (the 'Offshore Habitats Regulations') (i.e. an MPN is considered a 'plan' within the scope of the Regulations).

SRA MPNs are not plans "directly connected with or necessary to" the management of any specific European sites and the Regulation 63(1)(b) and 28(2)(c) exemptions do not therefore apply to the SRA MPNs.

However, having reviewed all aspects of the SRA MPN for [Sector X], including the nature, scale and extent of the SRA designation and the associated Marine Plan policies (notably SAF_02) it has been concluded that the SRA MPN can be eliminated from further assessment because it cannot have any conceivable effect on a European site. This conclusion is based on the following fundamental characteristics of the MPN and the associated Marine Plan policies:

- The MPNs will be entirely supplementary to and contingent on the Marine Plan, will not introduce any new policies, and cannot conflict with the Marine Plan policies.
- The SRAs will operate with SAF_02 to safeguard resources against inappropriate sterilisation and facilitate proactive dialogue between sectors when planning future activities; they do not safeguard resources for development, or facilitate or promote any development or other activities.
- All proposals coming forward within an SRA must follow normal authorisation and consenting procedures, and the overarching protective policies within the Marine Plan. The SRAs will have no bearing on the absolute acceptability (or not) of specific developments; nor will they confer rights, support, planning determination benefit (etc.) for development by a particular sector; nor imply any scale or rate of development or resource use.
- The SRAs will not result in indirect or secondary effects on European sites though other mechanisms, such as by creating a perception of support, inadvertently displacing activities, impeding conservation measures or by providing indirect support for development that might adversely affect a European site.

Supporting evidence is provided in [REFERENCE TO HRA TECHNICAL NOTE].

The SRA MPN will therefore have no significant effect, alone or in combination, on any European sites. This conclusion has been accepted by the UK Statutory Nature Conservation Bodies and Welsh Government is adopting the SRA MPN for [Sector X] on this basis.