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Paul Speight
European Commission
Environment DG
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8th August 2015

Dear Paul,

Re: CHAP (2015)2239 complaint regarding the Mulkear LIFE Project in Ireland

Thank you for reviewing my complaint in relation to the above. I have a number of comments on your assessment and the conclusion reached. These are outlined below in relation to the issues raised.

Issue I

The Coordinating Beneficiary (CB) Inland Fisheries Ireland (IFI) say that the Mulkear LIFE project did not require Appropriate Assessment as it was directly connected with, or necessary to the management of, the Lower River Shannon candidate Special Area of Conservation (cSAC). However, this decision was never recorded in advance of project works taking place as is a requirement under the Habitats Directive. This argument could potentially have been made, however this approach was not taken and was not recorded in any Screening for Appropriate Assessment report prepared in relation to this project. Such an argument cannot be made retrospectively, and all elements of the project need to be considered together to ensure that cumulative impacts are considered.

If the CB had approached this correctly, then perhaps they could have made the argument that the project was exempt from Appropriate Assessment (AA). However, the Mulkear LIFE project was not exempt from considering the implications of the entire project in advance of works and preparing a robust Screening for Appropriate Assessment Report. If the project had been screened properly in advance, then it would have become clear that capturing and tagging and Sea Lampreys while they were engaged in spawning activity at their main spawning grounds should be avoided. Likewise, it would have become clear that partially removing a major weir during the Sea Lamprey spawning season would cause significant impacts. This would have then resulted in changes to the project that could have included capturing and tagging the sea lampreys further downstream and well before the spawning season, and removing the weir outside of the lamprey spawning season with appropriate water quality mitigation. Just because a project brings some benefits does not excuse it from being at least screened correctly. If you are to avoid the requirement of an Appropriate Assessment, then you still need to assess project impacts and implications in a report and set out all necessary mitigation measures. NPWS guidance 'Circular NPW 1/10 & PSSP 2/10' states that "*Plans or projects that are directly connected with or necessary to the nature conservation management of a Natura 2000 site are essentially*

exempt from further consideration. But it adds that "Such exceptions will be comparatively rare and it is recommended that the reasons and justifications, and any possible wider effects and mitigation measures, are assessed and recorded in advance of the decision to proceed in each case, together with evidence of consultation with the appropriate National Parks and Wildlife (NPW) officials of the Department". In the case of the Mulkear LIFE project where are the reasons and justifications, and any possible wider effects and mitigation measures, assessed and recorded? They are not and this is a failure to comply with the provisions of the Habitats Directive.

The CB specially identify the National Parks and Wildlife Service (NPWS) as being the Competent Authority. However, I have consulted with NPWS and they have confirmed to me that they are not aware of any project in Ireland which has used the clause that it was directly connected with, or necessary to the management of a Natura 2000 site, to avoid the requirement of Appropriate Assessment. NPWS has also confirmed that they have no record of Ministerial approval having been issued for the partial removal of Ballyclough Weir. This is of concern as the CB state that NPWS provided approvals for this work and acted as the Competent Authority.

The CB refers to having conducted "*specific and separate*" AA screenings, ruling out significant effects. However, where are the cumulative effects of these specific elements assessed? As I pointed out in my complaint, the Screening Assessment prepared for the Ballyclough weir removal assessed a different project that was eventually constructed which invalidates this particular screening assessment. The detailed comments on the inadequacy of this screening assessment presented in my complaint were not addressed in the reply by the CB.

Whether or not the works triggered an AA the Competent Authorities have a legal obligation to ensure that no disturbance is caused to species for which the areas have been designated. The key issue here is that the CB should have not disturbed Sea Lamprey by capturing and tagging them while they were on their main spawning area during their spawning season. If this tagging work had to be done to research some unknown behaviour (which it did not), then the lampreys should have been intercepted further downstream earlier in the season. The CB should also have undertaken the works at Ballyclough weir with water quality mitigation during August/September when the lampreys were finished and their larvae had hatched out and settled. The onus should be on the developer in this case to clearly demonstrate that the appropriate steps were taken. Article 2 of the Habitats Directive clearly states that "*Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.*"

Issue 2

It has been now confirmed "*that the original LIFE funding application did not include all the works that were eventually undertaken within the Lower River Shannon SAC*", and therefore the entire realised project was not considered in terms of impacts on the Lower River Shannon cSAC. I was referring to the Ballyclough Weir removal which was undertaken during the sea lamprey spawning season, immediately upstream of the main spawning site for this species on the River Mulkear, in the absence of any water quality mitigation. I note here that the CB makes no attempt to dispute my claims that environmental damage was caused.

Issue 3

The CB provides no counter to my claim of severe disturbance to spawning Sea Lampreys. Rather, obfuscation is deployed in terms of the experience and qualifications of those undertaking the tagging but no denial of my claim of disturbing Sea Lampreys at their main spawning site on this Natura 2000 river.

The tagging work involved catching and tagging Sea Lampreys which were already on their spawning grounds, below a partially impassable barrier. It was already known - and reported in the scientific literature – that this was a migration barrier for lampreys. It is irrelevant that Dr. Rooney was actually proficient in physically inserting tags into the lampreys. The complaint concerned the fact that physically catching and temporarily removing lampreys from the river - when many had already engaged in spawning activity - was both unnecessary and caused significant disturbance.

I note that the “*scientific evidence to support [my] claim that the project resulted in severe disturbance to the 2010 spawning population*” is available in the CB response. They admit to catching and tagging a significant number of adult sea lampreys below this semi-impassable barrier at a time when these fish were preparing or activity engaging in spawning. I am disappointed to hear that this tagging work was also undertaken in 2011 with disturbance of a vulnerable species now confirmed to have occurred during two spawning seasons. This work provided no useful scientific information in relation to identifying migration barriers – as these were already well known.

Issue 4

I am well aware of Professor Reinhardt’s research and provided some comments from him in relation to the Mulkear LIFE “passes” in my original complaint. I understand that Enform Plastics Limited are not fish passage consultants and indeed have no expertise whatsoever in relation to lampreys.

My complaint here focused on the fact that the Mulkear LIFE project had produced no scientific evidence to show that their lamprey “passes” worked. In their response all they say is that it works, but have provided no scientific information to support this. You have essentially rejected my complaint here by saying I that I have not provided any scientific information to show that these passes didn’t work. This is a quite ridiculous conclusion and my complaint here has not been assessed satisfactorily.

There is no scientific evidence whatsoever to suggest that “*the lamprey passes have facilitated passage for over 90% of all sea lamprey since 2011*”. The onus is on Mulkear LIFE to provide scientific evidence that these passes worked. Whatever nominal benefits may have been provided under very particular environmental conditions, it is nonsense to say that 90% of all sea lamprey have passed upstream using these passes since 2011. There is absolutely no evidence to support this claim, and this is the basis of my complaint. These lamprey passes were washed away in 2014, with one of them – not two - replaced during May 2016. Clearly the passes could not be used in 2014, and there is only pass present at the site in 2016.

As has always been the case, a large build-up of Sea Lampreys again occurred downstream of Annacotty weir in 2016. This area continues to be the main spawning area on the River Mulkear for this species. It is not known if any lampreys ascended the single recently replaced lamprey “pass”, but it is likely that some Sea Lampreys continued to use the denil pass that is also present at this location.

Issue 5

In my complaint I have acknowledged that there were fish passage issues at this site. I also acknowledge that there will be long-term benefits from the removal of this weir. My complaint concerned that fact that the weir was removed during the Sea Lamprey spawning season in the absence of suitable water quality mitigation.

The CB claim that water quality monitoring was undertaken during the weir removal. If so where are the results of this monitoring? It is my understanding that there is no water quality monitoring data available.

The CB claim that no Sea Lamprey spawning occurs directly below Ballyclogh Weir. However, this is a false and misleading statement. Indeed, almost all of the Sea Lamprey spawning in the River Mulkear catchment occurs

downstream of Ballyclough weir – at Annacotty – which was well within the zone of influence of suspended solids pollution which occurred from the instream works at Ballyclough.

Sea lampreys spawn in the River Mulkear during the period May to July (Igoe *et al* 2004; Kelly & King 2000). I again observed Sea lampreys spawning at Annacotty during June and July 2016. Ova hatch approximately 2 weeks after spawning and settle in depositing areas shortly after that. There should be no instream works on rivers where Sea Lampreys occur during the period May to July at a minimum if this species is to be protected. Undertaking major instream works during the 2013 Sea Lamprey spawning season caused significant and unnecessary damage to spawning Sea lampreys, ova and recently hatched larvae downstream of Ballyclough Weir. The majority of the Sea Lamprey population in this river is present in the lower reaches of the River Mulkear - downstream of Ballyclough weir.

The CB have not achieved Sea Lamprey passage at Annacotty weir, with no scientific evidence available to show that the lamprey passes at this obstacle worked, no pass whatsoever present on the weir for the entire of 2015, and only one pass reinstated during 2016 (presumably in response to the current complaint). Maps showing an increase in the distribution of Sea Lampreys in this catchment are disputed. Redd counting is an inaccurate way to assess distribution, is prone to significant errors and overestimation, and is not a repeatable exercise that can be verified. It is not a standard method to assess lamprey distribution. Indeed, no mention of this method is made in the standard lamprey monitoring manual 'Monitoring the River, Brook and Sea Lamprey, *Lampetra fluviatilis*, *L. planeri* and *Petromyzon marinus*' by Harvey & Cowx (2003). Mulkear LIFE should have used standard approved scientific methods to assess Sea Lamprey distribution – for example quantitative ammocoete surveys. The mechanism of how lampreys would use the pass, and the flows/water temperatures under which the pass could provide any benefits should have been investigated and explained.

The partial removal of Ballyclough weir has provided benefits for salmon only. The majority of Sea Lampreys in the River Mulkear are still confined to below Annacotty weir. The part-removal of Ballyclough weir during the 2013 Sea Lamprey spawning season, and without any water quality mitigation or monitoring, cause significant and unnecessary impacts on the sea lamprey population in this river.

The instream works that Mulkear LIFE undertook during June 2013 was a major electrical fishing survey (see: <http://mulkearlifecatchmentwideelectrofishing.com/catchment-wide-electrofishing-survey-completed-june-2013/>). This operation caused major disturbance in the river at a time when Sea Lampreys (and perhaps the other two lamprey species) were spawning. These invasive works were followed by the works at Ballyclough weir resulting in severe disturbance in the river across the 2013 Sea Lamprey spawning season.

Issue 6

This issue was raised to illustrate other impacts of Mulkear LIFE's activities. NPWS are responsible for heritage issues in Ireland and they have confirmed to me that they did not provide consent for this weir to be partially removed.

Issue 7

I provided the location and a photograph of the illegal dumping of this material within the boundary of the Lower River Shannon SAC. NPWS again did not approve this.

Issue 8

No lamprey "passes" were present on Annacotty weir from the early winter of 2014 to May 2016. Only one of the two lamprey "passes" was replaced in May 2016. If it is the case that the lamprey pass "*is replaced with a new tile when the water levels dictate*" as claimed by the CB, then it is not clear why they were not replaced at

any time during 2015? I also note that no scientific evidence has been produced by the CB to demonstrate that these lamprey tiles are effective.

I have already commented on the crump weir development in my original complaint. The issues I have raised here have not been addressed. The evidence that the CB have provided to show an increased distribution of Sea Lampreys in the Mulkear catchment is unconvincing and anecdotal and was not collected by any approved scientific method (e.g. ammocoete surveys).

Issue 9

The CN say that “*at no stage was there a consideration for a rock ramp at Annacotty weir*”. It is not clear why there was no consideration for a rock ramp - this is exactly the type of pass that should have been installed. A rock ramp would have potentially allowed all three of the lamprey species for which the Lower River Shannon cSAC is designated – along with the critically endangered European eel *Anguilla anguilla* – to pass this barrier. Why - when there was €1.75m of funds available for this project – was a rock ramp not installed? Rock ramps are a well-studied first-choice fish passage solution, are cost-effective to install, would be suitable for the Annacotty weir site, can be used by all the migratory fish species in this river, and are durable and relatively maintenance free. It is a stark illustration of how the Mulkear LIFE project failed that the provision of a rock ramp at this site was **not even considered** by Inland Fisheries Ireland.

Issue 10

The CB acknowledges the limitations of the research they conducted on these lamprey passes in its reply here. They state that “*further monitoring would be required for the sites over the After LIFE period to assess the success rate for migration and improved population dispersal*”. Therefore, the CB admits here that more research on this pass design is required. What they don’t address is this area of my complaint which is relation to this pass design being promoted for use on other Irish Rivers. Again, my complaint has not been assessed correctly here and your response is that I have not provided any scientific information that the pass does not work, when my complaint was about the absence of a scientific evaluation for this pass design.

Yours sincerely,

On behalf of the Old River Shannon Trust,



Dr. William O' Connor

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References

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