



Item No.B5

By: Assistant Chief IFCO

To: Kent and Essex Inshore Fisheries and Conservation Authority – 14 May 2013

Subject: **New byelaws for 'red risk' European Marine Sites**

Classification Unrestricted

Summary: To consider introduction of new byelaws for MPA management

1. European Marine Sites (EMSs) are designated to protect those habitats and species defined within the EU Habitats Directive and the EU Birds Directive. To bring fisheries in line with other activities, the Department for Environment, Food and Rural Affairs (Defra) announced on the 14 August 2012 a new approach to manage fishing activities within EMSs. This change in approach will promote sustainable fisheries while conserving the marine environment and resources, securing a sustainable future for both.
2. In order to implement this new approach a Fisheries in European Marine Sites Implementation Group (IG) has been set up to include key stakeholders and delivery bodies to ensure that the new approach is implemented effectively and practically, in line with legal commitments, considering the impacts of management measures available and suitable timetable of delivery. The approach will be introduced to current fishing activities on a risk-prioritised basis.

3. A risk matrix has been developed by the European Marine Sites Implementation Group to identify the level of risk for each European Marine Site. Based on the risk matrix each site has been assigned to one of three categories red, amber and green, which reflect the priority and order that the site assessments will be undertaken. "High risk" (red) sites will be required to have protection in place by the end of 2013 and other sites (amber and green) by the end of 2016.
4. Within the Kent and Essex IFCA district, Thanet Special Area of Conservation (SAC) and the Essex Estuaries SAC have been identified as "high risk" sites on the basis of potential conflict between the features contained within it and the potential gear types worked in the area. Within the Thanet SAC this is bottomed towed gear being used over chalk reef. Within the Essex Estuaries SAC this is bottom towed gear being used over seagrass beds and hand gathering activities within sea grass beds. These sites will require control measures to be put in place by the end of 2013. This will be achieved by the introduction of KEIFCA byelaws.
5. Attached in Annex 1 is the Minister's direction on overarching policy and delivery which sets out what IFCA's are being asked to deliver.
6. KEIFCA officers held a series of local meetings with fishermen, bait diggers and other stakeholders at a number of locations across the district, and discussed site management issues including the amount of fishing activity on the site, the economic value of the site to local fishermen and the outcome of restricting all bottom towed gear on the site and on the feature. Natural England has attended all the meetings and has offered conservation advice as required. Consulted with and worked with industry at the first available opportunity and took on board their comments related to the best ways to engage with them. Meetings have been extremely productive and have helped both parties understand the issues and requirements of the process
7. The documents provided separately set out two draft byelaws (with accompanying draft documents including a draft site assessment document, the draft consultation document and a draft impact assessment document) to fulfil the requirements of the Minister's direction. The first byelaw is to restrict the use of bottom towed gear in specific areas i.e. on the sensitive features

within Thanet Coast SAC and Essex Estuaries SAC. The second byelaw is to restrict hand gathering activities within specific areas i.e. on the sensitive features within Essex Estuaries SAC.

8. Proposed timeline for implementing byelaws

May, June	<i>15th May – 10th July – Formal Consultation (8 weeks)</i>
July	<p><i>15th July - Assess options available and make decision as to the wording to be included. Hold a technical panel to discuss and agree preferred option.</i></p> <p><i>19th July - Send final byelaw proposal and IA to MMO (MCET) to check and receive comments. MMO Legal have 28 days to respond (respond by 16th August). MCET check the byelaw and IA from a policy point of view, before sending to MMO legal.</i></p>
August	<i>16th August - Proposed Byelaw measures presented to the KEIFCA members, 14 days before the date of the meeting of the Authority at which the byelaw is to be made. A draft of the byelaw, the supporting evidence and the IA, should be included with a covering letter.</i>
September	<p><i>5th September - KEIFCA quarterly meeting discusses proposed draft byelaw and if agreed makes the new byelaw. Notify MMO of new byelaw – proceed with process to apply for confirmation SoS.</i></p> <p><i>16th September - Advertise for 2 consecutive weeks in publications which target the stakeholders affected by the byelaws measures. (finish 30th September)</i></p>
October	
November	<p><i>1st November - Approximate closing date for all objections to byelaw advertisement, dependent on date of advertisements. Any person wishing to object to the byelaw to write to the IFCA and MMO not later than 28 days after the date of the newspaper in which the last advertisement appears.</i></p> <p><i>8th November - Final Proposal to MMO (MCET) – discuss comments and objections received</i></p> <p><i>18th November - Byelaw Package sent by MMO (MCET) to Defra. Defra have agreed to aim for a 5 day turnaround when signing off permanent IFCA byelaws.</i></p> <p><i>25th November - 2013 Sectary of State sign off</i></p>

Members are asked to AGREE to the principles of the draft byelaw subject to any new legal wording suggested by Defra/ MMO. Formal consultation will then take place as per the agreed byelaw implementation timeline and KEIFCA officers will then submit a revised draft to enable the making of a new byelaw at the next quarterly meeting in September 2013.

Annex 1

REVISED APPROACH TO THE MANAGEMENT OF COMMERCIAL FISHERIES IN EUROPEAN MARINE SITES - OVERARCHING POLICY AND DELIVERY DOCUMENT

Purpose

1. This paper outlines the Department's overarching policy approach and key implementation steps to ensure that all existing and potential commercial fishing operations are managed in accordance with Article 6 of the Habitats Directive.
2. The revised approach applies to all European Marine Sites (EMS) and potential Special Protection Areas (pSPAs) and possible Special Areas of Conservation (pSACs)¹ in England. It aims to ensure that, in order to comply with Article 6 of the Habitats Directive, management measures are identified for high risk features by December 2013, and any additional fishery management measures for the conservation of the abovementioned sites are in place by 2016. The approach for the conservation of EMSs in the offshore marine area is outlined in paragraph 13.

Context

3. Government and Fishery Regulators in England (primarily the Marine Management Organisation (MMO) and Inshore Fisheries and Conservation Authorities (IFCAs))² have legal obligations to ensure that fishing activities (including existing fishing activities), which could adversely affect EMSs are managed in a manner that secures compliance with the requirements of Article 6 of the EU Habitats Directive. Conservation of these sites contributes to the delivery of Defra's aim to conserve and enhance the marine environment and promote sustainable fisheries.
4. In order to ensure that EMSs receive the requisite level of protection, and ensure compliance with the EU Birds and Habitats Directives, Government has decided to revise the approach to the management of commercial fisheries affecting EMS. Building on existing management measures, this will ensure that all existing and potential commercial fishing activities are subject to an assessment of their impact on EMSs.
5. It is the expectation of the Department that appropriate management measures will need to be regulatory in nature to ensure adequate protection is achieved. Management decisions should be based on the best available evidence, but using a precautionary approach. Reflecting

¹ pSPAs and pSACs are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area or candidate Special Area of Conservation. For ease of reference EMS, pSPAs and pSACs are referred to collectively as "EMSs".

² There could also be other relevant regulators or competent authorities with responsibility for a particular site.

European Commission guidance³ on the management of fisheries in European Marine Sites, *“the proposed measures should be consistent with the conservation objectives for the sites concerned”* and we expect Regulators to take a precautionary approach, *“according to which the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures”*.

Delivery

6. The revised approach will be applied on a risk-prioritised, phased basis which will be applied to both UK and non-UK fishing vessels in accordance with the EU requirements. Following the matrix approach described below, management action will focus first on sites that contain features where evidence suggests there is significant risk⁴ that certain types of fishing activities could prevent a qualifying feature or sub-feature from achieving its conservation objectives.

7. We intend to proceed on the basis of assessments through a matrix type approach. This shows, at a high generic level, the effect gear types have on the conservation objectives for the relevant features for which EMSs have been selected or designated. This generic matrix (“The Matrix”) should provide regulators with an indicator as to whether:-
 - a. the activity requires priority management measures to be introduced to protect that feature without further site level assessment on the impacts of that activity on that feature or;
 - b. a further assessment may be necessary.

8. Under The Matrix fishing activities will be classed as Red, Amber, Green or Blue according to the potential or actual impact of the gear type on the feature(s) for which a site has been designated. The definition for the classifications is annexed to this paper.

9. For activities identified as Red, the Department would wish management measures to be in place by end 2013, but where this is not practicable, they must have been identified by this date, and implemented by end May 2014. Regulators must inform the Department if they are unable to put measures in place by end 2013. Consideration must be given to the use of emergency byelaw powers where it is clear there is an existing or imminent threat to any Red feature, including cases where a delay in

³ FISHERIES MEASURES FOR MARINE NATURA 2000 SITES

http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf

⁴ Risk relates to the sensitivity of the feature to the type of fishing, and is not related to the level of that fishing activity that may affect that feature.

implementation of the revised approach beyond the end of 2013 is expected.

10. For activities identified as Amber a site level assessment will be required to assess whether management of an activity is required to conserve site features. For activities identified as Green, a similar assessment will be needed if there are "in combination effects" with other plans or projects. To carry out such site level assessments the Department's strong preference is for the assessment to be carried out in a manner that is consistent with the provisions of Article 6(3) of the Habitats Directive. Appropriate management measures should be put in place to ensure that fishing activity or activities either have (a) no likely significant effect on a site, having regard to its conservation objectives or (b) that following assessment, have no adverse affect on the integrity of a site. The Department expects such measures to have been identified and put in place by 2016.

11. For sites located between 0-6nm, the Department expects the relevant IFCA to be the lead regulatory authority⁵. For sites between 6-12nm, the MMO should be the lead regulatory authority and measures introduced on a non-discriminatory basis in accordance with the relevant Common Fishery Policy (CFP). Where a site feature straddles the 0-6 and 6-12nm boundary, the expectation is that the MMO will lead. Where a site feature straddles the boundaries between two IFCAs we expect that any management measure proposed for that feature to be consistent across the IFCA boundaries.

Future Fisheries Management

12. By the end of 2016 all fishery operations potentially damaging EMSs should have been identified and be subject to appropriate management. Fishing activity which is prohibited or restricted within EMSs under the revised approach could be allowed through a permitting mechanism at the site level. Any such permitting would be subject to the Article 6(3)-(4) processes described in Part 6 of the Conservation of Habitats and Species Regulations 2010. The regulatory authorities should also ensure ongoing management of commercial fishery activities remains compatible with the conservation objectives of the site in line with their obligations to secure compliance with Article 6(2) of the Habitats Directive. The relevant Statutory Nature Conservation Body has a responsibility to advise the Regulators on this matter.

⁵ Except in cases where the Environment Agency is primarily responsible for regulating the fishery

Management of Sites Requiring Measures in Accordance with the Common Fisheries Policy

13.EMS outside 12nm will require legislative measures to be proposed by the European Commission in accordance with the CFP to ensure adequate protection. For these sites, the Department, taking account of any relevant guidance, intends to submit proposals to the European Commission for any fishery measures needed to ensure site protection is consistent with Article 6 of the Habitats Directive, so that appropriate Regulations are in place in 2016.

DEFRA
24 January 2013

ANNEX

- **RED:** Where it is clear that the conservation objectives for a feature (or sub-feature) will not be achieved because of its sensitivity to a type of fishing, - **irrespective of feature condition, level of pressure, or background environmental conditions in all EMSs where that feature occurs** - suitable management measures will be identified and introduced as a priority to protect those features from that fishing activity or activities.
- **AMBER:** Where there is doubt as to whether conservation objectives for a feature (or sub-feature) will be achieved because of its sensitivity to a type of fishing, **in all EMSs where that feature occurs**, the effect of that activity or activities on such features will need to be assessed in detail at a site specific level. Appropriate management action should then be taken based on that assessment.
- **GREEN:** Where it is clear that the achievement of the conservation objectives for a feature is highly unlikely⁶ be affected by a type of fishing activity or activities, in all EMSs where that feature occurs, further action is not likely to be required, unless there is the potential for *in combination* effects⁷.
- **BLUE:** For gear types where there can be no feasible interaction⁸ between the gear types and habitat features, a fourth categorisation of blue is used, and no management action should be necessary.

⁶ In theory, Green and Amber categories exist along a continuum of risk, for example it is theoretically possible for what is widely recognised to be a benign activity to cause a significant impact on a feature, if carried out at extremely high levels. As result, an assumption has been made that activities categorised as Green are assumed to have no impact on the feature or sub-feature at current maximum levels of commercial fishing effort, to be re-evaluated if conditions change.

⁷ In other words, where a type of fishing activity which on its own would not affect the achievement of conservation objectives for the feature, but which in combination with other activities might do so.

⁸ On this basis – where there is a feasible (even if unlikely) interaction, activities will be categorised as Red or Amber or Green.