



Agenda Item B4

Success criteria 2

By: Chief Fishery Officer

To: Kent and Essex Inshore Fisheries and Conservation Authority – 4 September 2015

Subject: **Minimum size limits for Skates and Rays**

Classification: Unrestricted

Summary: to seek approval in principle for an amendment to IFCA byelaws to prevent conflict with the landing obligation

Background

The demersal landing obligation comes into force progressively from January 2016, to be fully implemented by January 2019. The landing obligation represents the biggest change in fisheries management for a generation. Defra have conducted a review of legislation in light of this management change both at the national level and regionally, working in collaboration with IFCAs.

The issue

When a species is subject to the landing obligation (discard ban) there is a legal requirement for all catches of this species to be retained, subject to any exemptions. N.B. Prohibited species should continue to be thrown back.

The landing obligation applies to quota species; by 2019 all quota species will be subject to the landing obligation.

Any historical byelaw requirement to return a quota species back to the sea post capture has the potential to conflict with the landing obligation.

Four IFCAs have byelaws which conflict with the landing obligation: Cornwall, Southern, Kent & Essex and North Western. The conflicting byelaws range from Minimum Landing Sizes (MLS) to the foul hooking of fish.

Byelaws which conflict with the landing obligation can cause legal ambiguity, and would make enforcement very difficult; where there is a clear conflict between the requirements of a local byelaw and the requirements of directly applicable EU law, the validity of the byelaw could be challenged, meaning it would not be possible to prosecute a fisherman for an offence under the original byelaw.

Defra are working with local IFCA's to ensure that these byelaws work in harmony with the landing obligation without compromising their legal strength or purpose.

Proposed approach for byelaw amendment

The Secretary of State has the power to revoke or amend conflicting byelaws under section 159 of the Marine and Coastal Access Act 2009¹.

"159 Power of Secretary of State to amend or revoke byelaws

(1) If the Secretary of State is satisfied that any provision made by a byelaw under section 155 is unnecessary, inadequate or disproportionate, the Secretary of State may by order—

(a) revoke the byelaw, or

(b) amend the byelaw so as to restrict its application."

Before amending or revoking a byelaw under this section, the Secretary of State must consult with the committee members of the IFCA. They do not plan to consult more widely than this as they are simply making amendments to remove any conflicts with binding EU law.

The amendment of these byelaws will not lessen the environmental protection afforded to these species as the very nature of the landing obligation restricts fish mortality and encourages greater fishing selectivity. This will be done via quotas and the fact all catches will be landed and deducted from quotas.

Please see the draft Amendment Order (Appendix 1) which contains a list of amendments to be made to multiple byelaws in different districts. IFCA's do not have to consult on these changes or follow the usual byelaw making process as the amendment order will be signed by the Secretary of State.

Future proofing

As the demersal landing obligation is being phased in, there are byelaws which pose a problem in 2016 and some, for example those regarding skates and rays, which will only become an issue in future years. However Defra are keen to avoid a complicated legal process which we have to revisit each year until 2019.

Defra therefore aim to future proof the byelaws by adding a phrase to the end of the each affected byelaw, such as: 'unless the landing obligation under Article 15 of Regulation (EU) 1380/2013 requires the fish to be landed.'

¹ <http://www.legislation.gov.uk/ukpga/2009/23/section/159>

The amendment can be viewed as a quick fix, allowing IFCA's time to review, revoke and enact the most appropriate byelaws in light of the landing obligation. Defra is happy to work with IFCA's to ensure new byelaws are compatible with the landing obligation.

Timing: Urgent.

It is imperative that amendments are made before the 1st January 2016 to avoid conflicting legislation and reputational damage. However, as all amendments are to be included within one amendment order and some IFCA byelaw amendments include those which cover Bass, Defra are looking to implement these changes as quickly as possible to ensure the byelaws are in line with the EU emergency management package for Bass. Defra are timetabling for the amendment order to come into force in October.

Q&A

Q. What would happen if the byelaw was left as it is?

Retaining byelaws which contradict with directly applicable EU law will render them unenforceable in situations of a direct conflict. It would not be possible to prosecute a fisherman for an offence under the original byelaw if the fisherman committed the offence in order to comply with directly applicable EU law (i.e. the landing obligation). Retaining contradictory byelaws creates legal ambiguity. It would also be open to interested parties to challenge the validity of your byelaws in such circumstances.

If you are in any doubt as to the legal position regarding the byelaws and the proposed Amendment Order, Defra have recommended we consult with our legal advisers.

Q. Can the Amendment Order revoke a byelaw?

Yes it is possible to revoke a byelaw entirely and in lieu of a replacement byelaw national SIs and/or EU legislation will apply. The IFCA is responsible for choosing the most appropriate solution/amendment for their region.

Q. Can the Amendment Order issue a new byelaw?

No the Amendment Order can only amend or revoke existing byelaws.

Q. Does this amendment to a byelaw prevent IFCA's from amending or reviewing the byelaw in the future?

No. This amendment serves as a quick fix solution. An IFCA is free to revoke or replace their byelaws as normal; however Defra would be keen to work with them to ensure any future byelaws are compliant with the landing obligation.

Recommendation

It is recommended that IFCA Members agree to the proposed amendments to their identified byelaws (Appendix 2), or suggest alternative agreed wording which is compatible with the landing obligation.

Next Steps

Following your agreement to the proposed amendments, as set out in the draft Amendment Order, Defra will aim to finalise the draft by the end of September with a view to bringing it into force in October.

Defra will keep the IFCA informed as work progresses to Ministerial clearance