

By: Chief Fishery Officer

To: Kent and Essex Inshore Fisheries and Conservation Authority – 23 January 2017

Subject: **MARGATE AND LONG SANDS SCI BOTTOM-TOWED GEAR BYELAW**

Classification Unrestricted

Summary:

Members are presented with the draft Byelaw (Appendix A) and associated Impact Assessment (Appendix B) for approval.

Recommendation:

The Authority is asked to APPROVE the making of the Byelaw taking account of the Impact Assessment provided

Background

At the last Authority meeting an extended agenda item was held to discuss the KEIFCA and MMO fisheries management for the Margate and Long Sands SCI site. During this Authority meeting, presentations were received from Natural England, the National Federation of Fishermen’s Organisations, the MMO and the Marine Conservation Society. Prior to the meeting stakeholders were encouraged to contact the Authority expressing their views on the proposals. Since the meeting officers have offered to discuss any additional questions about the features being protected or the development of management measures/ byelaw with Members.

KEIFCA balancing legal responsibilities

One of the issues that emerged from discussions was additional clarity concerning the application of two key legal principles; the precautionary principle and the principle of proportionality. Both principles need to be thoroughly considered when making legislation.

There are a number of different versions of text describing the principles of precaution and proportionality, however useful texts (below) have been used in legal cases that are relevant to environmental law.

The principle of precaution

where there is scientific uncertainty as to the existence or extent of risks to human health or the environment, institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent ...

The principle of proportionality

The lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question, when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.

When developing management for a dynamic feature like sandbanks, it is important to apply these two principles in the context of Natural England's conservation advice. Natural England's advice highlights the most sensitive areas of the sandbank feature. Whilst the previous paper (IFCA meeting 29 November 2016) discussed the merits of a permit or closed areas byelaw approach, a closed areas byelaw is significantly more straightforward and means that there is a synchronised approach in managing the cross-boundary site by both KEIFCA and the MMO.

In developing the boundaries of the closed areas, KEIFCA took opinion from enforcement officers as well as industry, and in consultation with Natural England, developed an approach based on simple straight-line boundaries that where possible were located on clear lines of longitude and latitude. The areas proposed are based around the sensitive and more stable areas identified by Natural England in their advice but extend protection significantly from these points and provide a combined 53km² area (an area three times the size of Mersea Island). The significant size of the boxes also allows for a degree of sandbank/biotope movement and takes a relatively precautionary approach to the evidence and advice provided.

In weighing up potential other options of closing areas other than those identified by Natural England as sensitive, two issues quickly emerged: on what grounds are additional areas being suggested and would adding additional areas be proportionate if not based on evidence or advice. Whilst KEIFCA work hard to include all stakeholders in the byelaw making process, stakeholders are able to

challenge the Authorities decision via the courts through a judicial review, and it could be argued that developing closed areas outside of Natural England advice and with limited evidence could be disproportionate.

Managing the impacts of bottom-towed fishing gear on sandbanks is a relatively new development and as with other regulators and the wider community there are relatively few examples to base refined management measures on. The precautionary principle makes a clear case for action and the development of a byelaw, but it is hoped that the KEIFCA commitment to review of site management, working alongside Natural England, will over time, help the provide effective habitat management and a resilient and productive ecosystem.

The byelaw:

At the KEIFCA meeting held on 29 November 2016, Members instructed Officers with regard to the Byelaw they required to be made. The draft Byelaw (Appendix 1) and its associated Impact Assessment (Appendix 2) have been discussed with the Marine Management Organisation (MMO) who have approved the wording of it. This proposed Byelaw is now formally presented to you for making.

As required, Members have been given 14 days' notice of the intention to make this Byelaw and in addition were also provided with the associated Impact Assessment which should be considered before making the Byelaw.

If the Byelaw is made it will be necessary to seek the Secretary of State's confirmation of the Byelaw before it is operational. The next stage in this process will be to advertise notice of the Byelaw for two consecutive weeks in publications which target stakeholders affected by it. Notice will also be placed on the KEIFCA website where the full wording of the Byelaw will be available for viewing. Persons wishing to comment or object will be given 28 days to respond to KEIFCA and MMO. Following this, consideration will be given to comments or objections received as set out in Defra guidance.

Recommendation:

The Authority is asked to APPROVE the making of the Byelaw taking account of the Impact Assessment provided.