

**NWIFCA Technical, Science and Byelaw
Sub-Committee 1 November 2013
Supplementary report**

**Report
Number
5A**

**PROTECTION OF EUROPEAN MARINE SITES BYELAW 6– REPORT ON PROGRESS AND
REVISED BYELAW FOLLOWING TSB ON 1-11-13**

Aim of the report: To further discuss the proposed Lune Deep solution and propose including the closed area in Byelaw 6 to be remade on 6 December so that NWIFCA meets the Defra deadline of having this byelaw in place by the end of March 2014.

Recommendation: That the proposed Byelaw 6 be remade on 6 December with amendments to the Morecambe Bay Seagrass beds closed area and inclusion of the Lune Deep closed area with sunset clause.

Background

1. This byelaw was made on 20 September with agreement to include further data on Morecambe Bay seagrass beds from Natural England. Since the meeting NWIFCA has received strong representation from the Defra led EMS Project Board that the Lune Deep site should be protected so that Defra can defend the legal challenge to the management of EMS.

2. Officers considered various options for the Lune Deep closed area. A proposal was developed that would provide the required protection whilst including a sunset clause so that the single fisherman who fishes the Lune Deep would not be harmed by the closed area. This proposal was informed by a Habitats Regulations Assessment of this existing very low level of fishing activity. A full report was presented to the TSB on 1 November 2013.

2.3. TSB were not content that there could be other fishermen who fished the site that Officers had not contacted or that the possibility of fishing the site in the future would be closed off by the closed area. It was resolved not to approve inclusion of the Lune Deep closed area but to ask for further checks on usage of the area.

3.4. Completion of this byelaw is urgently needed to meet the Defra deadline of having protection in place for all SAC reef features from bottom towed fishing gear by the end of 2013. Officers have considered an emergency meeting of the TSB before the full NWIFCA on 6 December but have been unable to find a suitable date. Therefore, the further investigations requested by the TSB have been conducted urgently and a new full version of the byelaw is being presented to TSB members by correspondence herewith before the 6 December meeting.

Further investigations and developments

4.5. Officers have further investigated fishing in the Lune Deep area through consultations with fishermen in the Fleetwood areas and the NFFO West Coast Committee which met in Carnforth in November. With no evidence of any other usage of the site, NWIFCA can be fully confident that no other fishermen fish the Lune Deep.

5.6. Without specialist knowledge it is most unlikely that any other fisherman would attempt to fish the Lune Deep. In the future if technology developed which would facilitate fishing the

Lune Deep with no risk to the reef features or the vessel, NWIFCA could review the byelaw and adopt a more flexible approach to fishing the site

- | 6.7. With these further investigations Officers consider that members concerns over the impacts on fishing of the Lune Deep closed area have been addressed as far as legally possible under the Habitats Directive noting that EMS management decisions cannot be based on socio-economic factors.
- | 7.8. The Defra EMS Project Board has written to NWIFCA stating that the Lune Deep site must be protected to comply with the Habitats Directive. Defra have also replied to the Client Earth MCS letter which criticised the NWIFCA for not including the Lune Deep site, stating that the NWIFCA will protect the site. This was incorrect but happened because NWIFCA officers developed the proposed sunset clause in consultation with Natural England, who then discussed informally with Defra to see if they would find it acceptable. Defra.

Other important considerations

- | 9. If NWIFCA does not protect the Lune Deep reef to a degree which Defra consider necessary, Defra are most likely to ask MMO to pass an emergency byelaw to protect the site. MMO would be reluctant to act against an IFCA decision but under instruction from Defra would be obliged to do so. This would reflect badly on the NWIFCA by indicating that it had failed to fully discharge its conservation duties, acted against government policy and not fully assisted with work to address the legal challenge faced by Defra.
- | 8.10. If MMO made an emergency byelaw, it is unlikely they would include a sunset clause to protect current fishing activity. An MMO byelaw would therefore lead to a worse outcome for fishing in the District.
- | 9.11. NWIFCA has a constant and complex challenge to achieve sustainable use of the sea by balancing legitimate undamaging activity against the need to protect valuable conservation features of the marine environment for future generations. The Lune Deep issue brings this delicate balancing act into sharp focus.
- | 10.12. NWIFCA can be content that it is now able to fully implement the protection required for EMS sites in the District and has been able to do so in a manner that will not have adverse socio-economic impacts on the fishing industry. Members can be content that by making this byelaw as presented in this report, the NWIFCA has fulfilled its duties in regard to the protection of EMS features from damaging fishing activity and also allowed undamaging and legitimate fishing activity to continue around EMS sites.
- | 11.13. In the context of the 4 year review of IFCA now underway in Defra and the review of new burdens funding from 2015 onwards, the NWIFCA should do everything within its powers to support and bolster government marine environmental policy consistent with its duty to develop and protect fishing. Failure or perceived failure to discharge its statutory conservation duties and government policy is neither desirable nor tenable for the NWIFCA.

Next steps

- | 12.14. A full copy of the proposed amended Byelaw 6 will be prepared including the Lune Deep site. TSB Members are asked to approve the making of this byelaw at the full Authority on 6 December. Please could TSB members report to the CEO any further concerns about the byelaw so they can be conveyed to members on 6 December.

CEO
20 November 2013