

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

**Report
Number
5A**

**PROTECTION FOP 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 included 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 areas and developed a sunset clause so that the single fisherman who fishes the Lune Deep would not be harmed by the closed area. A full report was presented to the TSB on 1 November 2013.
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.
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

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.
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

7. With these further investigations Officers consider that the socio-economic concerns about the Lune Deep closed area have been addressed and are no longer a significant bar to the proposed protection for this site.
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 developed the sunset clause in consultation with Natural England who then discussed it with Defra to see if they would find it acceptable. Defra approved the solution before the NWIFCA meeting on 1 November.

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 as not being willing to assist Defra meet the legal challenge it faces.
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.
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.
12. NWIFCA can be content that it is now able to fully implement the protection required for EMS sites in the District with no 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.
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. By resisting government policy, NWIFCA could be seen as unconstructive and unhelpful to Ministers. There is no point in standing on a principle to the extent that the Government later abolishes the IFCA or slashes its funding because it is not seen as helping to implement national policy.
14. A Habitats assessment of the possible impacts on the site of a single vessel fishing occasionally using light otter trawl gear, fishing for a few days a year has been completed with a finding of no likely significant effect. This finding has been approved by Natural England

Next steps

15. A full copy of the proposed amended byelaw 6 is attached. TSB Members are asked to approve the making of this byelaw at the full Authority on December 6.

**NWIFCA CEO
November 2013**