

NWIFCA Quarterly Meeting

6 December 2013: 11.00 a.m.

AGENDA

ITEM NO.

14

CHIEF EXECUTIVE OFFICER REPORT

Purpose

This report provides updates and comment on various areas of work.

Recommendation:

1. The report be received

Contents

- I) Overview of the policy environment and work programmes
- II) Marine Conservation Zones (MCZ)
- III) EMS work and proposed Byelaw 6.
- IV) Byelaw review
- V) Health and safety policy
- VI) Staff changes
- VII) Claim against the Authority
- VIII) Association of IFCA
- IX) Procurement of a replacement main patrol vessel

I) **Overview of the policy environment and work programmes**

1. The focus of Defra on protection for European Marine Sites and the designation of Marine Conservation Zones continues. Two MCZ in the NW have been designated although it is not clear how much work will be required to protect and manage these sites.
2. Collation of data for Byelaw 6 and preparation of the byelaw have significantly impacted the amount of routine field work which the Authority has been able to complete in 2013. This project is dictating much of the science work programme and will continue to do so for the foreseeable future as the focus of the EMS programme moves from so called red sites to amber in 2014.
3. Enforcement resource priorities were the Foulnaze cockle fishery in the Ribble Estuary in the early part of the quarter and latterly the mussel fisheries in North Morecambe Bay.
4. An announcement from Defra on future funding for IFCA is still awaited. 2014-15 will be the last year of the so-called 'New burdens funding' under which Defra have provided about 30% of IFCA funding for the first 4 years of operation.
5. Defra have started development of the first 4 year report to Parliament required under the Marine Act. This is due to be laid before parliament by the end of 2014. The Association of IFCA will be the main route by which the input of all the IFCA to the government report is coordinated but there are also planned visits to all IFCA by the Defra team preparing the report giving opportunities for contributions from members and officers.

II) **Marine Conservation Zones (MCZ)**

6. Marine Conservation Zones passed a significant milestone with the designation of 27 sites round England on 21 November of which 2 are in the NWIFCA District. NWIFCA provided extensive advice to Government in October and November on the fact sheets for the North

Western MCZ sites. Defra indicate that there will be further designations of MCZ within 2-3 years but we have no details yet on which the sites will be proposed or the timescale.

7. The 2 sites in the NWIFCA District are Fylde and Cumbria Coast. The fact sheets and designation orders have been previously circulated to members.

Fylde MCZ

8. The designation of the Fylde site will come as a disappointment to the remaining inshore fishing vessel operators in the District because it covers a large area of important fishing ground close to the largest fishing ports in the North West and could in future lead to attempts to further limit fishing in the area.
9. The NWIFCA has previously commented that little is known about the biodiversity or ecosystem structure and function on the Fylde site and there do not appear to be identified resources for ongoing study or monitoring of this or other MCZ. NWIFCA should closely monitor discussions relating to the management of the site and ensure that any suggested regulations are justified by science data.

Cumbria Coast MCZ

10. Cumbria coast includes St Bees head extending to 1nm offshore and the intertidal area as far south as the Ravensglass estuary. The conservation objective is also 'to maintain' features in their current condition and no new management of the site is proposed. The Cumbria coast area is regularly patrolled by shore based IFCOs to monitor fishing and recreation activity
11. The NWIFCA has previously commented on the proliferation of marine protected area designations in the Eastern Irish Sea and the apparent lack of important conservation features within the protected sites which need protection. Over 60% of the NWIFCA District is protected while much of the rest of the Irish Sea remains outside any MPA.
12. It is difficult to see how the spread of MPA now created contributes significantly to the Government's aim for an ecologically coherent network of MPA or how the sites will deliver improved conservation of the marine environment within the NWIFCA District or the wider Irish Sea. NWIFCA may wish to monitor the extent to which the economy of the North West benefits or is restricted by MPA designations compared with other of the UK and Irish Sea where there are fewer MPA designations in place.

III) The EMS programme and proposed byelaw 6

13. In 2014, protection should be in place for the red sites. Risk of damage by any form of bottom towed fishing gear will be mitigated by the new NWIFCA Byelaw 6. The focus then moves to sites identified by the huge Natural England matrix as 'amber risk'. Amber sites are EMS areas where fishing takes place using gear which is less damaging than bottom towed gear which has been prohibited under the red programme. Amber sites include all fishing activities on all EMS throughout the NWIFCA District. The amber programme will involve detailed assessment of the impacts of all types of fishing which takes place on EMS. This work is scheduled to take 3 years and is expected to take up a high proportion of the time and resources of the NWIFCA Science team.
14. All fishing activities on all amber risk sites will each have to be separately assessed in a written Habitats Regulations Assessment (HRA). This is a 2 stage process to determine if fishing has an adverse impact on features of the relevant EMS. Stage 1 is a screening 'test of Likely significant effect' (LSE). If the conclusion of this is that there is no LSE then no further assessment is needed. If the conclusion is that there is a LSE then stage 2 is needed which is a full impact assessment known in Habitats Directive jargon as an 'Appropriate Assessment' (AA). If the AA finds that the impact of the activity under consideration is significant, then that activity will have to be mitigated, regulated or even prohibited under byelaw to a level such

that there are no significant impacts on the conservation features of the EMS. The scale of this task appears extremely large set against the NWIFCA Science team of 3 officers. It is not yet clear whether it is achievable with the available resources.

IV) **Other NWIFCA Byelaws in development**

15. Two draft byelaws 1 and 2 were made by the NWIFCA in 2011 but because of work pressure were not advertised and did not come into force. They were reconsidered by the TSB on November 1 with a view to completion.
16. Byelaw 1 (Definition of the District and derogations for science) was subsequently discussed with MMO. Advice received is that this byelaw is no longer needed following the establishment of IFCA's. The definition of the District is in the NWIFCA SI and Science derogations are better written into each byelaw separately. A wording has been provided by MMO and will be adopted in new IFCA byelaws. Existing science derogations will continue to be issued under NWSFC and CSFC byelaws until the review of byelaws is complete and inherited byelaws are abolished.
17. The TSB raised queries over the wording of Byelaw 2 (Limits on the size of fishing vessels permitted to operate in the District) and it is being redrafted.
18. Officers further considered a single District wide netting byelaw at a meeting in October. The byelaw will aim to regulate a wide range of net types and introduce a new permit scheme, to limit the amount of netting which can be set by non-commercial fishermen and a returns scheme so that NWIFCA has a better record of fish caught in the District. The Authority will be kept informed of progress and the industry will be consulted on proposals as they are developed.

V) **NWIFCA Health and Safety policy**

19. The policy has been reviewed in November 2013. There have been no Health and Safety incidents in the past quarter. NWIFCA Officer training to enable them to carry out their duties in accordance with the H&S policy continues. A register of training is maintained and is available for inspection by members on request.

VI) **Staff matters and recruitment policy**

20. Mr. Erik Thinnesen continues on sick leave since 1 July 2013. His condition is undergoing further investigation and he is likely to be off work for an extended period. We again wish him a full and quick recovery.
21. Interviews for the vacant posts in the Science team and the northern IFCO were held on 23 September in Whitehaven and 26 September in Carnforth respectively.
22. Miss Sarah Temple was appointed Science Officer and we were pleased to welcome her starting work with the Carnforth based Science team on 4 November. Sarah has become engaged with various elements of the science programme, visited parts of the District on field work and has attended a 2 day IFCA Technical Advisory Group which focused on the European Marine Site protection work.
23. Interviews for an IFCO in Whitehaven on 26 September did not unfortunately identify a suitable candidate and lead to an appointment. The Appointment Board agreed that the post should be re-advertised as soon as possible. The Chairman's Working Party (CWP) on 19 November confirmed the decision to re-advertise the post. Following complications with the recruitment to this post, members of the Interview Board asked for clarification of NWIFCA recruitment policy which is summarized below.

24. NWIFCA Standing Order 8.3c delegates all personnel matters to the CWP and SO 11 provides for the routine appointment to posts which fall vacant. Recruitment commences with preparation of a job description, qualifications and requirements for the post, salary scale, outline terms, instructions for applicants and a closing date for applications. This information is put on the website when the post is advertised. Posts are advertised in local and national media and relevant recruitment websites.
25. Following SFC practice, appointment of junior officers is routinely carried out by senior officers but an Authority member is often invited to sit on interview Boards. There is no requirement for this in Standing Orders. For senior appointments there would of necessity be more involvement of members. Recruitment of the CEO would be carried out by members under the direction of the Chairman of the Authority. Members of Interview Boards must not be related or have had any previous contact with any of the candidates other than internal candidates as provided for in SO 11. All Candidates for interview are treated equally and fairly and are asked similar questions so that answers can be directly compared. The most well qualified person for the post in the opinion of the Interview Board is appointed.
26. Applications for all posts except the CEO are examined by the Finance/HR Officer and the line manager for the post. A short list of 6-8 candidates is determined and invited for interview.

VII) **Claim against the NWIFCA**

27. NWIFCA was awarded summary judgment in the claim for alleged negligence brought by Mr. H. Benson of Flookburgh. The claim was struck out through lack of evidence. NWIFCA was awarded all costs and will be seeking to recover over £25,000. The final assessment of costs must be assessed and approved by the Court.

VIII) **Undersize mussel fishing in North Morecambe Bay**

28. The taking of undersize mussel from around the oyster farm run by Seasalter at Newbiggin in North Morecambe Bay led to excessive demand on enforcement officers in October and November. Seasalter were routinely given authorisation from the Sea Fisheries Committee to remove mussels from around the oyster frames which are fouling the oyster growing operation. Seasalter do not need an authorisation to take mussels from the trestles themselves but mussels around and beneath the trestles are part of the public fishery and an authorisation is required to take undersize mussel.
29. This year Seasalter attempted to use the removal of seed mussel as a commercial fishery, operated by Kingfisher Seafoods using Byelaw 3 permit holders. However, some Byelaw 3 permit holders were prevented from fishing and NWIFCA received complaints of discrimination. The TSB agreed with the complaints and withdrew the authorisation on 1 November resolving to issue a new authorisation which could not be used to discriminate. However, the offer of a new authorisation has not been taken up but removal of undersize mussel continued.
30. This activity may be related to the claim by Boughton Estate to own the fishery rights in the area. However, the Marine Act (s.158) is clear that in an SAC (the Oyster farm is within the Morecambe Bay SAC), IFCA bylaws apply whether or not there is a private fishery on the land. This gives the NWIFCA a statutory duty to enforce byelaws over the intertidal area owned by Boughton including the area of foreshore around and under the Oyster trestles, (but not on the trestles) whether or not there is a private fishery in place.
31. Boughton Estate has been charging a levy for seed mussel taken from land under and around the oyster trestles. Members may wish to confirm that it is the NWIFCA understanding that if there is no private fishery in place, then mussels not on the trestles are part of the public fishery and there is no justification for charging a levy on mussels fished.

32. The longstanding claim by Boughton to fishing rights is used by various parties to cloud recognition of the legal status of IFCA byelaws and leads to a drain on enforcement resources. The Authority may now consider that it is appropriate to commit IFCA resources to obtaining a definitive opinion from legal Council on whether Boughton Estate's claim to fishing rights is legitimate.
33. In the absence of a private fishery, the status of the Oyster farm is unclear. It is not able to adequately manage its environment to protect the oysters from heavy mussel incursions. This case highlights the need for a Morecambe Bay Fishery Order so that operations such as the oyster farm could be properly protected in a several fishery area leased under the Order.

IX) Association of IFCA (AIFCA)

34. The AIFCA Members Forum met on 17 September in London. The Chairman and CEO attended from NWIFCA. The main agenda was a discussion with Natural England Marine Director Alan Law about progress with EMS and MCZ and a briefing from Defra on the process for preparing the statutory 4 year report to Parliament on the IFCA.
35. The AIFCA helped with the organization of a meeting of the IFCA Chairmen and Chief Officers on 31 October. The Chairman and CEO attended for NWIFCA. Topics discussed included CFP reform and many aspects of joint working between IFCA and MMO, particularly the management of marine protected areas
36. The notes of both these meeting will be circulated to members by email and there will be an opportunity for questions at the 6 December meeting.

X) Main patrol vessel replacement

37. Lancashire County Council is managing the tender process for NWIFCA as reported in September. A further 2 contracts need to be agreed before the tendering process can be launched. There must be a contract between Council members of the NWIFCA to make contributions to the lease payments and a draft contract to be signed between the LCC and the appointed builder of the vessel when the tendering process is complete must be in place. Both these contracts need legal drafting advice and terms must be published with the invitation to tender. Lancashire Council has commissioned the legal advice and contracts are expected to be complete by the end of December resulting in a delay to the tendering timescale of approximately 2 months.
38. Funding still has to be agreed. The Finance Sub-Committee has agreed to ask Councils for a 2% increase in the NWIFCA levy on Local Authorities each year for the next 5 years to create a sum of money to assist the financing of the vessel.
39. We understand that the EU may have a budget to assist fisheries enforcement activity in the new European Marine and Fisheries Fund which could become available in 2014.

**Chief Executive
27 November 2013**