

Byelaw Guidance

Stephen Atkins

From: Hibberd, Grant (FSR) <Grant.Hibberd@defra.gsi.gov.uk>
Sent: 21 January 2011 15:57
To: Godfrey Williams; Holliday, David (MMO); Peter Winterbottom; Roger Thomas; Fisher, Robbie (NE); Ross, Gavin (ERG-MAR); cllr.roger.thomas@eastsussex.gov.uk; dapling@sussex-sfc.gov.uk; cllrlamb@southend.gov.uk; joss.wiggins@btconnect.com; ken.sale@suffolk.gov.uk; matmander@esfjc.co.uk; Janfish20@btinternet.com; david.mccandless@eastriding.gov.uk; Robert.Arkless99@northumberland.gov.uk; nsfc@nsfc.org.uk; Stephen Atkins; dtd@cumbriasfc.fsnet.co.uk; Elaine.Hayes@livingcoasts.org.uk; Sande.bhouse@virgin.net; kbower@devonsfc.co.uk; trobbins@devonsfc.co.uk; Enquiries.seafisheries@cornwall.gov.uk; ederriman.seafisheries@cornwall.gov.uk; cthomas@scilly.gov.uk; maritime@scilly.gov.uk; acj1@noc.soton.ac.uk; southernnsfc@btconnect.com; Branson, Margaret (ERG-MAR)
Cc: Friend, Gordon (ERG-MAR); Preston, Chris (ERG-MAR); Muneton, Benjamin (ERG-MAR); Oldfield, Kerry (ERG-MAR); Clarke, Colette H (ERG-MAR); Price, Leslie (ERG-MAR)
Subject: Informal DEFRA consultation on byelaw guidance for IFCAs
Attachments: IFCA Byelaw Guidance consultation.docx

Informal DEFRA consultation on byelaw guidance for IFCAs

Dear Colleagues,

This informal consultation exercise is seeking your views on the byelaw making guidance that DEFRA intends to issue to Inshore Fisheries and Conservation Authorities (IFCAs) from April 2011

We would welcome your comments on this guidance by 4 March 2011.

As you know, Inshore Fisheries and Conservation Authorities (IFCAs) have been established under the Marine and Coastal Access Act and, from April 2011, will replace current Sea Fisheries Committees. IFCAs will have a wider range of duties including:

- Seeking to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way;
- Seeking to balance the social and economic benefits of exploiting sea fisheries resources of the district with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation;
- Taking any other steps which in the IFCA's opinion are necessary or expedient for the purpose of making a contribution to the achievement of sustainable development; and
- Seeking to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Further to issuing guidance on annual planning and reporting in September 2010, the recent consultation on four other pieces of guidance to IFCAs, and in line with Sections 153 (3) and 153 (4) of the Marine and Coastal Access Act 2009, DEFRA has drafted the following byelaw making guidance:

<<IFCA Byelaw Guidance consultation.docx>>

The guidance covers best practice in making byelaws and is designed to accompany sections 155 to 164 of the 2009 Act. Following initial feedback from SFCs, we have reduced the level of

prescription in the guidance and, as a deregulatory measure, the guidance is intended to be used in place of the regulations mentioned in section 160 of the 2009 Act.

Under the Marine and Coastal Access Act, IFCA's must have regard to any guidance that DEFRA Ministers issue. **The byelaw making guidance has been drafted for and is relevant to all those involved in the work of IFCA's, including Authority members, IFC Officers, IFCA office managers and administrative staff; also to inform sea users and other public bodies about the way byelaws will be produced in each IFC District.**

We would welcome any comments on the guidance, but you might like to consider the following questions in your response:

Q1. Do you agree with the content of the guidance?

Q2. Do you think the principles in the guidance are appropriate?

Q3. Do you think the guidance provides enough examples without being too prescriptive?

Q4. Are there other areas that you think should be included in the guidance documents?

Q5. Does the guidance provide adequate information to assist IFCA's in fulfilling their new duties?

Q6. The guidance is being issued in place of in place of the regulations mentioned in section 160 of the 2009 Act (although the Secretary of State may choose to produce regulations in the future). Are you content that the guidance is sufficient?

Q7. Do you think the provision of a template byelaw as an annex to the guidance would be beneficial?

How to provide your comments:

Please send comments by **04 March 2011** to:

Sustainable Fisheries (IFCA implementation team)

Area 2C, Nobel House

17 Smith Square

London, SW1P 3JR

Email: IFCA.contact@defra.gsi.gov.uk

Telephone: 020 7238 5056

Fax 020 7238 4698

Kind regards,

IFCA Implementation Team

Department for Environment, Food and Rural Affairs (Defra)

This email and any attachments is intended for the named recipient only.

Draft IFCA Byelaw Guidance

Draft guidance on the byelaw making powers and general offence under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Access Act

March 2011



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Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
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Telephone 020 7238 6000
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Inshore Fisheries (IFCA implementation team),
Defra Marine and Fisheries Directorate,
Area 2C, Nobel House,
17 Smith Square,
London SW1P 3JR
Email: ifca.contact@defra.gsi.gov.uk

This document is available on the Defra website:

insert IFCA Link

Department for Environment, Food and Rural Affairs

Nobel House

17 Smith Square

London SW1P 3JR

Telephone 020 7238 6000

Website: www.defra.gov.uk

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Area 2C, Nobel House,

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London SW1P 3JR

Email: ifca.contact@defra.gsi.gov.uk

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IFCA BYELAW GUIDANCE

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1 Introduction and Status

1.1 This best practice guidance on making byelaws is produced under section 153(3) of the Marine and Coastal Access Act 2009 (the 2009 Act) and is designed to accompany sections 155 to 164 of the 2009 Act. The guidance is intended to be used in place of the regulations mentioned in section 160 of the 2009 Act. However, this guidance does not preclude the Secretary of State making such regulations in the future.

1.2 IFCA's must have regard to this guidance in carrying out their functions¹ and the Secretary of State will expect any departure from the principles set out in this guidance to be fully justified.

1.3 The aim of this guidance is to inform the following groups how powers to make byelaws and emergency byelaws will operate within each IFCA district to protect fisheries and the marine environment:

- IFCA's, which have a duty to sustainably manage the inshore marine environment and general duties in relation to conservation and biodiversity.
- Those who carry out activities in the inshore marine area and who are likely to be affected by a byelaw being made;
- Public authorities such as the Marine Management Organisation (MMO) which is involved in the production of IFCA byelaws and has a responsibility to make MMO byelaws/orders to protect Marine Conservation Zones (MCZs);
- Statutory nature conservation bodies that provide advice to public authorities regarding activities that are capable of affecting the protected features of European Marine Sites (EMS)² and Sites of Special Scientific Interest (SSSI) which may fall within the IFCA district.

1.4 The guidance also provides an explanation of the factors to be taken into account when considering the need for and appropriateness of an IFCA byelaw.

1.5 Using this guidance will help the above organisations and stakeholders to comply with the legislation and prevent or minimise damage and take action with respect to protecting fisheries and the marine environment within the IFCA district.

1.6 This guidance should be read in conjunction with relevant legislation. The Marine and Coastal Access Act 2009 is available at the following web link:
http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090023_en.pdf

¹ The 2009 Act section 153 (5)

² Eg: Natura 2000 (Special Areas Conservation, Special Protection Areas) and MCZs etc

1.7 IFCAs will be responsible for producing byelaws within their districts which includes such part of the English inshore region lying 6 nautical miles (nm) from baselines. The MMO and the Environment Agency may also make fisheries byelaws in England within the 6 nm limit to protect the marine environment (MCZs) from fishing activities or to protect migratory fish. Natural England (NE) has byelaw making powers in intertidal SSSI and National Nature Reserves (NNR) where they overlap with IFCAs, but guidance about their functions is not covered in this document.

1.8 Byelaws must be compatible with existing Community law and the Common Fisheries Policy (CFP) and cannot, therefore, be less stringent or inconsistent with national or Community legislation.

1.9 But Council Regulation (EC) No 2371/2002, which embodies the CFP, does recognise the UK's exclusive right to fish within 6nm of baselines. Accordingly, IFCa byelaws, which apply only within 6nm, will only affect UK registered vessels. Foreign vessels fishing within the 6 nautical mile limit would be contravening EC legislation.

1.10 This guidance has been developed after taking into consideration IFCAs' functions and resources and issued after consultation with IFCAs and other interested organisations and individuals.

1.11 This is one of several documents³ that offer best practice guidance to IFCAs. These documents will be reviewed regularly and, if necessary, reissued in the light of any changes in marine management or other Government policy.

2. Background

2.1 The 2009 Act strengthens and modernises the powers to manage inshore fisheries and the marine environment. Part 6 of the Act allows for the replacement of Sea Fisheries Committees (SFCs) with IFCAs. IFCAs have a range of duties including ensuring the sustainable exploitation of sea fisheries resources within their districts.

2.1 This guidance is informed by the Hampton Review which indicated that regulators should only intervene when there is a clear case for protection and legislation should be the last resort when considering options for regulation. More information on the Hampton Principles is available at the following link:

³ [Add link to IFCA Guidance when published](#)

<http://www.berr.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system>

There is specific guidance available to IFCA's on enforcement which is available at:

Add link to the IFCA Enforcement Framework, once published

3. Role and Responsibilities

3.1 Ministers

- The Secretary of State is responsible for confirming and revoking byelaws and initiating hearings, as set out in this guidance.

3.2 IFCA's

- The 2009 Act places a clear duty on IFCA's to sustainably manage sea fisheries resources in their Districts and to protect marine ecosystems from the impact of fishing.
- IFCA's are required to ensure more effective management of marine habitats in the inshore area. This includes amongst other things activities such as recreational sea angling, bait digging and seaweed gathering which were previously not regulated by SFCs.
- IFCA's have a duty, under Section 154 of the Act, to further the conservation objectives of MCZs and will be expected to introduce byelaws regulating fishing activity where necessary. IFCA's will also enforce MMO nature conservation byelaws within the 6 nm limit. IFCA's will also have powers to regulate several fisheries⁴ and other private fishing rights in nature conservation sites.
- In order to sustainably manage sea fisheries resources, IFCA's will need to gather evidence, evaluate options, propose management solutions and, where necessary, develop and agree byelaws. They will also need to evaluate outcomes and review the effectiveness of any action taken.

3.3 The Marine Management Organisation (MMO)

- The MMO will act as a policy and legal advisor on the process of making IFCA byelaws. The IFCA will consult the MMO at various stages of the byelaw making process.

⁴ Several Fisheries are rights granted under the Sea Fisheries (Shellfish) Act 1967

- The MMO will undertake quality assurance of byelaws and supporting evidence, before referring them to Defra for sign off by the Secretary of State, including holding hearings, if deemed necessary by the Secretary of State.

3.4 **Natural England**

Natural England is the government's statutory adviser on Nature Conservation out to 12nm. The Marine and Coastal Access Act places a duty on Natural England to provide guidance and advice on:

- the matters which are capable of damaging or otherwise affecting any protected feature or features;
- the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any protected feature or features is (wholly or in part) dependent;
- how any conservation objectives stated for an MCZ may be furthered, or how the achievement of any such objectives may be hindered;
- how the effect of any activity or activities on an MCZ or MCZs may be mitigated;
- which activities are, or are not, of equivalent environmental benefit to any particular damage to the environment

3.5 **Stakeholders**

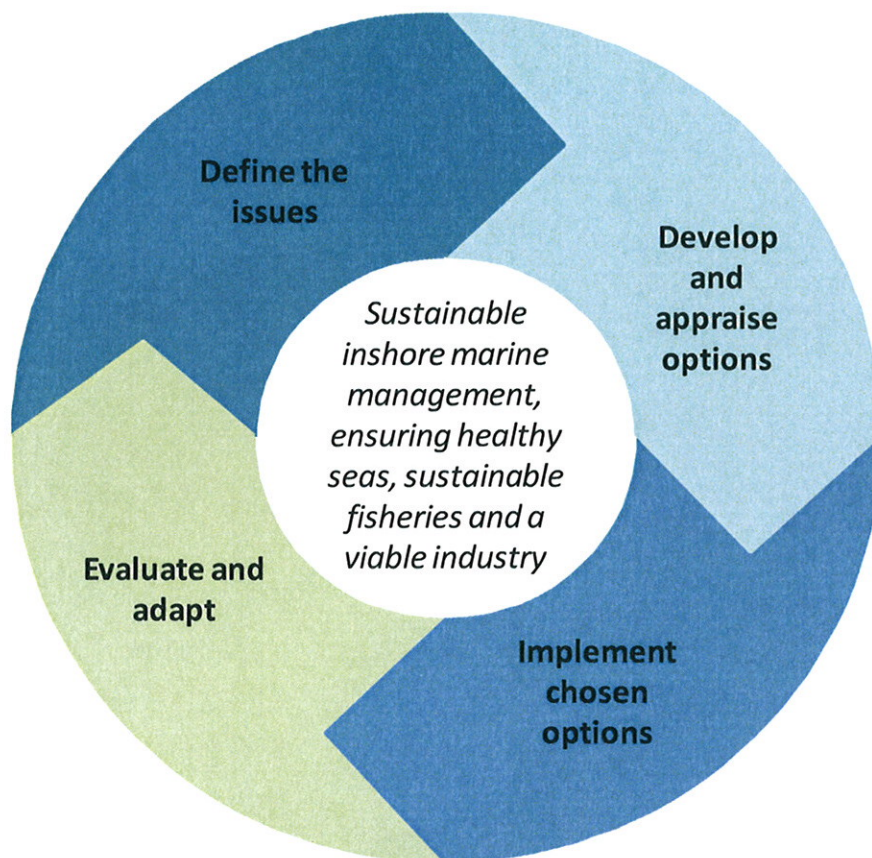
- Stakeholders, including Natural England, other agencies working in the marine area, fishermen, leisure users and anybody with an interest in the marine environment, can provide evidence to IFCA to enable good quality impact assessments to be produced and can respond to byelaw consultations. The IFCA should ensure that stakeholders are fully engaged in finding management solutions within their districts.

4. **Evidence-based decision making**

4.1 All byelaws should be based on sound evidence, decision making and appropriate consultation. An IFCA will be required to have regard to the additional guidance⁵ issued by Defra when considering how to manage a particular problem within their district. Byelaws should be seen as one of a range of solutions available to the IFCA and should normally only be considered where other non regulatory measures have been exhausted.

4.2 IFCA should adopt a consistent approach to byelaw making, using the evidence based marine management cycle, illustrated in the diagram below, as a guideline.

⁵ [Weblink to other IFCA guidance](#)



Evidence Based marine management cycle

This management cycle serves as a guideline to:

- evaluate the need for intervention. (Gathering and interpreting the best available research and analysis will inform this process.)
- identify and implement the best management options.
- evaluate the outcome of the chosen course of action and adapt their approach accordingly.

5. Power to make IFCA Byelaws

5.1 IFCA's will have a wide range of duties and, for the purposes of performing those duties, the power under section 155 of the 2009 Act to make byelaws for their district. IFCA duties include:

- managing the sustainable exploitation of sea fisheries resources and taking necessary steps to balance socio-economic considerations with

the need to protect and promote the recovery of the marine environment;
and

- ensuring that the conservation objectives of marine conservation zones are furthered.
- Develop management measures to support and further the conservation objectives of MPAs (including SSSIs, EMS and Ramsar Sites).

5.2 A byelaw does not have effect until it is confirmed by the Secretary of State. The Secretary of State may confirm a byelaw without modification or with such modifications as are agreed to by the IFCA. Before confirming a byelaw, the Secretary of State may cause a local inquiry to be held.

5.3 Emergency byelaws made pursuant to section 157 of the 2009 Act have effect without confirmation.

6. Provisions and Scope of Byelaws

6.1 Section 156 of the 2009 Act sets out a non-exhaustive list of the types of activities for which IFCAs may make byelaws (including emergency byelaws) to manage sea fisheries resources in their district.

6.2 Provisions that may be made by a byelaw under section 156 include prohibiting or restricting the exploitation of sea fisheries:

- (a) in specified areas or during specified periods;
- (b) limiting the amount of sea fisheries resources a person or vessel may take in a specified period.

6.3 The provisions cover:

- permits (including conditions for the issue, cost and use of permits)
- vessels
- methods and gear, (including the possession, use, retention on board, storage or transportation of specified items)
- protection of fisheries for shellfish, including monitoring by:
 - (a) requiring vessels to be fitted with specified equipment;
 - (b) requiring vessels to carry on board specified persons for the purpose of observing activities carried out on those vessels;
- marking of gear
- identification of items
- information that those involved in the exploitation of sea fisheries resources in an IFCA district must submit to the IFCA.

6.4 More specifically, byelaws may:

- prohibit or restrict the exploitation of sea fisheries resources in specified areas or periods or limiting the amount of resources that may be exploited or the amount of time a person or vessel may spend exploiting fisheries resources in a specified period.
- prohibit or restrict the exploitation of sea fisheries resources in an IFC district without a permit. IFCA's will be able to recover the costs of administering and enforcing a permit scheme, attach conditions to permits and limit the number of permits they issue under a particular scheme.
- prohibit or restrict the use of vessels of specified descriptions and any method of exploiting sea fisheries resources. The possession, use and transportation of specified items or types of items used in the exploitation of sea fisheries resources may also be prohibited or restricted. This would enable an IFCA to require the use of a particular method of sea fishing or an item used in sea fishing (for example to reduce by-catch) by means of a prohibition on the use of other methods and items.
- protect and regulate shellfisheries including, but not limited to, requirements for shellfish to be re-deposited in specified places and for the protection of shellfish laid down for breeding purposes and cultch, which is the substrate/material on which the spat or young of shellfish may attach and grow.
- establish a district of oyster cultivation, allowing an IFCA to prohibit the sale of oysters between certain dates, and allows IFCA authorities to disapply the defence concerning the taking and sale of certain crabs and lobsters as set out in section 17(2) of the Sea Fisheries (Shellfish) Act 1967.
- make provision for monitoring the exploitation of sea fisheries resources. This includes requirements as to the fitting of particular equipment, the carriage of onboard observers and the marking or tagging of items used in the exploitation of sea fisheries resources.
- require people involved in the exploitation of sea fisheries resources in their district to provide them with specified information so that it is an offence if certain information is not provided.

Duration of a byelaw

6.5 In line with the "evaluate and adapt" section of the marine management cycle, IFCA should continually monitor the effectiveness of their byelaws. When they are no longer effective, they should be repealed or modified. Section 158 of the 2009 Act makes provision for byelaws to cease to have an effect after a specified period (i.e., a "sunset clause"). Where possible, and in line with best practice, IFCA byelaws should include sunset clauses or specified review points.

Several or private fisheries

6.6 IFCA byelaws that prohibit, significantly restrict, or otherwise interfere with the exercise of any right of a several or private fishery must be made with the consent of the person who holds those rights. Consent is not required if part or the whole of that fishery falls within an MCZ, a European Marine Site, a Site of Special Scientific Interest (SSSI), a Ramsar site or a National Nature Reserve (NNR).

7. Urgent protection measures - Emergency Byelaws

7.1 Section 157 of the 2009 Act allows an IFCA to make an emergency byelaw. Emergency byelaws take effect without confirmation by the Secretary of State. The IFCA may make an emergency byelaw in circumstances where it considers there is an urgent need for a byelaw and that the need to make the byelaw could not reasonably have been foreseen. For example, the IFCA may consider it to be the most appropriate and effective method to quickly stop an activity which is causing significant damage to an ecosystem, such as scallop dredging in a new area, if there is no other mechanism in place.

7.2 An emergency byelaw comes into force on a date specified in the byelaw, and remains in force (unless revoked or extended) for such period, not exceeding 12 months, as is specified in the byelaw. An IFCA must notify the Secretary of State within 24 hours of making an emergency byelaw. The Secretary of State has the power to revoke the emergency byelaw.

7.3 An IFCA can introduce emergency byelaws anywhere within their district, so long as it is in pursuance of its duty and made for the purposes set out at 7.1.

Extension of Emergency Byelaw

7.4 The IFCA may extend the period for which an emergency byelaw is to remain in force, with the written approval of the Secretary of State. The IFCA may extend that period only once, and by no more than 6 months.

7.5 The Secretary of State only approve an extension period if satisfied that, during the period the emergency byelaw has been in force, the IFCA has used its best endeavours to make a byelaw that will make the emergency byelaw unnecessary, and that there would be a significant and adverse effect on the marine environment if the approval was not given.

8. Ensuring proportionality

8.1 Byelaws should be used in a proportionate and targeted way, in line with regulatory good practice. When an activity is occurring, is likely to take place, or could possibly take place, the IFCA, as regulator, should consider the likely significance of a single incident of the activity occurring within the IFCA district, and the likely/known frequency of the activity occurring there. Significance should be judged in relation to the extent to which the management objectives for the district might be hindered. The more significant the impact and/or more frequent its occurrence, the more likely it is to require regulatory control.

8.2 The combination of different types of activities should be considered when determining the likely risk to the marine environment or sea fisheries resource, particularly if they have similar or cumulative impacts when taken together. For example, an activity may not give sufficient cause for concern on its own, but when combined with similar activities may need to be controlled.

8.3 A byelaw should be used only when it can be demonstrated that existing activities are having an impact on the achievement of IFCA objectives, the marine environment or MPA conservation objectives or that there is a significant risk that they may do so both now and in the future. There may be some types of activity where a single, or occasional, incident will not pose a threat but the cumulative effect of multiple instances, over a longer period of time demands consideration. The IFCA will need to review this and possibly put in place suitable measures. Voluntary measures may also be an appropriate way to deal with local risk/impact activities although their use should have been assessed before the byelaw was developed.

Use of voluntary measures

8.4 Once it has been identified that an activity has potential to damage sea fisheries resources or the marine environment, the IFCA should give consideration to whether the activity in question may be more effectively

controlled by voluntary measures. These can include informal or "Gentlemen's agreements" or voluntary Codes of Practice, which, in combination with the IFCA's educational role, can provide an effective tool to enable compliance. Such measures may be useful in bringing an activity under control before it reaches a level of frequency or intensity that is likely to cause concern, therefore negating the requirement for regulation. If these circumstances relate to an MPA then a precautionary approach⁶ should be adopted.

Risk based approach to byelaw development

8.5 Alongside a risk based approach to enforcement, IFCA's may employ a similar approach for the identification of the environmental risks in the IFCA district. This could involve using the best available information to assess the potential risks that fishing activities in the district present to fisheries or the marine environment. Together these outputs could be used to provide an evidence base to inform the prioritisation of the development of management measures, including byelaws, and could help the IFCA to make best use of resources and to discharge their duties in an evidence based, strategic and proportionate way.

Preventative and precautionary measures

8.6 In some instances it may be difficult to identify whether an activity will, or is likely, to hinder the achievement of the IFCA's objectives, e.g., due to insufficient information about the activity or environment. This can also mean it is difficult to identify what the outcome will be if a certain activity is prohibited or restricted. In such circumstances, it may be appropriate to follow a precautionary approach and introduce controls to establish whether restrictions are beneficial. The precautionary principle is applied in the circumstances where there are reasonable grounds for concern that an activity is, or could, cause harm but where there is uncertainty about the probability of the risk and the degree of harm.

In simple terms this means that where a risk assessment leads the IFCA to conclude that there is an unacceptable possibility of a risk causing harm to the environment or fish stocks but that conclusive evidence is lacking, this should not be used as a reason for the IFCA not taking action. In these situations a precautionary approach would involve the IFCA taking proportionate action to address the risk whilst further evidence was gathered to improve the understanding of the issue. In such situations the principle of adaptive management may be an important consideration, whereby management may need to be altered as new information comes to light.

⁶ See JNCC definition <http://www.jncc.gov.uk/default.aspx?page=2519>

If in doubt the IFCA should seek further advice from their relevant Natural England appointee on risk based approach to environmental risk management and the application of a precautionary approach.

9. Content of IFCA Byelaws

Wording of Byelaw

9.1 When drafting a byelaw, IFCA should think about its purpose and cite the relevant section and paragraph of the 2009 Act under which the byelaw is being made. This text should be placed in the introductory paragraph of the byelaw (the preamble).

9.2 Those drafting byelaws should ensure they provide clarity and certainty for sea-users and enforcing officers. Drafters should avoid vague drafting such as 'prohibiting damage', 'destruction or disturbance to'. They should set out what action or behaviour is not acceptable. To achieve this, byelaws should clearly state as far as possible what is being controlled and the manner in which it is being controlled, thereby capturing only the intended target of the regulation and not other harmless activities. The byelaw should therefore identify the sea fisheries resources/species/activities, where they are located or taking place, how vulnerable they are to impacts, and the types of activity that are prohibited etc.

9.3 Drafters should use language that is clear, concise and easily interpreted. Byelaws are legal text, but with the legal nature of the text can be balanced with language that is easily understood by its audience. Good drafting will include:

- i.* Short sentences
- ii.* Well constructed paragraphs
- iii.* Defined terms, as appropriate.
- iv.* No unnecessary information
- v.* Consideration of the audience
- vi.* Use of Explanatory Notes that sets out, in simple terms, what the intention of the byelaw is.

An Explanatory Note at the end of byelaws.

Boundaries of areas covered by byelaws

9.4 IFCA byelaws are applicable within the IFCA district and do not extend beyond district boundaries. However, the area covered by a byelaw may not

always need to cover the entire area of the IFCA district. In these cases, the boundaries of the area covered by a byelaw will need to be clearly stated in the byelaw itself (through the use of co-ordinates and a map). The area to which a byelaw applies should generally be sufficient in size to address the impacts caused by an activity so as to ensure adequate protection. Where the need to manage activities extends in to the area of another IFC District the two IFCA's should cooperate to ensure byelaws are complimentary and offer transparency and consistency for sea users.

9.5 In some cases the byelaw area may need to be larger than the area where the activity is taking place (to aid compliance by assisting sea-users and enforcement authorities by being more easily identifiable when at sea or to act as a buffer zone if necessary).

9.6 In both such cases, the area will vary from byelaw to byelaw, and from one IFCA district to another.

Seasonal byelaws

9.7 If an activity is liable to hinder the management objectives of an IFCA at particular times of the year, the byelaw should seek to control those activities during those periods only.

Controlling effort

9.8 A variety of means may be used to control or limit the level of activity whilst still allowing an acceptable level of activity to continue, such as:

- **Permits** – Prohibiting the activity using a byelaw, and then granting an exemption to the prohibition by means of a permit. Permits may also impose conditions, which can serve to reduce the impacts on sea fisheries resources and biodiversity. Regulators may limit the number of permits issued (e.g. annually) in order to control the intensity of certain activities and may also charge for permits.
- **Temporal restrictions** – Impacts may be reduced by only allowing an activity to go ahead at certain times of the year, or even on certain days of the week or times of day. This approach can also be used to avoid cumulative or in-combination effects, as activities could be restricted to different times so that they do not occur together.
- **Conditional restrictions** – Some activities may be allowed to continue but with changes to the way they are carried out. In other cases, simple restrictions may be applied to different classes of the activity (e.g., varying restrictions depending on gear and type). Any such

restrictions would need to be consistent with relevant evidence, and not just arbitrary conditions.

10. Stakeholder involvement

10.1 Consultation must take place before a byelaw is made (except in emergency cases, where other provisions apply). The IFCA should include stakeholders throughout the decision making process, particularly when considering the management options, including the need for and suitability and wording of byelaws. In most cases, the need for regulation will be assessed during the Impact Assessment stage of the IFCA byelaw making process which will involve stakeholder participation. The need for and scope of byelaws will be considered in parallel with other control options and developed through associated Impact Assessments. Early involvement of stakeholders will:

- help identify whether other measures might be possible or more appropriate
- ensure that potential impacts on these groups are identified and taken into account in the decision-making process;
- ensure that the byelaws are appropriately targeted at harmful activities; and
- Improve understanding of the reasons for the making of a byelaw amongst stakeholders, and thereby improve the effectiveness of implementation and regulation.

10.2 Consultation should not unduly delay the byelaw-making process and the existence of outstanding objections will not preclude a byelaw being made or submitted to the Secretary of State for confirmation. It will be especially important for the IFCA to engage with the following stakeholders at an early stage in the following circumstances:

- Those who are likely to be affected by the proposed controls, e.g., fishermen (both commercial and recreational), coastal businesses, recreational groups (e.g., sea anglers, divers), environmental groups;
- Statutory Nature Conservation Bodies (SNCBs), primarily Natural England, for advice about activities which may cause damage or deterioration to MCZs and European Marine Sites (EMSs) and in relation to furthering the conservation objectives of those sites.
- The MMO, for advice on procedural aspects of the process and in relation to possible management measures to further the conservation objectives of MCZs and European Marine Sites (EMSs).
- Local Authorities and bodies responsible for developing and managing the coastal access route (as set out under the Act) – where there may be interference with coastal access, or movement on or around the beach by people, animals or vehicles ;

- Environment Agency – where there could be impacts on freshwater or migratory fish or fisheries or where a byelaw could affect the taking of such fish or could impact on the Agency's delivery of the UK's obligations under any of the EC Directives for which it is responsible;
- Maritime and Coastguard Agency - where the movement of vessels may be affected;
- Harbour Authority and the Ports Division of the Department for Transport - where the movement of vessels in or near to a harbour may be affected;
- Any other public body that regulates/authorises licenses for activities which are likely to be affected by the making of a byelaw. English Heritage, for example, will need to be consulted if byelaws will affect their licensing of access to wrecks and other marine heritage sites. Similarly, **Department of Energy and Climate Change (DECC)** should be contacted if byelaws are likely to affect the deployment of renewable energy installations.

11. Impact Assessments

11.1 All byelaws will need to be accompanied by an Impact Assessment (IA). An IA should be prepared by the IFCA in accordance with the best practice guidance published by the Better Regulation Executive. This can be viewed at the following link: <http://www.bis.gov.uk/ia>

11.2 The IA should set out the anticipated costs and benefits of the proposed measure, including the identified fisheries, nature conservation, sustainable development, environmental, social, and economic implications. The IA should be consulted on at the same time as the byelaw is formally consulted on.

More information about impact assessments is available on the Cabinet Office website at:

http://www.cabinetoffice.gov.uk/making-legislation-guide/impact_assessment.aspx

12. Making IFCA Byelaws

12.1 Once the IFCA has consulted and is satisfied the evidence supports making a byelaw, it should make the byelaw in accordance with its standing orders and other governance procedures.

12.2 Once made, the byelaw should be forwarded to the MMO's byelaw officers for quality assurance.

13. Confirmation of IFCA Byelaws

13.1 Byelaw (other than emergency byelaws) must be confirmed by the Secretary of State in order for it to have effect. The Secretary of State will expect the IFCA to have had regard to this guidance and any other relevant advice, guidance and information, including representations and information from stakeholders (including other Government departments).

13.2 The Secretary of State may hold a local inquiry before deciding whether to:

- confirm a byelaw;
- revoke an emergency byelaw;

13.3 It is intended that an inquiry will only be held where justified by the special circumstances in a particular case (such as the significance and complexity of the issues, and whether public scrutiny of the proposed byelaw might usefully inform the decision).

14.Considering when and how to make IFCA byelaws

Byelaws procedure

14.1 The Secretary of State can make regulations about the procedure to be followed by an IFCA in relation to byelaws.

14.2 However, the intention at this stage is to issue this guidance in lieu of regulations. This does not preclude regulations being introduced at a later stage, should this be deemed necessary.

14.3 IFCA's must have regard to the following procedures when making byelaws, or they risk the byelaw being rejected by the Secretary of State:

- a) **Carrying out an impact assessment (IA).** Each byelaw should be supported by an IA. The IA defines the issues and whether intervention by the IFCA is appropriate. It sets out what regulatory and non-regulatory options have been considered and the evidence for why a byelaw is required. In the IA, IFCA's will be required to set out the costs, benefits, risks and assumptions of their proposals, with reference to any relevant research. The IFCA may conduct research or carry out an informal consultation with relevant stakeholders at this stage to inform the impact assessment.
- b) **Notification of intention to make byelaw.**
Notice of the intention to propose making a byelaw should be given in writing to the Authority members and the Secretary of State not less than 14 days before the date of the meeting of the Authority at which the byelaw is to be made. A draft of the byelaw,

the supporting evidence and the IA, should be included with a covering letter explaining the justification for and purpose of the byelaw.

c) **Legal Advice**

Where necessary, the IFCA should take its own legal advice in relation to the proposed byelaw and seek to resolve any contentious issues through discussion with the MMO.

d) **Consultation with stakeholders –**

- The Authority would be expected to have discussed the issues being addressed and the proposals to make a byelaw with affected stakeholders and particularly including the MMO, NE and EA at an early stage and before moving to making and advertising the byelaw.
- the Authority should give notice of its intention to apply for confirmation of the byelaw by advertising it for 2 consecutive weeks in publications which target the stakeholders affected by the byelaw's measures. The advertisement should contain:
 - i. either a copy of the byelaw, or a summary of its provisions and the address where the byelaw may be inspected free of charge
 - ii. a statement directing any person wishing to object to the byelaw to write to the IFCA and MMO **not later than 28 days after the date of the newspaper in which the last advertisement appears**
 - iii. the address of the MMO and IFC Authority
- The IFCA should examine all timely objections before the byelaw is submitted for confirmation, respond in writing to objectors and, where appropriate, liaise with objectors with a view to resolving the objection. The IFCA may wish to consider amending the byelaw in light of those objections. Objections that cannot be resolved do not preclude confirmation but the IFCA must provide sufficient explanation as to why they have decided to disregard the objections.
- When responding to objectors, IFCAs should explain that their objections have been considered and why the byelaw has not been amended as they might have wished.

e) **Application for Confirmation of the byelaw by the Secretary of State**

The IFCA should submit the final byelaw to the MMO for confirmation by the Secretary of State after the consultation period is complete and once the consultation responses have

been considered and/or resolved. Two signed copies of byelaw should be sent, for confirmation. The submission should also include the following supporting evidence:

- i.* a summary by the IFCA of the consultation responses and the IFCA's response to them
 - ii.* copies of the advertisements of the byelaw
 - iii.* copies of the minutes of the meeting at which the byelaw was made and any meetings when the byelaw was discussed
 - iv.* copies of any correspondence together with an examination of any objections, resulting compromise, or reasons why objections have been disregarded
- f) The MMO will make final quality assurance checks and assess the evidence prior to recommending the byelaw for confirmation by the Secretary of State. The MMO will liaise with the IFCA and/or stakeholders where there is a need for clarification or any unresolved issues. If necessary, request that the Secretary of State cause a local inquiry to be held.
- g) the IFCA should publish the confirmed byelaw to notify stakeholders

Diagram to show Byelaw Procedure

Emergency Byelaw Procedure

14.5 The 2009 Act requires an IFCA to notify the Secretary of State directly within 24 hours of making the emergency byelaw. The IFCA should also send a copy of that byelaw to the MMO.

14.6 Prior to making the emergency byelaw, the IFCA should have sufficient evidence to assess the need for these measures, however the precautionary principle can be applied where appropriate. Relevant stakeholders will also have been informally consulted, as necessary. This evidence will form part of the initial IA.

14.7 Once the emergency byelaw has been made, the IFCA should advertise the emergency byelaw to ensure that anybody affected by the emergency byelaw has the opportunity to comply. If stakeholders wish to comment on an Emergency byelaw they should inform the IFCA and the MMO, who will consider their concerns.

14.8 The IFCA should continually review whether the emergency byelaw should remain in place. This should include a full IA and consultation to review whether the emergency byelaw should be replaced with a permanent byelaw.

14.9 Should the IFCA wish to extend the period during which the emergency byelaw remains in force, it should submit the case for extending it to the MMO, explaining why the extension is needed and providing evidence of activity by the IFCA to put a permanent byelaw in place.

14.10 The IFCA should submit the request for the extension to the MMO at least 8 weeks before the expiry of the 12 month period of the initial emergency byelaw. This is to allow sufficient time for the request to be reviewed for suitability for signing by the Secretary of State. If the MMO is satisfied that the extension can be justified, they will make recommendations to the Secretary of State to grant the extension.

Diagram to show Emergency byelaw making procedure

15.Enforcement

15.1 IFCA Byelaws are enforceable within the IFC district by the IFCA or other agency to which the IFCA has given the authority. There is separate guidance available to IFCAs on enforcement activity in the IFCA Enforcement Framework. [Add link to enforcement framework once published.](#)

IFCA Byelaw making flowchart

Issue Identified

Yes

Yes

Yes

Yes

No

No

No

No

No

Yes

Regulatory

Non Regulatory

Define management objective

Make Byelaw

Consult stakeholders

Send to MMO for quality assurance and confirmation

Secretary of State confirms Byelaw

IFCA Publish agreed byelaw

Notify Secretary of State

Advertise Emergency Byelaw

Review Emergency Byelaw – is a permanent byelaw required?

Will the need to control the activity stop within 1 year (or 18 months)?

If Emergency Byelaw needs extension apply to MMO 8 weeks prior to the end of the byelaw validity

Notify Authority and Secretary of State of intention to make byelaw (14 days notice)

Is byelaw the best option?

Seek legal advice (where necessary)

Prepare Impact Assessment

Gather evidence from stakeholders and all interested parties.

Is there a need for an Emergency byelaw?

Make Emergency Byelaw

Use non regulatory solution:

e.g. Code of practice; Gentleman's Agreement

Consider options for achieving objective