

Title: North Western Inshore Fisheries and Conservation Authority Protection of EMS Features Lead department or agency: NWIFCA Other departments or agencies: MMO, Natural England, DEFRA	Impact Assessment (IA)	
	IA No:	
	Date:	01/01/2010
	Stage:	Development/Options
	Source of intervention:	Domestic
	Type of measure:	Primary legislation
	Contact for enquiries:	Dr Stephen Atkins (01524 727970) Chief Executive of NWIFCA

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Defra has determined that European Marine Sites (EMS) require further protection from commercial fishing to comply with Art 6.2 of the Habitats Directive (see revised approach policy statement 24-1-13). In particular the use of towed fishing gear on reef features and disturbance to seagrass in EMS must be prohibited. NWIFCA is the lead regulator for EMS in its District. Following a site feature against fishing gear analysis created in a reference matrix, EMS in the NWIFCA District are considered to include various reef features. Where towed gear could theoretically damage these reefs, whether or not fishing actually occurs, the Defra policy is that such features should be legally protected using an IFCA byelaw. Defra has advised all IFCA that they should take urgent action to comply with the policy.

What are the policy objectives and the intended effects?

The objectives of this policy are (1) to ensure that the duties of the NWIFCA to manage EMS in accordance with the Habitats Directive and the Defra policy for deemed red risk sites as identified in the matrix are met by the end of 2013. (2) To enact an IFCA Bylaw by the end of 2013 which will achieve objective 1. The byelaw is intended to ensure that the use of bottom towed gear and other fishing related activities which could damage Sabellaria reef, Mussel reef, Bedrock reef and Seagrass beds are prohibited to ensure the favourable condition of the protected features within the EMS.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. Do Nothing. There is no data indicating use of bottom towed gear on the affected marine features at any of the sites identified in the NWIFCA District so 'do nothing' would have the same practical effect as the preferred option and would be compliant with the Habitats Directive. However it would not be in line with the Defra policy.
2. Prohibit use of bottom towed gear on the features using an IFCA byelaw. This ensures appropriate measures to protect the habitats have been taken and meets the aims of the Defra policy. This is the preferred and only acceptable option.
3. Prohibit use of bottom towed gear in over the whole areas of all -EMS in the District. This option would have large negative impacts on the commercial and hobby fishing activities in the District with no discernible benefit over option 2. it is not necessary to comply with the Defra policy as stated in the site integrity report.
4. Introduction of a voluntary management agreement. This option must be dismissed because the European Commission has deemed voluntary measures to be non-compliant with the Habitats Directive

Preferred policy option

Option 2. This option is in line with the precautionary approach taken by the Habitats Directive, it is necessary to prohibit access to protected features by fishing activities classed as high risk. This option allows the fishing industry to retain access to certain area within the EMS as well as protecting features from potentially damaging fishing activities.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 03/2015	
What is the basis for this review? Duty to review If applicable, set sunset clause date: N/A	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups' No increases in costs have been identified. There is no evidence of bottom towed gear being used in the areas where it will be prohibited or of fishing activities on seagrass beds. NWIFCA will enforce a new byelaw using its standard risk based approach and will seek no additional enforcement resources as a result of making this byelaw. If there were costs these could not be mitigated because legal and policy changes require the introduction of this measure.					
Other key non-monetised costs by 'main affected groups' No costs have been identified. Fishermen operating bottom towed gear in the region of protected features already take care to avoid reefs and consequent damage to fishing gear. If there were costs these could not be mitigated because legal and policy changes require the introduction of this measure.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups' No benefits have been identified.					
Other key non-monetised benefits by 'main affected groups' No benefits to the fishing community have been identified. There may be small benefits to environmental interests in knowing that conservation features have additional protection. A benefit to NWIFCA may result from being in compliance with the Habitats Directive and Defra policy.					
Key assumptions/sensitivities/risks None known.					Discount rate (%)
Direct impact on business (Equivalent Annual) £m): Costs:			In scope of OIOO? Yes/No		Measure qualifies as IN/OUT
Benefits:					
Net:					

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Other		
From what date will the policy be implemented?			Byelaw start date 2013		
Which organisation(s) will enforce the policy?			NWIFCA and partner bodies		
What is the annual change in enforcement cost (£m)?			£0m		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0		Non-traded: 0
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: n/a		Benefits: n/a
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits	N/A									
Annual recurring benefits	N/A									
Total annual benefits	N/A									

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Problem under consideration;

The NWIFCA is under a statutory duty to manage the exploitation of sea fisheries resources in its District. In doing so it also has a duty to protect the marine environment. The NWIFCA District includes a number of European Marine Sites which must be managed in accordance with the Habitats Directive and Defra policy. The NWIFCA is a competent authority for the purposes of the Habitats Directive. Article 6.2 of the Habitats Directive requires that the EMS be managed in such a way as to avoid the deterioration of habitats within the EMS and to prevent the disturbance of species for which the habitat was designated. In a recent large scale review of the risks of various fishing activities to types of habitat found in EMS Defra concluded that various types of habitat found in the EMS in the NWIFCA district were at 'red risk' from bottom trawling activities. Red risk is an indicator that any fishing activity of the type identified in the assessment in these areas had the potential to cause serious and/or irreparable damage to the valuable habitat. As such, the DEFRA wrote to all IFCA informing them that in order to comply with their duties under the Habitats Directive they must prohibit such activities in the EMS areas where such sensitive habitat is found. In the NWIFCA district there are the following sensitive habitat features which have been classed as red risk of damage from bottom trawling by the MMO:

1. Subtidal bedrock reef in the Shell Flat and Lune Deep EMS;
2. Subtidal boulder and cobble reef in the Shell Flat, Lune Deep, Solway SAC and Morecambe Bay SAC EMS;
3. Sabellaria spp reef in the Solway SAC, Morecambe Bay SAC and Dee Estuary SAC EMS; and
4. Seagrass beds in the Morecambe Bay SAC EMS.

• Rationale for intervention;

MMO supporting documents for the red risk assessments of bottom towed trawl gear on the habitat features listed above should be used in conjunction with this evidence base. Available general evidence indicates that any use of such gear on the specified featured on any site would pose a high risk of causing serious damage. The NWIFCA's own assessment of the risk done in response to these documents agrees that bottom towed gear would pose such a risk were it to occur. NWIFCA has no evidence that any such activity does or will occur however it is theoretically possible for bottom towed gear to damage the reefs features or for fishing related activities such as bait digging to damage seagrass beds. In the Solway Firth, the feature is not present in the EMS in 2013 although conservation advice from Natural England states that the feature has been present in the EMS in the past. In line with the Defra advice and policy, intervention to prohibit the red risk activities in these areas, even if the feature is now absent, is deemed necessary.

NWIFCA survey in the Solway Firth, found that the intertidal Sabellaria reef feature was no longer present in the EMS. However, Sabellaria reef was recorded in areas outside the EMS. Therefore NWIFCA has decided that in areas where red risk features extend outside of the relevant EMS, the importance of the feature will be recognised by providing protection outside the EMS under the proposed byelaw. This approach is justified by the precautionary approach because it may help natural ecological structure and function in the EMS.

It could be further argued that if fishing which does not take place on sensitive features must be prohibited within an EMS it must also be prohibited where it does not occur on sensitive features outside an EMS.

The DEFRA policy is to prevent only commercial fishing on the relevant features of the EMS. This policy may not be compliant with the Habitats Directive since towed gear causes the same damage whether or not any fish caught are sold. The NWIFCA has therefore decided to prohibit all bottom towed gear fishing within the area of red risk features, be it commercial or recreational. Absent any fishing using bottom towed gear on the sites, this decision carries no extra costs. In addition the NWIFCA's assessment of the MMO red risk assessments applies equally to recreational and commercial fishing.

- **Policy objectives;**

The policy objectives are to ensure that NWIFCA management of the EMS in its district is in line with Defra policy and precautionary obligations under the Habitats Directive to ensure the long term protection of valuable environmental features in the EMS.

Description of options considered (including do nothing);

Option 1. Do Nothing. This would mean leaving the current regulation and management approach to the EMS in the NWIFCA district as it is and taking no new measures to protect the habitat features. Present data held by NWIFCA indicates that no bottom towed gear is used on any of the relevant Habitat features of the EMS. The features are either inaccessible to bottom tower gear or would cause such damage to the gear that fishing would be uneconomical. As there is not believed to be any use of bottom towed gear on the affected marine features at present this option would likely have the same practical effect as the preferred option. The activity which will be regulated is merely theoretical however this option would not be in line with the Defra policy. As the possibility exists in the future that fishermen may decide to attempt to use bottom towed gear on the features at red risk of damage then Defra policy requires that such activity be prohibited.

Preferred Option

Option 2. Prohibit use of bottom towed gear on the features and damaging fishing activities on seagrass beds. This option involves the introduction of a new byelaw prohibiting the use of bottom towed gear in areas of the EMS known to contain the red risk features listed above. The byelaw will also prohibit bottom towed gears in areas outside of the Solway Firth EMS where red risk features have been found in 2013. As stated in the previous section there is none of the fishing activity which is being prohibited currently occurring and so it is not expected that this option would have any significant impact on present fishing activities or enforcement operations. The main advantage of this option is that it fully complies with Defra policy by ensuring appropriate measures to protect the habitats have been taken.

Option 3. Prohibit use of bottom towed gear in whole of EMS. This option would involve a new byelaw which prohibits the use of any bottom towed gear in all of the EMS areas in the NWIFCA district. While this option has the same benefits as option 2 it offers no greater benefits as the red risk features can be clearly identified and adequately protected with sufficient buffer zones. As there is currently no fishing activity of the type being prohibited on the affected features to extend the prohibition to a larger area would create enforcement challenges which do not exist with the more targeted byelaw in option 2. It would also prohibit a substantial amount of fishing in some of the larger EMS areas and so create a significant cost for the fishing industry in loss of valuable fishing areas. This would have a significant negative impact on the commercial and hobby fishing activities in the District with no discernible benefit over option 2.

Option 4. Use of voluntary agreements. This is not an option because voluntary measures have been deemed by the EC to be non-compliant with the Habitats Directive.

Costs and benefits of each option (including administrative burden);

There are no costs or benefits associated with Options 1 and 2 apart from the intangible precautionary environmental benefits of Option 2 as outlined above.

There is no known towed gear fishing occurring on the affected features or in the boxed areas drawn to protect them and so there is not expected to be any effect on any human being. This assessment of the lack of relevant fishing activity is based on the observance of Fishery Officers and their long experience with fishing locations, gear and methods.

Option 3 would create substantial enforcement and administrative costs to the NWIFCA and significant costs in loss of earnings to the fishing industry in the district as it would involve the policing and closure of large areas of the district to bottom towed trawling.

Recommended Option

The recommended option is a byelaw to prohibit the use of bottom towed gear on the features identified by the MMO and the NWIFCA science officers as at red risk of damage in the case of such fishing

activity. This option ensures NWIFCA compliance with the Habitats Directive in line with DEFRA advice, while imposing no new costs on the fishing industry or increasing the NWIFCA's own administrative or enforcement burden. It also ensures that the relevant features are fully protected using a precautionary approach.

Risks and Assumptions

As this measure is based on a precautionary approach there are no risks or assumptions.

Wider Impacts

There are not expected to be any wider impacts as no fishing activity of the proscribed type occurs at present on the relevant features.

Summary and Preferred Option including implementation

Summary

A new byelaw will be introduced by the NWIFCA to prohibit the use of bottom towed gear on habitat features in the EMS which have been assessed as at red risk of damage from such fishing activity. As there is not currently any fishing activity of the proscribed type occurring on these features there are not expected to be any practical impacts of this measure at present. The measure does however ensure long term protection of the features in line with Defra policy and the precautionary approach mandated by the Habitats Directive. The measure will be implemented as soon as possible in order to ensure the NWIFCA is in complete compliance with Defra's timescale.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

The effectiveness of the byelaw in achieving its objectives will be kept under continuous review to study how it is working and identify any changes which may be required. The NWIFCA will require reports and data on this review process and Defra will review the performance of all IFCA in 2015.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review is intended to check that regulation is operating as expected, will evaluate the policy approach taken and will provide a link between policy objective and outcome.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The review will evaluate the effectiveness of all elements of the byelaw.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline position is the current scale of fishing in the Relevant parts of the district as at March 2013.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Compliance with and endorsement of the measure by the Fishing industry,
Satisfactory enforcement of the byelaw by Fishery Officers and partners,

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

Add annexes here.