

# NWIFCA Quarterly Meeting

## 18<sup>th</sup> September 2015: 11.00 a.m.

AGENDA  
ITEM NO.  
7

### IFCA BYELAW AMENDMENTS REQUIRED TO AVOID CONFLICT WITH LANDING OBLIGATIONS

**Purpose:** To present draft amendments to NWIFCA byelaws for approval by the Authority

**Recommendation:** The Authority approves amendments to NWIFCA byelaws as in Annex A. NB the Authority is asked to select the preferred option for amending EA Byelaw 6.

#### Background

1. The demersal landing obligation comes into force progressively from January 2016, to be fully implemented by January 2019. The landing obligation represents the biggest change in fisheries management for a generation. Defra have conducted a review of national and regional legislation affected by this management change including IFCA byelaws. NWIFCA has contributed to the development to the amendments.

#### The issue

2. The landing obligation (discard ban) will require all catches of relevant species to be retained and landed, subject to some exemptions. Unaffected species will continue to be discarded. The landing obligation will apply to all quota species by 2019.
3. Any existing IFCA byelaw requirement to return a quota species back to the sea post capture (for example because it is undersize) will conflict with the landing obligation. Four IFCAs have byelaws which conflict with the landing obligation: Cornwall, Southern, Kent and Essex and North Western. The conflicting byelaws include mainly MLS sizes and the foul hooking of fish.
4. Byelaws which conflict with the landing obligation could cause legal ambiguity, creating enforcement difficulties and loopholes. Where there is an identifiable conflict between the requirements of a local byelaw and the requirements of EU law, the validity of the byelaw could be challenged, meaning it would not be possible to prosecute a fisherman for an offence under the byelaw.
5. Defra are working with local IFCAs to ensure that these byelaws work in harmony with the landing obligation without compromising their legal strength or purpose.

#### Proposed approach for byelaw amendment

6. The Secretary of State has the power to revoke or amend conflicting byelaws under section 159 of the Marine and Coastal Access Act 2009<sup>1</sup> which says:

##### **159 Power of Secretary of State to amend or revoke byelaws**

- (1) If the Secretary of State is satisfied that any provision made by a byelaw under section 155 is unnecessary, inadequate or disproportionate, the Secretary of State may by order:

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2009/23/section/159>

- (a) revoke the byelaw, or .
- (b) amend the byelaw so as to restrict its application.

- 7. Before amending or revoking a byelaw under this section, the Secretary of State must consult with the relevant IFCA members. Defra will not consult more widely as amendments are only designed to remove conflicts with EU law.
- 8. The byelaw amendments will not lessen the environmental protection afforded to quota species as the landing obligation is designed to reduce fishing mortality and encourage greater fishing selectivity. All fish caught must be landed and all landings will be part of quota allocations. Quota will be amended to ensure species protection is not compromised, indeed this should be increased.
- 11. The draft Amendment Order at Annex B contains the list of amendments to be made to all IFCA byelaws. IFCAs do not have to consult on these changes or follow the usual byelaw making process as the amendment order will be signed by the Secretary of State.

### **Future proofing**

- 12. As the demersal landing obligation is being phased in, there are byelaws which pose a problem in 2016 and some, for example those regarding skates and rays, which will only become an issue in future years. However we are keen to avoid a complicated legal process which we have to revisit each year until 2019.
- 13. We therefore aim to future proof the byelaws by adding a phrase to the end of the each affected byelaw, such as: 'unless the landing obligation under Article 15 of Regulation (EU) 1380/2013 requires the fish to be landed.'
- 14. The amendments are a 'quick fix', allowing IFCAs to continue their byelaw review and development work with minimum of delay. Defra will work with IFCAs in future to ensure new byelaws are compatible with the landing obligations.

### **Timing: Urgent.**

- 15. It is imperative that amendments are made before the 1<sup>st</sup> January 2016 to avoid conflicting legislation and reputational damage. However, as all amendments are to be included within one amendment order and some IFCA byelaw amendments include those which cover Bass, we are looking to implement these changes as quickly as possible to ensure the byelaws are in line with the EU emergency management package for Bass. We are timetabling for the amendment order to come into force in October.

### **Next Steps**

- 16. Following your agreement to the proposed amendments, as set out in the draft Amendment Order, we will aim to finalise the draft by the end of September with a view to bringing it into force in October.
- 17. We will keep you informed as work progresses to Ministerial clearance.
- 18. A list of Questions and Answers is at Annex C.

**Stephen Atkins (CEO NWIFCA) and Liz Crocker (Defra)**  
**7<sup>th</sup> September 2015**