



Quality Assurance of IFCA Byelaws: Process Review

Marine Management Organisation

GB2490

Final Report

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Submitted by

MRAG

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Acronyms

CIFCA	Cornwall Inshore Fisheries Conservation Authority
DSIFCA	Devon and Severn Inshore Fisheries Conservation Authority
EIFCA	Eastern Inshore Fisheries Conservation Authority
HMT	Her Majesty's Treasury
IA	Impact Assessment
IFCA	Inshore Fisheries Conservation Authority
KEIFCA	Kent and Essex Inshore Fisheries Conservation Authority
LAR	Legal Advice Request
MACAA	Marine and Coastal Access Act
MCZ	Marine Conservation Zone
MMO	Marine Management Organisation
NEIFCA	North Eastern Inshore Fisheries Conservation Authority
NIFCA	Northumberland Inshore Fisheries Conservation Authority
NWIFCA	North Western Inshore Fisheries Conservation Authority
QA	Quality Assurance
SIFCA	Southern Inshore Fisheries Conservation Authority
SuIFCA	Sussex Inshore Fisheries Conservation Authority

1 Introduction

Sections 155 to 157 of the Marine and Coastal Access Act (MACAA) 2009¹ give Inshore Fisheries Conservation Authorities (IFCAs) the power to make byelaws to manage the exploitation of sea fisheries resources. Section 155(5) stipulates that IFCA byelaws (other than emergency byelaws) do not come into force until they have been confirmed by the Secretary of State.

Section 160 gives the Secretary of State the power to make regulations about the procedure to be followed by an IFCA in relation to byelaws. In lieu of these regulations, Defra published formal guidance² in March 2011 which lays out procedures which IFCAs must follow when making byelaws. This guidance includes the requirement for the Marine Management Organisation (MMO) to quality assure IFCA byelaws before they are submitted to the Secretary of State for confirmation.

IFCAs are responsible for producing byelaws within their districts which includes such part of the English inshore region lying six nautical miles (nm) from baselines. The best practice guidance document published by Defra in 2011² details:

- how powers to make byelaws and emergency byelaws will operate within each IFCA district to protect fisheries and the marine environment;
- the roles and responsibilities of the public authorities involved – Defra, MMO and IFCAs; and
- an explanation of the factors to be taken into account when considering the need for and appropriateness of an IFCA byelaw.

The document lays out the key steps in the byelaw making process for IFCAs as follows:

- Carrying out an Impact Assessment (IA);
- Notification of intent to make a byelaw;
- Seeking appropriate legal advice and resolving contentious issues through discussion with the MMO;
- Consultation with affected stakeholders including;
 - MMO, Natural England (NE) and Environment Agency (EA) before moving to making and advertising the byelaw;
 - advertising intention to apply for confirmation for 2 weeks, and allowing a subsequent 28-day objection period (formal consultation);
 - examining objections before submitting the byelaw for confirmation;
- Submission of the final 'IFCA byelaw package' to the MMO for confirmation by the Secretary of State including:
 - Two signed copies of the byelaw;
 - Summary of the consultation responses and IFCAs response to them;
 - Copies of the advertisements;
 - Copies of the minutes of the meeting at which the byelaw was made and any other meetings when the byelaw was discussed;
 - Copies of any correspondence and examination of objections, resulting compromise or otherwise;
 - a copy of the impact assessment; and
- Publishing the confirmed byelaw to notify stakeholders.

¹ Marine and Coastal Access Act 2009 available at <https://www.legislation.gov.uk/ukpga/2009/23/contents>

² Defra (2011) IFCA Byelaw Guidance. Guidance on the byelaw making powers and general offences under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Act.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182343/ifca-byelaw-guidance.pdf

The document also details respective roles and responsibilities as follows:

- **The Secretary of State (Defra):** Defra is responsible for confirming and revoking byelaws and initiating hearings.
- **IFCAs:** In order to perform duties imposed by section 153 (Management of inshore fisheries) and 154 (Protection of marine conservation zones) of the MACAA, section 155 enables IFCAs to make byelaws for their respective district. In order to sustainably manage sea fisheries resources, IFCAs will need to gather evidence, evaluate options, propose management solutions and, where necessary develop and agree byelaws. IFCAs are also responsible for evaluating the outcome and reviewing the effectiveness of any management actions taken.
- **MMO:** The MMO acts as a policy and legal advisor on the process of making byelaws and undertakes Quality Assurance (QA) of byelaws and the supporting evidence (e.g. impact assessments), before referring them to Defra for sign off by the Secretary of State. The MMO will liaise with Defra, the IFCA and or stakeholders where there is a need for clarification on any unresolved issues.
- **Natural England:** As the government's statutory advisor on nature conservation out to 12 nm, this body provides guidance where appropriate in relation to:
 - matters which might damage/affect protected features or the ecological or geomorphological processes on which any protected feature/s is dependent;
 - achieving or furthering conservation objectives stated for Marine Conservation Zones (MCZs);
 - how effects on MCZs can be mitigated; and
 - which activities are, or are not, of equivalent environmental benefit to particular damage to the environment.

1.1 MMO Request for Services

IFCAs, MMO and Defra have been working together under this guidance for over six years. While periodic improvements have been made, such as the introduction of a 28 working day timeline for MMO QA and the development of a terms of reference detailing MMO and Defra roles, the process does not run as smoothly or as quickly as desired. For example, the quality of byelaws and supporting documentation received for QA by MMO from IFCAs can vary considerably. Confirmation of some byelaws has also been subject to significant delays due to differences in opinion and/or emphasis between Defra and MMO legal and operational/policy teams. Therefore, there is scope for improvement in the IFCA Byelaw QA and Confirmation process, through streamlining MMO/Defra processes and supporting IFCAs to improve the quality and consistency of their submissions.

1.1.1 Aims and Objectives

Consequently, the MMO requested support in completing a review of byelaw submission (excluding emergency byelaws), QA and confirmation, taking into account IFCA, MMO and Defra perspectives, incorporating the following tasks:

1. A review of current processes;
2. Developing, scoping and reporting on improvements; and
3. How proposed improvements, subsequently agreed by IFCAs, MMO and Defra might be implemented.

This report reports on the first two of these tasks; the third task requires further consultation with IFCAs, MMO and Defra to agree upon proposed improvements.

The review methods are described in Section 2.

Section 3 summarises the results of the review and associated consultations. Section 3.1 presents a review of current MMO QA and Defra confirmation processes in 3.1.1 and 3.1.2 respectively, including a summary of MMO and Defra perspectives. Section 3.2 provides a synthesis of the problems experienced primarily by IFCAs, drawing on comparative experiences of MMO and Defra, Section 3.3 describes aspects of the process that currently work well and Section 3.4 presents the current levels of satisfaction with the process across IFCAs, MMO and Defra. Section 3.5 synthesises the improvements proposed by IFCAs, MMO, Defra and MRAG to mitigate the limitations of the current process presented in Section 3.2.

The final Section 4 summarises preliminary actions required to implement proposed improvements to the process.

2 Methodology

The first step of the review involved an appraisal of the relevant reference and guidance documentation. The aim of this appraisal was two-fold:

- to develop a better understanding of the process, requirements, roles and responsibilities, and
- to determine and report on the utility of the guidance documents available to IFCA, MMO and Defra staff.

Documents reviewed included:

- Marine and Coastal Access Act (2009)³;
- Defra IFCA Byelaw Guidance⁴;
- March 2015 IFCA Byelaw TOR (see Annex 1);
- 20170531 IFCA Byelaw QA Checklist (see Annex 2);
- 20130514 IA framework with examples (see Annex 3);
- BIT_Impact_Assessment_Calculator_2017_07_July⁵;
- Guide to making legislation (e.g. Chapter 14 on Impact assessment)⁶;
- Impact Assessment Guidance⁷;
- Guidance to IFCAs on evidence-based marine management⁸;
- Guidance to Inshore Fisheries and Conservation Authorities on monitoring and evaluation, and measuring performance^{8b};
- Guidance to Inshore Fisheries and Conservation Authorities on their contribution to the achievement of sustainable development⁸;
- Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments⁹;and
- Economic Impact Assessments of Spatial Interventions on Commercial Fishing: Guidance for Practitioners Second Edition¹⁰.

Following the document appraisal, any gaps in understanding of the process were filled through communication with MMO via telephone and email.

The independent review was introduced by the MMO and MRAG at the IFCA Chief Officers Group meeting on 10th January 2018. This enabled MRAG to receive preliminary feedback from IFCAs in advance of developing consultation templates.

³ Marine and Coastal Access Act 2009 <https://www.legislation.gov.uk/ukpga/2009/23/contents>

⁴ Defra (2011) IFCA Byelaw Guidance. Guidance on the byelaw making powers and general offences under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Act., available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182343/ifca-byelaw-guidance.pdf

⁵ See https://www.gov.uk/...data/.../BIT_Impact_Assessment_Calculator_2017_07_July.xls

⁶ Cabinet Office (2017) Chapter 14: Impact Assessments in 'Guide to making legislation'. Available at <https://www.gov.uk/government/publications/guide-to-making-legislation>

⁷ See <https://www.gov.uk/government/collections/impact-assessments-guidance-for-government-departments>

⁸ See <https://www.gov.uk/government/publications/ifca-byelaw-guidance>

⁹ Seafish UKFEN (2012) Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments available at <http://www.seafish.org/media/634910/ukfen%20ia%20best%20practice%20guidance.pdf>

¹⁰ Seafish UKFEN (2013) Economic Impact Assessments of Spatial Interventions on Commercial Fishing: Guidance for Practitioners Second Edition, available at <http://www.seafish.org/media/1133259/ukfen%20ia%202nd%20ed%20final%2011dec13.pdf>

For consultation with IFCAs, questionnaires were developed to acquire feedback on their experiences of the QA and confirmation process and to explore ideas for possible improvements. Questionnaires were circulated by email to interested IFCAs, with a request to provide feedback within a three-week period. Additional questionnaires were also developed for the MMO and for Defra to acquire feedback of their respective experiences during the same period. Questionnaire templates are included in Annex 4 . A quality assurance checklist (similar to an audit checklist) was also developed to frame consultations with MMO to further understand the QA and Confirmation process.

Nine of the ten IFCAs completed the email questionnaires between 7th February and 7th March 2018. The Chief Officer for the Isles of Scilly IFCA only recently took up the position and therefore limited institutional information was available to inform the review.

The Defra Fisheries Control and Enforcement Team (Defra from herein) and MMO Marine Conservation Team (MMO from herein) and the MMO Legal Team also completed questionnaires during this period.

Additional consultation was carried out with the MMO (by telephone) and Defra (in person), to establish more detail of respective experiences of the QA and Confirmation process and to discuss further suggestions for options to improve these processes. The face to face consultation meeting was held with Defra on February 21st 2018, while the MMO provided ongoing consultation on the process and further details of the questionnaire and QA checklist by telephone on February 22nd 2018.

On receipt of feedback, questionnaire responses were compiled and synthesized across the IFCAs, MMO and Defra. The results are presented in the Sections 3 and 4 of the report.

3 Consultation and Review Results

3.1 Current QA and Confirmation Process

3.1.1 MMO Quality Assurance (QA) Process

The MMO formal QA review proceeds broadly as follows:

- The byelaw and associated documents are received;
- MMO checks that all documents are present based on checklist;
- MMO undertakes initial checks covering the impact assessment, consultation process and byelaw content and then passes the byelaw for review to:
 - the MMO legal advisors;
 - MMO Communications team;
 - MMO IFCA representative;
- Comments received are reviewed, MMO IFCA byelaw QA Checklist is reviewed and feedback is sent back to IFCA;
- Head of Marine Conservation signs off byelaw package; and
- MMO submits byelaw package to Defra for confirmation by the Deputy Director.

The MMO is committed to complete QA within 28 working days of receipt of all relevant documentation¹¹.

The Defra Best Practice Guidance indicates that byelaws should be seen as one of a range of solutions, and normally only considered where other non-regulatory measures have been exhausted. It also details that byelaws should be used in a proportionate and targeted way in line with good regulatory practice; should be used only when it can be demonstrated that existing activities have an impact on achievement of IFCA objectives; and that in making a byelaw, cumulative effects should be considered and a risk-based approach should be used. However, specific criteria are not provided in the guidance for determining whether these approaches to making a byelaw are being applied by IFCAs.

A QA check list (internal MMO document) is available for MMO to refer to when carrying out the QA review (See Annex 2). This includes aspects to consider for each part of the byelaw package – consultation, impact assessment and the byelaw text itself. The checklist is designed to capture the various obligations and principles that IFCAs should follow when making a byelaw, as set out in the Defra Best Practice Guidance.

Using the QA checklist as a framework, the MMO determine whether the byelaw is coherent with IFCA duties, existing legislation and UK policy based on their expert knowledge and through cross-reference to Marine Plans and the Marine Policy Statement¹², and any other relevant policy documents (e.g. HM Government 25-year Environment Plan¹³). Uncertainties are referred to the relevant expert within MMO (including to the MMO IFCA representative or MMO legal advisors) or Defra. If the review deems that the IFCA has not followed the required byelaw process, the IFCA are alerted in order that they have the opportunity to remedy any issues. The process of determining whether the byelaw is consistent with IFCA duties and UK

¹¹ This does not include the informal review process carried out by MMO.

¹² HM Government 2011 UK Marine Policy Statement <https://www.gov.uk/government/publications/uk-marine-policy-statement>

¹³ <https://www.gov.uk/government/publications/25-year-environment-plan>

policy can lead to procedural issues and delays, for example, if specific issues or uncertainties need to be referred to respective policy leads in Defra.

The MMO quality assures the technical aspects of the impact assessment (e.g. cost-benefit analysis), based on the Better Regulation Framework Manual¹⁴ and where necessary the team may draw upon Defra Economists for advice, as no economic expertise is available in-house.

Byelaw text is also reviewed by the MMO with final documents reviewed by the Head of the Marine Conservation Team and a proof read completed by the MMO Communications Team.

In submitting the byelaw to Defra for confirmation, MMO completes a submission. The MMO submission presents a compilation of the key aspects of the byelaw and Impact Assessment (IA) identified by the QA review, that the MMO considers Defra should be aware of in advance of confirmation e.g. contentious issues, and also presents what the MMO's recommendation is for confirmation.

3.1.1.1 MMO Informal Review

In addition to formal QA, the MMO also carries out an informal review upon request from IFCAs. Figure 1 illustrates an annotated version of the IFCA Byelaw making flowchart included in the Defra best practice guidelines⁴. In this flow chart, the QA and Confirmation process is only indicated by the last three boxes. However, the informal MMO review begins much earlier in the process of making a byelaw.

The stages of the informal review proceeds as follows:

1. IFCA prepares draft byelaw and IA; sends draft to MMO.
2. MMO checks byelaw and IA; comments to IFCA (stages 1 and 2 may be repeated in an iterative process).
3. MMO to alert Defra if any significant legal/policy risks or areas where IFCA and MMO have not agreed. Defra to seek input of Defra legal or policy teams as appropriate on a case by case basis.
4. IFCA confirm no further comments required on draft byelaw and IA.

The IFCA then finalises the IA and makes the byelaw, notifying Defra and MMO of intention to make IFCA byelaw not less than 14 days before the byelaw is made at the IFCA authority meeting.

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583871/bis-13-1038-Better-regulation-framework-manual.pdf Note: This document was withdrawn in January 2017 and has not yet been replaced.

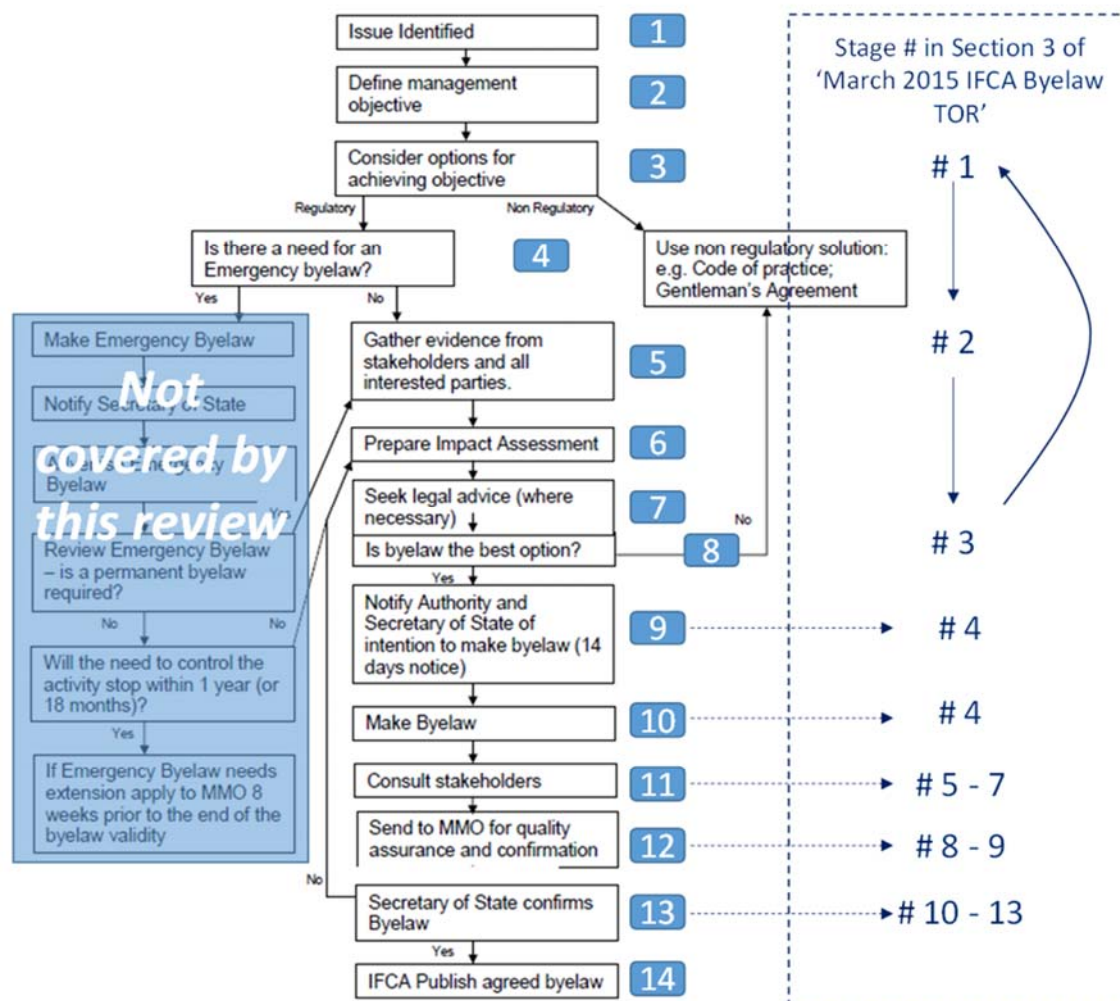


Figure 1 Annotated copy of IFCA Byelaw making flowchart (Source: IFCA Byelaw Guidance, Defra 2011 and March 2015 IFCA Byelaw TOR, Defra). Blue boxes include reference numbers for each stage in the byelaw making process. The additional numbering details the stages of the QA process as presented in Defra's IFCA Byelaw TOR.

The first stage in the informal review is initiated by the IFCA informally communicating their intent to make a byelaw to the MMO. MMO confirmed that there is no specific timetable for the informal review process but suggested that it usually begins around stages 6 to 8 (blue boxes) in Figure 1. Based on IFCA consultation responses, the informal review process can begin as early as Stage 1 (blue boxes) in the flow chart when an issue is first identified, but five IFCA's indicated that their first interaction with the MMO begins at stage 3 when they are considering the options for achieving the management objective (see Table 1).

Table 1 Stage of the byelaw making process (see Figure 1) at which IFCA's consult with the MMO.

Stage in process	Number of IFCA's consulting with MMO
1	2
2	2
3	5
4	4
5	7
6	5
7	4
8	4
9	7
10	5
11	7
12	8
13	3

The informal review can involve numerous iterations of the draft IA and byelaw review, before the IFCA submits the byelaw package to MMO for formal QA at stage 12 in Figure 1.

3.1.2 Defra Confirmation Process

The Defra Confirmation process proceeds broadly as follows:

- Defra receive IFCA Byelaw package accompanied by MMO draft submission;
- Defra forward byelaw to Defra legal on a case by case basis;
- Defra forward the IA and byelaw to respective technical policy teams or economists as appropriate for review (two weeks subject to level of issues/perceived risks);
- Defra review byelaw text in all cases to make sure the provision, dates and signatures are correct. Defra Legal will be consulted if necessary;
- On receipt of feedback of IA from technical, policy or legal teams, the submission template is re-drafted, recommending whether the Deputy Director:
 - i. Confirm the byelaw without modifications
 - ii. Confirm byelaw with modifications agreed with IFCA
 - iii. Instigate a local inquiry to be held prior to confirming Or
 - iv. Reject the byelaw
- Head of relevant Defra team completes a light-touch review of the Defra submission and this is sent to the Deputy Director for consideration of the proposed confirmation recommendations (i.e. i – iv above). However:
 - if the byelaw is considered controversial it may be escalated to a minister for confirmation rather than Deputy Director;
 - once the byelaw is confirmed, the Deputy Director signs two original versions of the byelaw (one to be retained by Defra, one to be returned to

IFCA to publicise), an additional copy of the signed byelaw is sent to MMO for reference.

No formal criteria are used in Defra's review of byelaws, the associated IA or for determining proportionality. Defra Policy teams review technical aspects of the IA to make sure they are sound. If any issues arise or clarification is required, Defra's economists are first consulted. Issues might include, for example;

- exceptionally high impact costs;
- issues with permit charging or proposals to differentiate on permit charging (which Her Majesty's Treasury (HMT) also have an interest in and may have to be consulted on);
- sense checks on proposed restrictions and whether the byelaw provides socio-economic balance under MACAA 2009.

Any figures that appear to be incorrect will be referred back to the MMO and the respective IFCA.

Defra base their review of the byelaw on their knowledge of what is required from a policy perspective using previous byelaw examples and informal check lists of what is expected for each section of the byelaw. Key aspects for cross-reference include Section 155 of the MACAA 2009 covering 'Powers to make byelaws'. Primarily, Defra confirm that the byelaw is not gold-plating¹⁵, is not duplicating other legislation, is legal and that cost aspects are proportional. The Defra review also considers how a byelaw sits within the national objectives for coastal management.

Delays in the confirmation process can occur for example with contentious byelaws, or when a minister may be required to sign off the confirmation. Some IFCAs will communicate with Defra directly prior to the formal confirmation stage.

3.2 Problems Encountered

The consultations highlighted three key aspects of the IFCA Byelaw making process that currently lead to delays in the MMO Quality Assurance and Defra Confirmation process.

IFCAs, MMO and Defra all referred to the following issues during the consultations (albeit from slightly different perspectives):

- variations in legal advice provided during MMO informal review, MMO formal QA and Defra confirmation;
- impact assessment requirements; and,
- timeframes for Defra Confirmation process.

The following sections provide further details on each of these factors.

3.2.1 Provision and Adoption of Legal Advice

The delay factors referred to most frequently by consultees related to **variations in legal advice provided** by the MMO and Defra Legal teams.

Eight of the nine IFCAs consulted reported that they have experienced delays as a result of discrepancies in provision of legal advice. Problems have varied, and include circumstances where advice provided by the MMO and Defra Legal teams' during latter stages of the process,

¹⁵ Gold plating is a term used to describe the process where a basic EU directive is given extra strength when being incorporated into UK law.

conflict with independent legal advice sought by IFCA's or with MMO guidance given early on during informal MMO QA process.

Based on IFCA experience, legal advice has also varied over time or between different personnel within the same (Defra or MMO) legal teams, during the course of QA and confirmation for a particular byelaw and across separate byelaws adopting similar management approaches. According to IFCA's, assessment of legal risks has differed between MMO and Defra legal teams advising on the same byelaw; highlighting that this issue can have significant resource consequences across all parties, particularly when the Defra legal team identify legal risks during the latter confirmation stage which have not been detected during earlier informal/formal reviews.

It was also noted by the MMO that IFCA's frequently do not seek independent legal advice prior to informal or formal QA by the MMO, which can also lead to delay in MMO's ability to return review responses in a timely way.

A number of IFCA's remarked that if Defra legal advisors are ultimately to provide the 'definitive' view on a byelaw, then their inclusion is required at an earlier stage in the process. IFCA's also highlighted that currently no direct dialogue occurs between the Defra legal team and IFCA's, with Defra and MMO policy teams communicating legal advice to IFCA's making the byelaw; IFCA's suggested that as a result, details of important legal considerations may not be communicated accurately.

Both Defra and the MMO noted that duplication of and differing outcomes of respective legal reviews can lead to delays in QA and confirmation. Defra are aware that difficulties in resolving complex legal issues, such as in relation to regulatory notices, deeming clauses or byelaws that are *ultra vires*, and the resultant delays in confirmation (see also 3.2.3), have the most significant impact on relationships with IFCA's and stakeholders. IFCA consultations confirmed that frustrations can be exacerbated if issues picked up by Defra legal advisors at the confirmation stage of the byelaw process, have not been perceived or detected by either IFCA or MMO legal advisors during earlier review stages.

Consultations also revealed that there is some uncertainty between MMO and Defra on how Defra Legal advisors are engaged in the review process, indicating that improved coordination and standardisation of this process might be warranted.

3.2.2 Impact Assessment Requirements

Another delay factor frequently referred to by consultees was that the **current IA assessment template is not fit for the purpose of making byelaws**.

Six of the nine IFCA's consulted, the MMO and Defra indicated concerns with the current format and requirements of the Regulatory Impact Assessment template and its respective suitability for assessing the impacts of IFCA byelaws.

The IA requirements are considered by IFCA's to be disproportionate to the potential (social, economic and environmental) impacts of byelaws. The data required to assess impacts are difficult to obtain and therefore confidence in cost estimates is low. In addition, One IFCA highlighted that the current format of the IA can be difficult to interpret and as a result, a document that is meant to aid stakeholder understanding of the issues at stake, actually lessens the effectiveness of stakeholder engagement.

Two IFCA's noted significant difficulties in gathering economic data for use in IA development, particularly from stakeholders e.g. fishing businesses, who will be adversely affected financially by a proposed byelaw, in terms of reduced fishing opportunities, closed areas etc. The IFCA's explained that precise economic data is generally only available from the owner/skipper/operator, who may choose to share it only at the public consultation stage.

Verification of economic data is also problematic for IFCA; officers can provide a subjective assessment of whether costs appear too high but frequently, there are no other sources available to verify this opinion. In addition, landings data is gathered at an ICES sub-rectangle scale which is generally inappropriate when considering the impact on a small MPA. Data/evidence relating to the benefits of byelaw measures is also very difficult to acquire as it often relates to placing a value on natural capital, which is beyond IFCA assessment capabilities.

One IFCA also pointed out that the current format of the IA plays down benefits of an activity to the ecosystem and/or social impacts. It should be possible to show within the IA how an activity provides a service (environmental, social or otherwise); the current framework does not facilitate this (see also section 3.2.5.1 on Guidance documents available to IFCA).

The difficulties experienced by IFCA in gathering the evidence base appropriate for completing the financial aspects of the IA may explain some of the issues experienced by the MMO in relation to their QA of IAs. For example, draft impact assessments received by the MMO vary considerably in quality. Some are of high quality, while others require significant input by the MMO to bring them up to the standard required for submission to Defra for confirmation; some contain basic errors (e.g. incorrect coordinates for spatial measures) whilst others include a disproportionate amount of information. Almost every byelaw where financial costs are estimated within the impact assessment require further MMO input to correct costed aspects.

The lack of in-house economists was highlighted by (three) IFCA and the MMO as a limiting factor in their respective abilities to complete and review the IA effectively.

Consultation results illustrate that approaches to completing impacts assessments also vary amongst IFCA. For example, in some cases impact assessments are developed retrospectively rather than used as a basis for determining the preferred option (evidenced by a draft byelaw being submitted to MMO ahead of a draft IA). This variation in approach may also contribute to the variation in quality of associated outputs. Table 2 illustrates the variation in the stages at which the IA process is initiated and completed by IFCA during the course of making byelaws, based on IFCA consultations.

Table 2 Consultation results detailing stage at which IFCA's initiate and complete the IA (see Figure 1 for details of Stage processes).

Stage in process	Number of IFCA's:	
	Impact Assessment started	Impact assessment completed
1	2	0
2	1	0
3	0	0
4	0	0
5	4	0
6	1	0
7	0	0
8	0	1
9	0	0
10	0	0
11	0	2
12	1	4
13	0	1

The Chief Officer completes the IA for four out of the nine IFCA's consulted (see Table 3), with support provided from Assistant/Deputy Chief Officers in two of these cases. Across the remaining IFCA's, different staff members complete the IA.

Table 3 Staff completing the IA and drafting byelaws across all IFCA's consulted.

IFCA role	Number of IFCA's for which corresponding staff:	
	Completes IA	Drafts Byelaw Text
Chief (Executive) Officer	4	6
Assistant/Deputy Chief Officer	3	3
Principal Policy Officer	1	
Principal Enforcement Officer		1
IFCA Environmental and scientific team	1	
Byelaw and Permitting Committee		1
Senior IFCO Regulation		1
IFC Officer	2	1
Solicitor		2

Interpretation of the role of the Impact Assessment in the byelaw making process was broadly consistent amongst IFCA's, the MMO and Defra. Therefore, across these regulators the problems experienced in the implementation and review of impact assessments reflects the incompatibility of the current requirements with a number of factors including (but not limited to):

- context, scope and scale of IFCA byelaw impacts;
- data availability;
- skillsets of in-house staff resources;
- training opportunities.

See also 3.2.5 in relation to limitations of the guidance documents with respect to impact assessments.

3.2.3 Defra Confirmation Timeframes

The MMO, Defra and six of the nine IFCA's consulted, all reported that the Defra confirmation process has on occasion, taken excessive periods of time. IFCA feedback indicated that the time taken for confirmation can range from 3-4 months to greater than 12 months.

IFCA experiences confirmed that the longest delays occur at the confirmation stage of byelaw-making, particularly when there are legal complications. IFCA's suggested that delays could either result from changes in Defra policy during the byelaw-making process (one IFCA), or changes in Defra personnel changes (one IFCA). Such changes impact on continuity of advice and legal view points; for example, previously agreed issues are considered no longer fit for purpose or carry an unacceptable level of risk of legal challenge (see also 3.2.1). Resulting extended periods of delay can disrupt IFCA Byelaw planning and timetabling and delivery against Defra policy objectives (e.g. agreed Defra timetable for MPA implementation).

For a number of IFCA's, there was an understanding, that where legal complications existed, delays might be expected. However, in circumstances where reasons for delay in confirmation had not been communicated, or when delays occurred without an apparent cause, frustration manifested not only for IFCA's but also for the effected stakeholders. MMO also indicated that although communication with Defra is good, anticipated timeframes for confirmation are not always communicated by Defra.

Consultation with the Defra highlighted that conflicts can be experienced across contributing teams in prioritising byelaw confirmation above other competing work streams. It was noted that this staff resource issue, experienced by legal teams, other policy colleagues and economists, can lead to delays in the confirmation process and can subsequently have significant impacts upon working relationships with IFCA's and other stakeholders. The requirement for the Deputy Director to physically sign byelaws for clearance and associated availability for this activity can also lead to unintended significant delays to the confirmation process.

3.2.4 Other Procedural Issues

3.2.4.1 MMO informal review

The informal interactions with the MMO prior to formal QA, are generally considered to be a useful opportunity to query uncertainties and sense-check early developments of the byelaw (see 3.3). However, a number of IFCA's and the MMO felt that the process can become too onerous, with too much back and forth on multiple versions of draft byelaw packages (IA and byelaw text) between the MMO and IFCA's.

Two IFCA's noted that whilst the informal reviews can be beneficial, the iterative process of exchanging documents and making amendments could be achieved more efficiently through a more structured approach, which minimised the frequency of exchanges/reviews. The lack of a timetable for the informal review, with long delays (2-3 months) in MMO response times on some occasions was also identified by two IFCA's. Another IFCA observation was that opportunities to review byelaws and associated impact assessments are not always maximised by the MMO during informal review exchanges. Two IFCA's queried whether delays

or inefficiencies might be a result of a lack of MMO staff resource availability. The utility of the informal review process was also questioned by two IFCAs, given that major problems with a byelaw often do not emerge until the formal QA stage, despite informal reviews being carried out at the early stage of the IFCA process.

The MMO indicated that some IFCAs (but certainly not all) can rely too heavily on MMO informal checks by the to bring incomplete or poorly constructed byelaws up to the required standard for formal QA. Additionally, the MMO do not always have sight of byelaws or IAs at the point of being made (stage 10 in Figure 1), and therefore when a byelaw is submitted for formal QA, do not necessarily know whether advice given during the informal review has been followed.

Based on an overview of all consultation feedback, whilst providing some benefits, the opportunity to obtain informal advice prior to the formal QA and confirmation stages of the process also leads to ambiguity in where the responsibility lies for assessing/determining risks of a particular byelaw. See further detail in 3.5.4.1, summarising the proposed improvements to the MMO QA and informal review.

3.2.4.2 MMO and Defra Coordination

Variation in technical advice provided by the MMO and Defra was noted by three IFCAs, the MMO and Defra which can also lead to delays for similar reasons to those elicited by the lack of coherence in legal advice. Two IFCAs suggested that greater liaison between the MMO and Defra is required so that Defra have approved MMO advice/guidance given during stages in the byelaw making process

Both the MMO and Defra noted that there is duplication in some aspects of respective quality assurance checks and processes (see 3.5.1 for proposed mitigation).

A specific issue pointed out by Defra, was that there is room for a greater level of detail to be provided in certain areas of the MMO submission to Defra policy. As stated in March 2015 IFCA Byelaw TOR, Defra QA should only require a “light touch”.

3.2.4.3 IFCA Byelaw-Making Process

The MMO provided a summary of general issues experienced in the IFCA byelaw making process in relation to the Defra Guidance¹⁶; these are summarised below.

IFCAs should give notice in writing of the intention to propose making a byelaw to the Authority members and the Secretary of State (Defra) not less than 14 days before the date of the meeting of the Authority at which the byelaw is to be made. On occasions, this notification is not submitted, or is given as part of a newsletter or other communications rather than as a standalone notification, which would be preferable. Another issue is that the MMO are not in receipt of this notification and therefore can be unsighted to a new byelaw up to a point at which it is submitted for formal QA, making it difficult to plan and to provide timely advice to IFCAs if contentious issues are identified at this formal stage.

The MMO noted that the extent of consultation is variable across IFCAs. In addition, there is an expectation that IFCAs will advertise in at least two local newspapers and one national newspaper, however this is not always the case. Similarly, IFCAs do not always notify the Secretary of State of their intention to make a byelaw as required by the Defra Guidance. However, one of the IFCAs pointed out in their feedback that a better means of advertising

¹⁶ Defra (2011) IFCA Byelaw Guidance. Guidance on the byelaw making powers and general offences under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Act.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182343/ifca-byelaw-guidance.pdf

the consultation process would be desirable, as local papers may not reach into the community as they might previously have done.

3.2.5 Limitations of Guidance Documents

3.2.5.1 Guidance Documents Available to IFCA's

The Defra Best Practice Guidance¹⁷ provides a quite broad description of the overall Byelaw making process and does not provide significant detail on how the separate QA and confirmation processes work. In reviewing this guidance document, at the onset of this review, it was difficult to establish how the byelaw making process should proceed from the IFCA's perspective, how the MMO's quality assurance process dovetailed the different stages of the byelaw making process and how MMO and Defra carry out the formal QA and confirmation process. It was only through talking to those involved and through synthesis and review of the consultation results, that the different stages of the process became clearer.

For example, two process diagrams are included in the Defra Best Practice Guidance – the first diagram presented in the guidance is illustrated in Figure 2, the second diagram in the guidance is the flow chart illustrated in Figure 1. There are six key steps described in the guidance text on pages 18-20, preceding the diagram shown in Figure 2; however, this diagram only has four key process stages and these do not follow the same headings as the text. In addition, the bullets included in each box of the diagram in Figure 2 do not appear in the same order as corresponding activities in the flow chart in Figure 1.

Not all aspects of byelaw making process are included in the current flow diagram. For example, there is currently no step for 'drafting the byelaw'; IFCA's suggested this might sit between stages 5 and 6 or between stages 3 and 4 in Figure 1. Additionally, the flow chart shown in Figure 1 does not reflect how the IFCA's and the MMO interact throughout the IFCA Byelaw making process, particularly with respect to the informal MMO reviews. Consultation results reflecting which stages of the process IFCA's, MMO and Defra teams interact with each other, indicated considerable variation in the stages that IFCA's consult with MMO during the informal review period prior to the formal QA (see Table 1).

The Best Practice Guidelines indicate that the 'IA should be prepared by the IFCA in accordance with the best practice guidance published by the Better Regulation Executive' and provides a link to these guidance documents¹⁸. The Cabinet Office Guide to making legislation July, 2017¹⁹ refers users to the 'departmental better regulation unit' for guidance on completing Regulatory Impact Assessments (RIAs). However, with respect to IFCA's, it is not clear which unit should be providing this support. In addition, at the time of consultation, one IFCA pointed out that the Better Regulation Framework Manual was withdrawn in 2016 and had not yet been replaced²⁰.

The Defra Guidance lacks detail on the different types of byelaw commonly made by IFCA's, such as flexible byelaws, permit byelaws, and dispensation byelaws; one IFCA suggested that guidance on these byelaw approaches/structures would aid the development of the byelaw at

¹⁷ Defra (2011) IFCA Byelaw Guidance. Guidance on the byelaw making powers and general offences under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Act.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182343/ifca-byelaw-guidance.pdf

¹⁸ <https://www.gov.uk/government/collections/impact-assessments-guidance-for-government-departments>

¹⁹ Cabinet Office Guide to making legislation July, 2017

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf

²⁰ Better Regulation Framework was updated in August 2018, See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735587/better-regulation-framework-guidance-2018.pdf

stage 7 in Figure 1 (seek legal advice). The MMO also pointed out that Defra Guidance does not provide detail on what changes can be made to a byelaw after it has been made but before confirmation, and what sign off this requires from IFCA committee, consultees, MMO and Defra.

A key issue with the guidance documentation provided by the MMO and Defra (noted by MRAG and one IFCA), is that different aspects are distributed across a number of different documents (see section 2). This makes it difficult to understand the expected timing of different stages in the process and how the different aspects come together and where responsibilities lie with each organisation involved. For example, separate documents provide guidance on:

- IFCA byelaw making best practice (Defra, 2011²¹)
- Carrying out and drafting impact assessment (MMO)
- Gathering associated evidence (Defra)
- Contribution to the achievement of sustainable development

Specific guidance documents do not exist for drafting of byelaw text; most IFCAs, the MMO and Defra indicated that previously made byelaws are used as a basis for developing new byelaws adopting similar management approaches.

Additional guidance exists, for example on Fishing Industry Financial and Economic Impact Assessments²² which has been drafted by other organisations (e.g. Seafish) and these documents are referenced within the MMO Impact assessment Guidelines. However, it would be beneficial for aspects within these documents considered by the MMO and/or Defra to be relevant to/appropriate for byelaw impact assessments to be incorporated into one comprehensive guidance document.

3.2.5.2 Guidance documents and checklists available to MMO and Defra Staff

Telephone and face-to-face consultations with the MMO and Defra confirmed that respective QA and confirmation detailed review criteria are currently not included within internal desk notes.

Feedback provided by the MMO legal advisor suggested that additional internal institutional guidance documents may be warranted or, as a minimum, the existence of all available reference material could be communicated more effectively within the MMO. The MMO legal advisor pointed out that they were unaware of all of the separate guidance documents available to IFCAs (detailed in section 2) prior to this consultation; and that detail within them may increase their understanding of the IFCA byelaw process and associated role in the QA process in the future.

Defra also agreed that it would be beneficial to draft detailed/formal checklists for Defra staff to ensure continuity of institutional knowledge over time.

²¹ Defra (2011) IFCA Byelaw Guidance. Guidance on the byelaw making powers and general offences under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Act., available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182343/ifca-byelaw-guidance.pdf

²² Seafish UKFEN (2012) Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments available at <http://www.seafish.org/media/634910/ukfen%20ia%20best%20practice%20guidance.pdf>

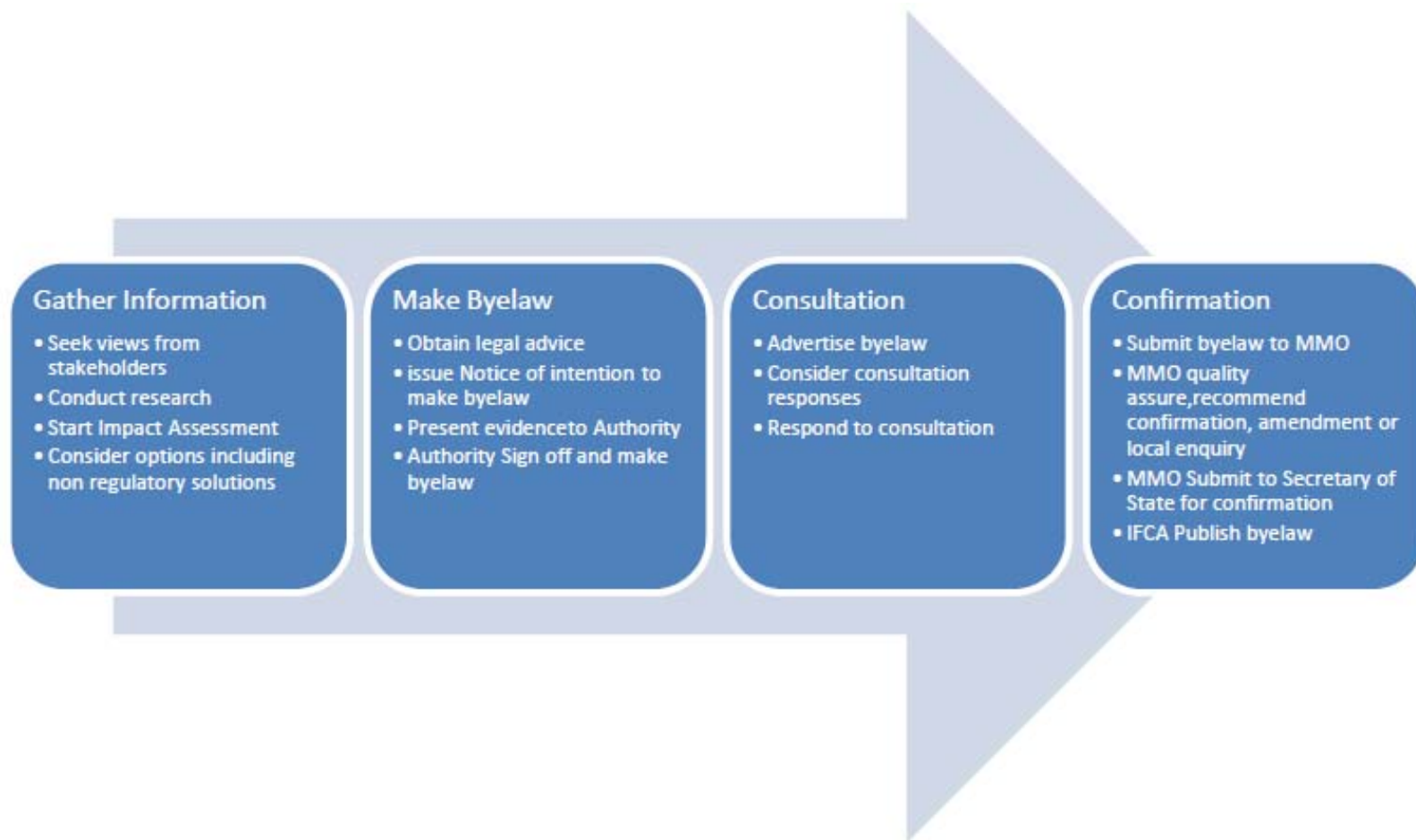


Figure 2 Diagram illustrating Byelaw Procedure (Source: IFCA Byelaw Guidance, Defra 2011)

3.2.6 Training Requirements

Seven IFCA's reported that there were stages of the byelaw making process where they considered additional training would be beneficial; stages most commonly referred to included drafting byelaw text (4 IFCA's) and drafting impact assessments (5 IFCA's).

3.3 Stages of the Process Which Work Well

Feedback within questionnaires demonstrated that in general the provision of advice to IFCA's by the MMO during both informal and formal stages of the review process are considered advantageous.

Noting the issues highlighted within section 3.2.4.1, four IFCA's considered the informal review process currently works well, reporting that:

- The MMO provide a great deal of support during informal review stages;
- Very positive working relationships exist between some IFCA's and the MMO as a result of informal review stage; and
- The MMO is effective and helpful during informal review.

In relation to the formal QA provided by the MMO, IFCA's also noted that:

- Communication relating to objections to byelaws are handled very well, and are dealt with in a consistent way by the MMO and IFCA's;
- Availability, approachability, helpfulness and knowledgeability of MMO personnel is considered to be excellent; and
- Significant improvements in the systems and processes for engagement with the MMO have been observed.

There was general agreement from the MMO that overall communication, trust and understanding between MMO and IFCA's has improved a great deal since this work began in 2011, as have the quality of some IFCA's byelaws and associated documents. The MMO reported that the whole process can run smoothly for more straightforward byelaws submitted by certain IFCA's, and in these circumstances, once all relevant information has been received the MMO consistently meet the 28 working day target to QA a byelaw. However, extensions to these target timeframes may be required for more complex byelaws. The MMO reported that the informal review of byelaws often avoids more serious issues becoming apparent much later in the process, where making changes is more difficult (but see also 3.2.4.1).

With respect to Defra confirmation, one IFCA highlighted that Defra have on occasions dealt very well with last minute amendments to byelaws when unforeseen issues have arisen during final stages of the process. Defra also reported good communication with the MMO and IFCA's in relation to byelaw making.

A general comment made by one IFCA was that the byelaw making process has been sufficiently flexible to allow the making of quite 'imaginative' legislation.

3.4 Current Levels of Satisfaction with QA and Confirmation

Table 4 summarises the satisfaction levels with different stages of the byelaw making process, associated guidance documents and process overall across IFCA's. Satisfaction in the byelaw making process overall was split equally between 'somewhat satisfied' and 'somewhat dissatisfied' (four IFCA's each), with just one IFCA being 'very dissatisfied' with the process overall. There was greater variation in satisfaction levels associated with the MMO informal review and QA process and the guidance documents available; while the greatest level of dissatisfaction across IFCA's related to the Defra confirmation process.

Table 4 IFCA consultation result on satisfaction levels with different stages of the byelaw making process, associated guidance documents and process overall.

In general, how satisfied are you with:	<i>Very satisfied</i>	<i>Somewhat satisfied</i>	<i>Neither satisfied nor dissatisfied</i>	<i>Somewhat dissatisfied</i>	<i>Very dissatisfied</i>
- MMO informal review process?	2	3	1	3	
- MMO QA process?	1	2	3	3	
- Defra confirmation process?		2	2	5	
- Guidance / reference material for IFCA byelaw making?	1	2	3	2	1
- The byelaw making process overall?		4		4	1

3.5 Proposed Improvements

The following sections provide a summary of the suggestions made by IFCAs, the MMO, MMO Legal Advisor, Defra and in places by MRAG, to mitigate or reduce process delays detailed in section 3.2.

3.5.1 Provision of Legal Advice

Should the process broadly remain unchanged there are some institutional improvements that could be made across all authorities involved that would help to improve the consistency in legal reviews of byelaws in development.

From the IFCAs' perspectives there is an acceptance that legal wording, processes, decisions and preferences do evolve over time, and that issues with continuity in advice over time resulting from personnel changes may be difficult to resolve. However, IFCAs also made a number of suggestions for how problems experienced could be lessened. These include:

- IFCAs to maximise the use of their own individual legal services (one IFCA) to improve the quality of first drafts and reduce the reliance on the informal review process;
- Greater informal dialogue with MMO and additional steer from Defra at the consultation / drafting stage (~stage 5 in Figure 1) to ensure that the proposed mechanisms and concepts are in keeping with policy, e.g. flexible permit conditions;
- Formal recognition of an earlier step in relation to Defra / MMO legal consideration (one IFCA);
- MMO to provide legal advice, and Defra to provide additional legal review only when there is disagreement between MMO and IFCA legal advisors (one IFCA);
- Greater liaison between the MMO and Defra so that Defra approve any MMO advice/guidance given prior to confirmation (two IFCAs);
- Defra to take charge of legal review (two IFCAs);
- One centralised legal advisory team (two IFCAs);
- Direct communication between IFCA Officers developing byelaw and MMO and Defra legal advisors to avoid misinterpretation of byelaw intention (two IFCAs);
- One-off workshop with IFCAs, MMO and Defra to align expectations of the process and current policy (particularly with regard to interpretation of s.156 MACAA) (one IFCA);
- Basing new byelaws on previously confirmed byelaws (*i.e.* for byelaws aimed at meeting similar objectives) (one IFCA);
- Provision of byelaw framework/template incorporating standardised advice on definitions/interpretations/layout etc. (one IFCA); and

- Greater provision for flexibility in byelaw structure (one IFCA).

The suggestion for a **centralised legal advisory team** was also put forward by the MMO as a solution to the delays currently experienced as a result of differences in legal appraisals of byelaw text or intent. The MMO also agreed with one IFCA's suggestion that IFCAs should maximise the use of their own individual legal services and proposed a mechanism by which this would be guaranteed; by not accepting a byelaw package for formal MMO QA without confirmation that independent legal advice has been sought by the respective IFCA.

The MMO Legal Advisor put forward a simple and practical solution which would help to streamline the legal (and technical) appraisal of byelaws throughout the process; introducing an index number for each version of the byelaw submitted so that all individuals involved in QA or legal review have a clear record of any amendments or comments previously made.

Defra were also conscious of the duplication in provision of legal advice and suggested it would be beneficial to identify what the (MMO and Defra) legal teams are checking and clarify which areas of the legal review can be streamlined, or whether separate risk assessments both need to be applied to byelaws.

Based on an overview of the feedback provided, there are a number of ways in which consistency in legal advice might be improved going forward. A practical and relatively easy to implement solution, would be to **develop an indexed referencing/logging system for byelaw documents/packages** within a share point accessible to both the MMO and Defra staff involved in the QA and confirmation of byelaws.

Going forward, it would also make sense to have all parties involved in the provision of legal advice to work together to resolve or iron out legal issues rather for these teams to be working in isolation or in a step-wise manner. This could be achieved in a number of ways.

One approach that might take into account all suggestions received during the consultation would be to establish/assign a **steering group** for each byelaw made up of IFCA Officers, IFCA Legal advisors, MMO and Defra technical and legal staff. This would facilitate direct communication between IFCAs, MMO and Defra Legal teams and ensure that all those involved in the development of the byelaw are 'on the same page' at all stages of its development. This steering group would be jointly responsible for agreeing and resolving legal complications, and if scheduled to review at an early stage in the byelaw making process (e.g. Stage 5 in Figure 1) should theoretically mitigate for complications arising during the latter stages of the process (i.e. confirmation).

If it is not practical to involve legal teams in the steering group approach, the next best approach would be to set up a **centralised legal team** supporting both the IFCA byelaw making process and the development of wider UK marine legislation. This would ensure more consistency of advice and continuity with wider marine legislative programmes. However, the practicalities of the steering group or a centralised legal advisory team approaches will need to be explored by MMO and Defra based on staff resources available.

Another means of providing a coordinated legal framework for byelaw making, would be for the MMO and Defra to establish respective priorities for legal considerations of the byelaw text or intent (particularly in relation to the interpretation of Section 156 of the MACAA (as queried by one IFCA)) and to document these in a (annually/biennially reviewed and updated) **legal guidance document** (see also 3.5.5). This document would then serve as guidance/reference material across IFCAs, MMO and Defra teams and over time should key personnel be unavailable at the time of the review. It should help to alleviate some of the issues noted during the consultation resulting from different perception of risks across the three regulators involved in byelaw making and assist better coherence in the advice they provide. In addition, if funding/resources are available, **an annual or bi-annual best practice sharing and**

expectation setting workshop/meeting involving IFCA's, MMO and Defra technical and legal teams would help to communicate policy developments over time and mitigate impacts of byelaw team staff turnover.

The current lack of structure and terms of reference for the informal MMO review seems to blur responsibilities for determining the legal provisions of a byelaw during early stages of the process. Legal aspects of advice should either not be offered by the MMO during informal communications with IFCA's, or **formal recognition of a Defra and MMO legal advisory stage should be determined prior to formal QA and confirmation**. If formalised, this process/additional stages will need to be incorporated into the process diagrams within the Defra Byelaw Best Practice Guidance.

3.5.2 Revised Impact Assessment Requirements

Options put forward by consultees to revise Impact Assessment requirements for byelaw making include:

- Improve and simplify current IA requirements to be proportionate to the scope of IFCA byelaws and potential impacts (five IFCA's, Defra);
- Modify impact assessment to reduce the reliance on economic data within the application; in some areas data required is not available and to input data which are poor detracts from aim of the process (three IFCA's)
- Completely restructure IA requirements and replacement with an alternative approach, tailored specifically to the needs of an IFCA byelaw (MMO, one IFCA); and
- Adoption of a similar existing approach targeted at lower cost of impact scenarios, such as a Regulatory Triage Assessment²³ (Defra).

Based on an overview of the consultation feedback, it is apparent that the current IA framework does not facilitate implementation of the process in the way that it is intended, i.e.

- *a continuous process to help think through the reasons for government intervention, to weigh up various options for achieving an objective and to understand the consequences of a proposed intervention; and,*
- *a tool to be used to help develop policy by assessing and presenting the likely costs and benefits and the associated risks of a proposal that might have an impact on the public, a private or civil society organisation, the environment and wider society over the long term⁶.*

In other words, it is not aiding the development, assessment and comparison of impacts of alternative management options available, to easily identify the best management option to mitigate a particular problem and present this evidence clearly to the relevant stakeholders. Key messages are lost in the current impact assessment reporting template.

The problems experienced with the impact assessment appear to be primarily a result of poorly defined approach/framework for implementing impact assessments within the byelaw-making context and inadequate practical guidance in implementing analysis of options given the resources and data available within this context.

Feedback provided across all authorities consulted justifies a further, more detailed assessment of how the proportionality and potential impacts of any given byelaw might best be appraised.

²³ Regulatory Triage Assessments are usually applied to cases where there is <£5 million cost of impact anticipated, see <https://www.gov.uk/government/publications/regulatory-triage-assessment-form> for further detail.

The **current IA framework warrants revision**, taking into account the context, scope, data availability, **alternative options for option analysis/comparison (for data limited situations** such as SWOT analyses) and the resources available to IFCAs to complete impact assessments.

Once a more proportionate approach has been defined; it needs to be better incorporated into the guidance on the byelaw-making process, i.e. how consultations can be utilised to assess costs/benefits of options etc. The current template/guidance document does not explain how to include non-monetised elements in the assessment of each option, and ultimately the comparison of options; this needs to be remedied in future revisions.

Should a revised/alternate approach to impact assessments be adopted for making IFCA byelaws; training will also need to be provided across relevant IFCA, MMO and Defra staff corresponding to updated guidance documents, to ensure correct implementation and QA of this implementation going forward. An initial one-off training workshop might then be complimented with annual/bi-annual best-practice/information sharing workshops, if there are resources available to introduce this approach.

3.5.3 Timetable for Defra Confirmation

Improvements to the provision and coordination of legal advice detailed in section 3.5.1 and improvements in expectations of the impact assessment detailed in section 3.5.2 should help to alleviate delays currently experienced with the Defra confirmation process.

However, the process would also benefit from the inclusion of response timelines for the technical and legal reviews carried out by Defra staff. Incorporation of realistic estimation of response times (taking into account time required to address unforeseen issues) will help IFCAs to forward plan. There should also be a requirement for Defra to provide a summary of comments issued on a particular byelaw at the confirmation stage, in order to facilitate IFCA understanding of Defra rationale for future submissions.

Development of a timetable for the different aspects will need to be included into revised guidance documentation across IFCAs, the MMO and Defra (see section 3.5.5).

A number of IFCAs requested that Defra be involved during earlier stages of the byelaw making process, particularly for more innovative byelaws / mechanisms. A steer from Defra at stage 5 of Figure 1 (gather evidence from stakeholders and all interested parties) would be beneficial to ensure that the proposed mechanisms and concepts are in keeping with policy e.g. flexible permit conditions.

Consultations with Defra highlighted that, from Defra's perspective, there is a desire to understand better the type of engagement (from Defra and the MMO) that IFCAs would find beneficial at each stage of the byelaw making process. This follows from a concern that engagement in the byelaw-making process too early, before all impacts have been considered for a proposed byelaw might be construed as an indication that the byelaw will be passed at the formal stage. The proposal for periodic best practice/sharing workshops involving MMO, Defra and IFCA staff made in section 3.5.1 in relation to provision of legal advice, might facilitate information sharing between IFCAs and Defra in this respect.

3.5.4 Other Procedural Improvements

3.5.4.1 MMO QA and Informal Review

Both negative and positive feedback was given in questionnaires in relation to the MMO informal review process (see 3.2.4.1. and 3.3 respectively).

In order to avoid ambiguity in the weight and importance of advice provided during informal consultations, it would make sense to formalise the aspects of the informal review process which work well. A starting point would be to determine an appropriate schedule for developmental reviews by MMO at stages earlier than the current formal QA (e.g. stage 12 in Figure 1) through consultation with IFCA's. Results from this review (e.g. Table 2Table 1) could be used as a starting point for this follow-on engagement.

For example, one IFCA provided a detail summary of their experiences of the informal MMO review and identified three key stages at which informal review is usually sought from the MMO e.g. prior to notification of and making of byelaw (stages 9 and 10 in Figure 1); prior to formal stakeholder consultation (stage 11 in Figure 1) and prior to MMO formal QA (stage 12 in Figure 1). However, this IFCA also reported an intention to significantly reduce the level of informal review with the MMO to just two key stages before byelaw making and at formal QA in order to improve the efficiency of process for both organizations.

Determining more structure to earlier stage consultations would help to reduce inefficiencies in the current format reported by both IFCA's and the MMO, and subsequently address MMO staff resource limitations (raised as a possible limiting factor by two IFCA's) in addressing the greater volume of MPA byelaws which have been submitted in recent years (as a result of the revised approach to EMS which was adopted after IFCA's and MMO were created).

It would also be worth considering whether Defra advisors could be included within earlier process reviews (see 3.2.1).

With respect to the current formal QA process, incorporation of additional detail and, or criteria to assess quality of byelaws in current MMO QA checklists would help to prevent loss of institutional knowledge as a result of staff changes. One IFCA suggested that a checklist could also be developed for IFCA's to complete for submission alongside byelaws which would allow MMO to check key points at a glance. A combination of these approaches could be developed in line with the suggestion for an indexed referencing/logging system, by prefacing submissions and responses from the MMO (and Defra) with a summary log of amendments required, whether these amendments have been addressed etc. which would help speed up the review process across all parties.

Two IFCA's also suggested that it would be helpful if an MMO lead officer could be allocated to each byelaw and contact details exchanged with a respective IFCA lead officer.

3.5.4.2 IFCA, MMO and Defra Coordination

In addition to approach/approaches detailed in section 3.5.1 for improving the consistency of legal advice provided by the MMO and Defra, the following suggestions were made to improve overall coordination in byelaw making processes across IFCA's, MMO and Defra:

- Establishment of Service Level Agreements for MMO and Defra reviews (One IFCA);
- Informal summary of MMO and Defra priorities/requirements for impact assessment and byelaw content provided either as part of comprehensive guidance or as a standalone document (Defra, one IFCA);
- Defra and MMO determine whether both of their respective risk assessments need to be applied to IFCA byelaws (Defra) and explore whether the right bits of the process

sit with the right organisation (e.g. in relation to review of impact assessments and related economic analysis)

- Defra to identify what is needed from a policy perspective in MMO's submission form, particularly in relation to permitting byelaws (Defra);
- Reduce duplication of reviews across MMO and Defra technical and legal teams (Defra) to identify what legal teams are checking and clarify which areas can be streamlined;
- MMO and Defra to provide monthly updates to IFCA's on issues arising from QA and Confirmation byelaws in development (two IFCA's);
- Centralised Document Repository and indexing system ensuring that status of byelaw is clear and accessible to all parties at all stages in the process (MMO Legal)
- Greater level of information sharing across bodies (two IFCA's); which might be addressed through introduction of annual/biennial best-practice workshop;
- IFCA's should produce a brief to the MMO and Defra when the decision is taken by the Authority to make a byelaw detailing the expected timeline in order to help MMO and Defra plan and prioritise allocation of resources (one IFCA);
- IFCA's adopt consultation approach similar to that utilised by the MMO in byelaw making where stakeholders are consulted before 'making the byelaw' (MMO); and
- There are certain issues which would be better pursued at a national (i.e. by Defra) rather than local level (e.g. berried lobster Statutory Instrument coming many years after IFCA byelaws, as there is very little structure in place at the IFCA level to support such decisions (one IFCA).

3.5.5 Improvements to Guidance Documentation

Should proposed changes to the process detailed in preceding sections (primarily in section 3.5.1 and 3.5.2) be adopted, associated relevant detail would need to be incorporated into the Defra Byelaw Best Practice Guidance and any other associated IFCA, MMO, Defra internal templates or checklists.

Some broader suggestions for improvements to guidance documents in general are summarised below.

- Develop a single, comprehensive guidance document that includes guidance across all stages of the byelaw-making process; this might include for example a summary of the process from beginning to end, with clearer presentation of the different steps in the process and where responsibilities lie within each step of the process (MRAG, one IFCA);
- Figures included within guidance should correspond with each other and accompanying text (MRAG);
- Clearly indicate how and when informal and formal reviews should take place with the MMO and Defra, based on any future revision of and/or clarification on the structure of these reviews as discussed above (section 3.5.4.1).
- Add further detail to IFCA guidance on what is required in terms of IFCA formal consultation (MMO);
- Develop template byelaws or sections of byelaws for the commonly submitted byelaw types (e.g. MPA, permitting, etc) to improve consistency and reduce the work needed to review each byelaw (MMO and IFCA's).

The following suggestion relate specifically in relation to improving the impact assessment guidance document (see Annex 3 :

- The addition of description of how the impact assessment process (or alternative approach) should be used to gather evidence and compare management options,

including any examples of how the template should be completed, with the template included as an annex for reference (MRAG);

- Include additional detail on incorporating non-monetised costs in the assessment and comparison of options; if economic data are unavailable across all aspects (environmental, economic and social) an alternative approach should be provided to assign costs and benefits in a more proportional way; e.g. SWOT analysis (MRAG);

Further clarification should be included on the level of detail that is required in the provision of background evidence for the impact assessment (one IFCA, MMO). Finally, updates to MMO/Defra Internal Documentation and Checklists which could be considered to improve standardisation within and across organisations involved in byelaw making include:

- More detailed/formal review criteria incorporated within MMO and Defra checklists to ensure continuity of institutional knowledge;
- Stages outlined within the MMO/Defra TOR aligned better with the flowchart of the process presented in the Defra Best Practice Guidance (see Annex 1 and Figure 1 respectively); and
- Improvements/edits to internal checklists should be cross-checked and revised periodically with future updates in process and correspondence in guidance targeted at the IFCAs.

3.5.6 Access to Training

Future needs in relation to access to training, will primarily be dependent on which of the proposed improvements summarised in section 3.5.2 on impact assessment requirements and in section 3.5.4.2. in relation to establishing which aspects of process sit best within each organisation (MMO or Defra).

However, it may be worth considering providing access to training in impact assessment for MMO and Defra staff involved in byelaw making to aid future appraisal of an appropriate format for the impact assessment associated with IFCA byelaws. Impact assessment training would also be helpful across IFCAs and MMO technical staff, once a suitable approach to assessing IFCA byelaw impacts has been determined.

Should economic analysis continue to be required for impact assessments, a means of providing periodic training to IFCAs and MMO staff will need to be identified.

Provision of training in legislative drafting was also highlighted as desirable by IFCA Officers leading on this aspect of byelaw making.

4 Preliminary Actions Required to Implement Proposed Improvements

Based on the review of the IFCA Byelaw QA and confirmation process and an overview of the consultation results, the following steps have been identified as recommended prerequisites to implementation of the proposed improvements for the main problems currently encountered:

- **Determine respective priorities for MMO and Defra technical and legal reviews** to determine where duplication of effort currently occurs and where there is a need for separate inputs and expertise from both organisations;
 - this step should help to determine whether better coordination and consistency could be achieved through clarification, communication and documentation of priorities and expectations or would better be achieved in the long term, through the introduction of a centralised legal (and technical) advisory team or steering group.
- **Evaluate the scope of impact assessments relative to IFCA byelaw potential impacts;** this could be achieved either by:
 - Enlisting the services of an impact assessment/evaluation expert to provide an appraisal of alternate appropriate approaches; or
 - Providing training in impact assessment to MMO, Defra and IFCA staff involved in byelaw making to enable them to subsequently work collaboratively to identify the best approach and draft associated templates and guidance documents.
- **Develop a single comprehensive guidance document,** incorporating all aspects of the IFCA byelaw making process, which includes expectations of the MMO technical and Defra policy and MMO and Defra legal teams respectively (see first bullet above);
 - Various aspects of the requirements (i.e. policy, legal, timelines) and associated implementation guidance (i.e. templates, examples and practical advice) could be incorporated within document text and annexes using a similar (albeit less complex) approach/format to the Marine Stewardship Council Fisheries Assessment Framework²⁴;
- **Explore options for better harmonisation of inputs** within and between IFCAs, MMO, Defra Policy Teams and respective legal teams, e.g.
 - **Document indexing and logging system;**
 - Combined share point housing historical byelaw package revisions;
 - **IFCA byelaw brief template** created for IFCAs to submit to the MMO and Defra when the decision is taken by the Authority to make a byelaw, detailing Objectives of byelaw, associated complexities, risks or uncertainties and anticipated timeframes, in order to help MMO and Defra plan and prioritise allocation of resources; and
 - **Annual/biennial best-practice/expectation sharing workshops** across IFCAs, MMO and Defra staff working on byelaws.

²⁴ See https://www.msc.org/documents/scheme-documents/msc-scheme-requirements/methodologies/Fisheries_Assessment_Methodology.pdf/view

Annex 1 Terms of Reference for byelaw work, March 2015

1. Defra Quality Assurance (QA) expectations and sign off responsibility for IFCA Byelaws

Policy drivers for byelaw production	IFCA, MMO and NE Quality assurance roles	Defra QA expectations
<p>Marine conservation zone (MCZ) management</p> <p>European marine site (EMS) management</p> <p>Wider fisheries measures (e.g. stock protection, gear conflict, environmental protection outside MPAs)</p>	<p>Standard byelaws:</p> <p>IFCAs to ensure robust internal procedures for byelaw and IA making in the context of Defra Guidance to IFCAs and their legal powers and duties as set out in the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) and the Marine and Coastal Access Act 2009 (MACAA).</p> <p>NE to provide advice on proposed measure in relation to conservation objectives of the site and legal duties particularly with respect to s125 and 127 MACAA.</p> <p>MMO to provide early alert to Defra if significant issues arise, including those of a substantive nature or high volumes if a large number of objections received.</p> <p>MMO to provide QA of byelaw and IA in relation to legal requirement, legal powers and policy context.</p>	<p>Standard byelaws:</p> <p>Early engagement with Defra via MMO on significant legal or policy questions – this will be by exception.</p> <p>Defra will rely on IFCAs, MMO and NE to address issues before byelaws and IA are submitted for confirmation.</p> <p>If any significant legal or policy questions persist with byelaw or IA following MMO QA (including objections which cannot be resolved) these need to be highlighted to Defra.</p> <p>Byelaw and IA should require minimum policy and legal QA at byelaw confirmation stage (subject to level of latent policy/legal concern following MMO QA).</p>
	<p>Emergency byelaws:</p> <p>IFCAs will retain full responsibility for QA, liaison with MMO and NE as well as the appropriate stakeholder engagement.</p>	<p>Emergency byelaws:</p> <p>Defra will not be involved in QA of emergency byelaws, unless significant concerns are raised after the byelaw is</p>

		made or until IFCA request an extension from the SoS under s157(4) MACAA.
	<p>Extension of emergency byelaw:</p> <p>IFCAs responsible for preparing justification for extension and ensuring appropriate liaison with MMO and NE when requesting an extension to an emergency byelaw from the SoS under s157 (4) MACAA.</p>	<p>Extension of emergency byelaw:</p> <p>SoS will take a view based on IFCA justification and the views of the MMO and if appropriate, advice from NE.</p>

Annex 2 MMO IFCA byelaw QA Checklist [Name of byelaw]

IFCA package	Yes	No	Note
2 copies final signed byelaw			
Copy of byelaw			
Completed IA (latest version attached)			
Each consultation representation			
IFCA response to each representation			
Copies of adverts, with dates visible			
Minutes of meetings where byelaw was made or discussed			
Confirmation receipt and submission package emails sent to IFCA and Defra (start of 28 day quality assurance date included)			
Consultation			
14 day notification sent to Defra (on behalf of SoS) and Authority members of intention to make byelaw?			
Has the byelaw been advertised in at least two local and one national publication?			
If no to above, is there sufficient justification and/or has alternative consultation be undertaken?			
Have any objections been received?			
Have objections been resolved?			
If not resolved is there justification as to why they have not been?			
Byelaw			
Is the purpose of the byelaw consistent with the IFCA duties and UK policy?			
Does the byelaw avoid duplicating provisions of existing legislation/policy?			
Have previous MMO comments been fully considered?			
Is a new MMO legal advice request required?			
Have fundamental changes been made to the byelaw since consultation?			
If fundamental changes have been made, have they been consulted on?			
Are any fees charged laid out in the byelaw?			
Have co-ordinates been checked on MMO SPIRIT?			
Are co-ordinates correct?			

Are the title(s), preamble and signature block of the byelaw appropriately drafted?			
Does the explanatory note summarise the provisions of the byelaw and help people understand whether the byelaw applies to them?			
Have maps or charts been provided if would be helpful?			
Have MMO IFCA rep's views been sought on the byelaw?			
Impact Assessment			
Does the IA follow the IA framework?			
Does the IA detail the need for the byelaw?			
Does the IA detail the main impacts of the byelaw?			
Are non-statutory measures considered?			
Does IA layout the rationale for the chosen option?			
Are any assumptions made in the byelaw justified?			
Is the economic data correct?			
Has the discount rate been correctly applied?			
Is there a clear justification for any fees charged?			
Submission letter			
Is the deadline for confirmation of the byelaw included?			
Are the main provisions of the byelaw summarised?			
Is the maximum number of permits which can be issued specified?			
Has submission letter and byelaw been reviewed by MMO SEO?			

Complete the checklist, sign and date prior to byelaw submission to Defra:

Completed by

Date:

Signature:

Impact Assessment Guidance for IFCA and MMO Byelaws

Aim

The aim of this guidance is to provide IFCAs and the MMO with guidance on how to complete a byelaw Impact Assessment (IA) for their byelaw with the aim of producing impact assessments that are consistent and of a high quality but at the same time are proportionate to the decisions being undertaken.

Impact Assessments and Byelaws

IAs are required as they ensure that byelaws are underpinned by robust evidence and rationale which is usefully housed in the form of an IA. They are included in official IFCA/MMO byelaw making guidance.

In relation to the central government process of 'One in Two Out' and Regulatory Policy Committee Clearance byelaw IAs are not covered as they are introduced by local government introducing local regulation.

The level of analysis undertaken in an impact assessment should be proportionate to the impact that is expected. IFCAs are expected to have fully explored the potential costs and benefits of their byelaws and quantified and monetised the impact to the extent that evidence allows in a proportionate manner.

The impact assessment and consultation provide an ideal opportunity to gather further evidence to fill gaps or support existing evidence and therefore questions relating to the impact assessment and further evidence can be included in both the impact assessment itself and the consultation.

Notes

This guidance should be used alongside the HMT Green Book²⁵ and the Impact Assessment guidance²⁶ and the most up to date IA template²⁷.

²⁵ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

²⁶ <https://www.gov.uk/government/publications/impact-assessments-how-to-guide>

²⁷ <https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies>

The guidance provides a number of sources of help and guidance

- **Blue** text is standard text that can be copied and pasted, if relevant into your byelaw IA (this text can be expanded and amended to include additional local information if required)
 - **Red** text gives an overview and explanation of what is needed in each section
 - *Italics* text is examples from the MMO Haisborough, Hammond and Winterton EMS (specified areas) bottom towed gear byelaw²⁸ in order to give an idea of what information can be used in each section.
-
- A spreadsheet accompanies this document which allows the calculation of the key data needed i.e. Net present values and average annual costs to both the public and private sector.
-
- **Appendix 1 sets out useful links and documents**

²⁸ <http://www.marinemanagement.org.uk/protecting/conservation/ems/haisborough.htm>

(This should be one page)

Title: Name of Byelaw (if straddles 6 -12 and IFCA boundaries ensure byelaws are similar to ensure consistency) IA No: MMO/IFCA01 Lead department or agency: Other departments or agencies:	Impact Assessment (IA) Date: Stage: Consultation Source of intervention: Domestic Type of measure: Secondary Legislation Contact for enquiries: Full details inc. Name, position, telephone number, email and address
Summary: Intervention and Options	RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£m ²⁹	£ ³⁰	NA ³¹	No	NA

What is the problem under consideration? MAXIMUM OF 7 LINES
Give a brief overview of why the management measure is being proposed and document the legislative and policy requirements.

For example³²:

This byelaw is proposed in accordance with the revised approach introduced by the Department for Environment, Food and Rural Affairs (Defra) to ensure the full compliance with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (the Birds Directive) with respect to commercial fishing activity. The aim is to reduce environmental damage caused by....

Why is government intervention necessary? MAXIMUM OF 7 LINES
This section reflects two main criteria (green book³³): (1) market failure – where the market has not and cannot of itself be expected to deliver an efficient outcome – the proposed intervention seeks to redress this. (2) Distributional effects – are there equity considerations that need to be met?

²⁹ To be documented in £ms and calculated for 10 years from implementation of byelaw

³⁰ To be documented in £ms and calculated for 10 years from implementation of byelaw – costs and benefits to business only.

³¹ As these IAs are not in scope of one in two out this does not need to be completed

³² All example text was correct at the time of writing and may change in the future

³³ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

Government intervention is required to redress market failure in the marine environment by implementing appropriate management measures (e.g. this byelaw) to conserve features to ensure negative externalities are reduced or suitably mitigated. Implementing this byelaw will support continued provision of public goods in the marine environment. (section 2.6 - 2.8)

For example add to the previous section:

Specifically this byelaw will prevent the deterioration of Sabellaria spinulosa reef features within the 0 to 12nm from bottom towed gears and ensure compliance with the Habitats Directive.

What are the policy objectives and the intended effects? MAXIMUM OF 7 LINES

(1) Identify clear policy objectives. (2) Check that policy objectives are achievable. (3) Set out any hierarchy of outcomes. (4) Ensure targets are SMART (specific, measurable, achievable, relevant and time-bound).

For example:

- *To prevent the deterioration of Sabellaria spinulosa reef features within the section of the Haisborough, Hammond and Winterton SCI, between 0 and 12 nm, from impacts associated with deployment of bottom towed fishing gears;*
- *To further the conservation objectives stated for the Haisborough, Hammond and Winterton SCI;*
- *To ensure compliance with the Habitats Directive in line with Defra's revised approach;*
- *To promote sustainable fisheries while conserving the marine environment;*
- *To minimise the impact on bottom towed gear fishing activity, by maintaining access, where possible, to fishing grounds within the SCI;*
- *To reduce external negativities and ensure continued provision of public goods.*

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) MAXIMUM OF 10 LINES

For example:

- Option 0. Do nothing.*
- 1. MMO byelaw to prohibit bottom towed gears over bedrock reef feature with appropriate buffering ('zoned management').*
 - 2. MMO byelaw prohibiting bottom towed gears throughout the SCI ('full site closure').*
 - 3. Management of activity through a Statutory Instrument, Regulating Order or fishing licence condition.*
 - 4. Voluntary measures.*

All options are compared to option 0 the preferred option is option 1 which will promote both sustainable fisheries and conserve the marine environment and will ensure compliance with the Habitats Directive.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 6 years or when new evidence has been collated?

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes

What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A	Non-traded: N/A
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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 & Evidence Policy Option 1 (Provide a summary page for either the preferred option or the options for which full analysis is carried out (each summary page should be no more than 1 page))

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013 ³⁴	PV Base Year 2013 ³⁵	Time Period Years 10 ³⁶	Net Benefit (Present Value (PV) (£m ³⁷))		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition ³⁸ (Constant Price) Years		Average Annual ³⁹ (excluding transition) (Constant Price)	Total Cost ⁴⁰ (Present Value)	
Low			Optional	Optional	
High			Optional	Optional	
Best Estimate			Optional	£0.20m	
Description and scale of key monetised costs by 'main affected groups'					
All quantified and monetised costs to be included in this section i.e. enforcement costs/monitoring costs/cost to business/ lost revenue/environmental or social costs etc. More detail can be included in the evidence section.					
Example:					
Estimated annual enforcement costs to be faced by MMO range between £22,475 to £23,475. The best estimate of enforcement costs is assumed to be the mid-point of the low and high cost scenarios (£22,975), which results in a present value of costs over 10 years of £0.2m.					
One-off costs are not anticipated.					

³⁴ The constant price year. The price base year is the year from which your costs are calculated for example if costs were taken from a report carried out in 2010 the price base year would be 2010. If the costs were estimated this year then the price year would be 2014.

³⁵ Present Value Base Year: The present value base year relates to the calculation of the NPV (see NPV footnote) and should be the year that the policy comes into force for example the byelaw comes into force in April 2015 then the present value base year is 2015.

³⁶ The standard timeframe for analysis is 10 years unless the situation requires a different amount of time for example the benefits will occur over a much longer period. If there is deviation from the standard 10 years this must be clearly explained in the main evidence section.

³⁷ Net Benefit - value of the total monetised benefits minus the total monetised costs. All monetised costs and benefits should be expressed in £m. In order to compare options you need to adjust the estimates by discounting the impacts to the same point in time, to estimate the Present Value (PV) of the impacts (see main evidence section for explanation).

³⁸ Transient, or one-off costs or benefits that occur, which normally relate to the implementation of the measure. Non-quantified transient or one-off costs should be documented in the non-monetised section

³⁹ Average Annual, These are the costs and benefits that will reoccur in every year while the policy measure remains in force (although the scale of the impact may change over time) and so should not include transition costs. These are expressed as an annual average (over the life of the policy). i.e. undiscounted.

⁴⁰ i.e. discounted as with NPV

*Estimated annual loss of UK landings within the prohibited area including buffer zone is **£82.24** and the value of GVA affected is **£28.76**⁴¹. Present value of GVA over the 10 year IA timeframe is **£247.56**⁴².*

Due to minimal displacement caused by the intervention, as alternative fishing grounds are easily accessible, total cost estimates do not include loss of GVA. Costs to fisheries in that case are likely to be an overestimation as no displacement has been assumed and 100% of GVA in the areas affected is assumed lost.

If costs cannot be quantified they must be described in the non-monetised section below.

Other key non-monetised costs by 'main affected groups'

Include a brief description of non-monetised costs as identified in section 7 (Table 1).

Example: *The MMO proposes to use other enforcement bodies such as UK Border Agency and the police in order to fully utilise their resources for surveillance and enforcement. These costs cannot be monetised at present as they are requested on an ad hoc basis and costs can vary.*

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'

Describe any monetised benefits.

Maximum of 5 lines

Other key non-monetised benefits by 'main affected groups'

Describe non monetised benefits. *The environmental benefits from the introduction of this byelaw will improve as it will protect the Sabellaria spinulosa reef features within the site from bottom towed gear. This will contribute to meeting the 'maintain' or 'restore' conservation objective. This will have an added benefit on other features within the SCI and will have an overall benefit to the reef habitat as a result of the prohibition recommended. This could promote more recreational use in the area such as divers and recreational anglers which could potentially benefit the local economy (see evidence base).*

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

You can add into this section anything around international implications as these would not be included in the main analysis for example: Belgian⁴³ vessels have legal access rights

⁴¹ Further details on the approach is available in Annex H7 for the MCZ IA

<http://publications.naturalengland.org.uk/publication/1940011>

⁴² A range of monetised costs can be documented or if the impact is so small please document as to why costs and benefits cannot be monetised

⁴³ Other member states only have access in the 6 – 12nm limit therefore will only be documented by the MMO

in the section of the SCI outside 6nm. Section 7.4 VMS data highlights the limited activity for the Belgian fishing vessels within this SCI which was also confirmed by early engagement with Belgian fishing industry representatives in July. During formal consultation Belgian fishing industry representatives confirmed that some fishing activity takes place in the proposed prohibited area.

In addition briefly give key assumptions for example: Average cost estimates for the fishing industry are based on MMO landings values, estimated within the SCI and International Council for the Exploration of the Sea (ICES) division VIIe statistical rectangles 35F1, 35F2, 34F1 and 34F2. It is unknown what proportion of the total landings value was actually derived directly from the proposed prohibited area, which makes up less than 0.092% of an ICES statistical rectangle (3840 square km). Reported GVA was calculated by multiplying the value of landings by percentage of total income that constitutes GVA for the relevant gear type/region. Information gathered from fishers and other stakeholders during the pre-consultation meetings is used to support the evidence base and assumptions with the caveat that it is anecdotal evidence only.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A ⁴⁴	No	N/A

⁴⁴ Linked to ENCB

Evidence base

The evidence base should cover:

1. Overview of EMS/MCZ
2. Rationale for government intervention
3. The problems you are trying to solve
4. Background including sectors affected
5. Options including the preferred option
6. Cost and benefits
7. Conclusion summarising recommended option

1. Introduction

The aim of this section is to give the reader a very brief introduction to the impact assessment and policy issue. It should set out the high level context and what is being considered. It should also include the scope of the IA – i.e. England, the area affected etc. Ideally it should very briefly summarise what the IA is looking at and why. This shouldn't be any more than a page long and ideally shorter.....

Example: Site: Haisborough, Hammond and Winterton SCI⁴⁵.

Haisborough, Hammond and Winterton SCI has been designated for reef (Sabellaria spinulosa) and sandbanks (Sandbanks which are slightly covered by sea water all the time). Sabellaria spinulosa reef features have a number of important effects on the physical environment: they often stabilise sands, gravels and stones

The Department for Food, Environment, and Rural Affairs (Defra) has introduced a revised approach to the management of fisheries in EMS (see section 2.1). This has resulted in the need for the MMO to establish measures to protect the Sabellaria spinulosa reef features from bottom towed fishing gears in the SCI between the 6 to 12 nm limits to ensure full compliance with Article 6 of the Habitats Directive⁴⁶.

Bottom towed gear means any fishing gear which is pushed or pulled through the sea and contacts the seabed. This includes demersal otter and beam trawls and shellfish dredges. Management measures restricting these activity/feature interactions are therefore required.

This IA has been prepared to outline the costs and benefits of the proposed MMO byelaw to prohibit bottom towed gears for the protection of the reef features. The IA also indicates why the option being recommended is the preferred option for management. A draft of this IA has been subject to public consultation.

2. Rationale for intervention

⁴⁵ Sites of Community importance (SCIs) are sites that have been adopted by the European Commission but not yet formally designated as SACs by the UK Government.

⁴⁶ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

This section of the IA focuses on why government needs to intervene. This should reflect the primary reason for government intervention (irrespective of any subsequent regulatory rationale) and should be focused around reasons such as public goods, externalities and common good problems (as described below). For example for a measure which is being undertaken as a result of the habitats directive the argument would be along the following lines: without government intervention the level of biodiversity in the seas would be reduced due to the presence of public goods and externalities. As such the government intervenes in a number of ways and at a number of levels for example through the habitats directive. The habitats directives places a duty to do x and y and therefore this IA is considering measures to meet this duty and reduce the impacts of externalities and maintain/increase the level of public goods in the marine environment.

The rationale for intervention section requires reference to specific economic terms and it is important that this section both sets out the relevant primary rationale for intervention but also explains this so that a lay person can understand it.

The Green book sets out that government can intervene where there are market failures or equity issues. In terms of the marine environment there are a number of standard market failures and so following standard text can be included (and amended) to suit the situation.

As set out in the example below, once you have set out the primary reasons government intervention is needed, you can then go on to describe any other rationale for example EU legislation. This should however not be a major focus, it should just be a brief mention as 'because there is EU law which says we have to' is not viewed as sufficient rationale for government intervention.

Inshore Fisheries and Conservation Authorities have duties to ensure that fish stocks are exploited in a sustainable manner, and that any impacts from that exploitation on designated features in the marine environment are reduced or suitably mitigated, by implementing appropriate management measures (e.g. this byelaw). Implementing this byelaw will ensure that fishing activities are conducted in a sustainable manner and that the marine environment is suitably protected.

• Fishing activities can potentially cause negative outcomes as a result of 'market failures'. These failures can be described as:

- **Public goods and services – A number of goods and services provided by the marine environment such as biological diversity are 'public goods' (no-one can be excluded from benefiting from them, but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.**

- Negative externalities – Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.
- Common goods - A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

IFCA byelaws aim to redress these sources of market failure in the marine environment through the following ways:

- Management measures to conserve designated features of European marine site will ensure negative externalities are reduced or suitably mitigated.
- Management measures will support continued existence of public goods in the marine environment, for example conserving the range of biodiversity in the sea of the IFCA District.
- Management measures will also support continued existence of common goods in the marine environment, for example ensuring the long term sustainability of fish stocks in the IFCA District.

3. Policy objectives and intended effects

This section should clearly set out what the policy objectives are and the intended effects of intervention. Ideally policy objectives should be SMART (specific, measurable, attainable, realistic and timely).

For example:

The policy objective pertinent to this IA is to further the conservation objectives of this site by ensuring that the Sabellaria spinulosa reef features are protected from the risk of damage from bottom towed gear.

The intended effects are that the risk of deterioration of the Sabellaria spinulosa reef features will be reduced and obligations under article 6 of the Habitats Directive will

be met. In addition, the economic impacts of management intervention will be minimised where possible.

4. Background

This section should give background on the policy, area in which the byelaw is being implemented, environmental issues and intervention needed. It should also set out the sectors affected and their scale etc.

Example: *In August 2012 Defra undertook a review into the management of fisheries within EMS in order to identify future management required to ensure site features are maintained at favourable condition. This resulted in a revised approach⁴⁷ to management of fishing in EMS.*

The revised approach is being implemented using an evidence based, risk-prioritised, and phased basis. Risk prioritisation is informed by a matrix⁴⁸ which categorises the risks from interactions between fishing activity and ecological features. Activity/feature interactions have been categorised as red, amber, green, or blue. Those classified as red have been prioritised for the implementation of management measures by the end of 2013 (regardless of the actual level of activity) to avoid the deterioration of Annex I features, in line with obligations under Article 6(2) of the Habitats Directive. Interactions which are categorised as amber require a site-level assessment to determine whether management of an activity is required to protect features. Interactions which are categorised as green also require site-level assessment if there are “in-combination” effects. A categorisation of blue indicates that there is no feasible interaction, and as such no further assessment is required⁴⁹.

Paragraphs 6(1) and 6(2) of the Habitats Directive require that, within special areas of conservation (SACs) and special protection areas (SPAs), member states:

- establish the necessary conservation measures which correspond to the ecological requirements of the Annex I natural habitat types and the Annex II species present on the sites;*
- take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated.*

Regulation 8(1) of the Conservation of Habitats and Species Regulations 2010 defines an EMS as any (among others) SAC, SPA and SCI. Part 6 of these regulations lay out the management requirements for EMS, in line with articles 6(2), 6(3) and 6(4) of the Habitats Directive.

Haisborough, Hammond and Winterton SCI contains Sabellaria spinulosa reef features which have been categorised as red with regard to bottom towed gears and

⁴⁷ Fisheries in EMS policy document:
www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/policy_and_delivery.pdf

⁴⁸ See Matrix: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/populated_matrix3.xls

⁴⁹ Centre for Environment, Fisheries and Aquaculture Science (CEFAS) review of matrix and supporting evidence:
http://www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/cefaf_matrix_review.pdf

therefore management measures are required to remove this risk. The MMO is responsible for implementing management to prohibit the interaction between the Sabellaria spinulosa reef features and bottom towed fishing gear. The interaction of other fishing gear types with Sabellaria spinulosa reef features and the interactions between all fishing gear types and subtidal sandbank features will be assessed during the amber/green assessment process.

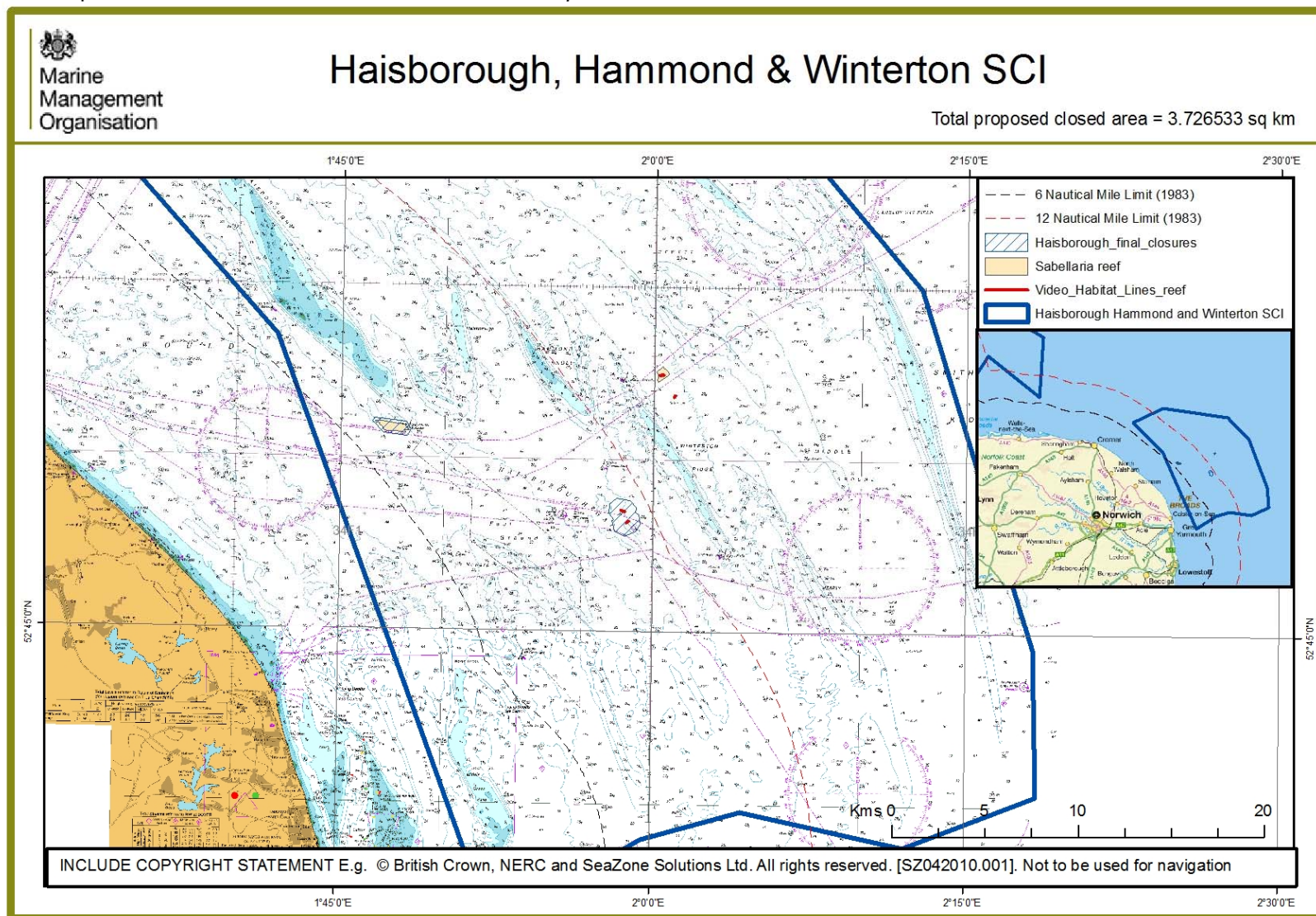
Environmental Impact

Impacts of bottom towed gear activity on Sabellaria spinulosa reef: The available evidence⁵⁰ highlights the impact of towed demersal gears as a significant threat to Sabellaria spp. reef. It is acknowledged that different fishing gears are likely to have variable levels of impact and there is limited peer reviewed empirical data demonstrating impacts. However, these factors are not considered to outweigh a precautionary rating of red particularly in the context of known declines of this feature in the OSPAR region. There are clear links between human activity and threat to Sabellaria spinulosa reefs, the most significant of which is physical damage caused by towed demersal trawling (Jones et al. 2000, Holt et al. 1998 and OSPAR, 2010). The impact of towed demersal gear is to break apart the worm tubes resulting in direct mortality (death) of the worms and in a reduction of the structure and complexity of the habitat which may no longer support the associated animals and plant communities (UK BAP 2000). One study (Volberg 2000) conducted off the coast of France and in the Wadden Sea challenges the view that all towed gears constitute a great risk to all Sabellaria spp. reef; however, the study findings relate exclusively to short-term effects following once-only disturbance and conclude that the possibility of impairment by shrimp trawling in the medium to long-term cannot be ruled out in the event of intensive fishing, despite the relatively light weight of the gear used⁵¹.

⁵⁰ See Sabellaria spinulosa Red risk audit:
www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/sabellaria.pdf

⁵¹ See Sabellaria spinulosa Red risk audit:
www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/sabellaria.pdf

The map below identifies the location of the *Sabellaria spinulosa* reef features within the SCI.



In describing the sectors affected only include a description of the sectors and why they are affected rather than giving any indication of the impact of your options on them (as you haven't described the options yet).

There are a number of sectors affected by this proposal specifically:

Fishing industry: The main vessels affected are beam trawlers which primarily include vessels landing into Lowestoft and Great Yarmouth. UK and Belgian vessels operate within the site targeting demersal species. All other Member State's vessels have access rights in the section of the SCI beyond the 1983 12nm limit. The majority of the UK vessels which operate within ICES area 35F1, 35F2, 34F1 and 34F2 are under 10 metres in length and are predominantly netters (28 vessels), longliners (10 vessels) and potters (22 vessels). There are occasional over 15 metre beam trawlers (4 vessels). The majority of foreign vessels which operate within the ICES area are over 15metre with the occasional under 10metre vessels. Other member state landings data is limited as the majority of these vessels do not land in the UK.

The main species landed are crabs, lobsters, cod, skates and rays, dogfish and bass. VMS from the over 15m fleet show limited activity within the SCI.

Note that the basis of the IA is the UK and therefore do not include international impacts in the main analysis, these can however be highlighted in text boxes or annexes.

International impacts

*Belgium vessels have access rights to fish for demersal fish in this area up to the 1983 6nm limit however, the majority of this catch is not landed in the UK. From dialogue with Belgian authorities and fishing industry representatives, during the pre-consultation for this proposed management measure, it was confirmed that bottom towed fishing activity is limited. As a result of the formal consultation the Belgian fishing industry representatives have highlighted the importance of the fishing grounds within the whole EMS but have not specifically identified if fishing activity occurs in the proposed prohibited areas. **It should be noted that impact assessments specifically deal with UK impacts and therefore this is for information only and the costs and benefits to international businesses is not included in the aggregate analysis.***

Local economies and society: The potential for social and economic costs to the UK local communities as a result of potential landings lost and resulting impact on the local fishery.

Enforcement bodies: The lead responsibility of enforcing any measures in the area would fall to MMO and therefore the additional enforcement cost would impact on MMO.

5. The options

- **All options need to be described including the 'do nothing' option.**

- In this section you should include all options considered, if there are options for which further analysis is not carried out, these should be set out here with an explanation as to why more detailed analysis wasn't carried out. For ease include options without further analysis at the end of the list of options so that when you analyse the costs and benefits you are comparing option 0 to options 1, 2 etc rather than to 3,4 to avoid confusion.
- All options are compared to option 0 which is the do nothing or do minimum option.
- In determining the most appropriate form of management to further the conservation objectives of an MCZ/EMS, the MMO/IFCA, following the Better Regulation Principles⁵², must consider voluntary measures before proceeding with a statutory measure such as a byelaw⁵³. This decision, and the reasoning behind it, should be detailed in the impact assessment. At any point during the byelaw making procedure, the MMO/IFCA may determine that a voluntary measure will further the conservation objectives of an MCZ/EMS and that a byelaw is no longer necessary.
- Note that this section describes the options, it should not include any costs or benefits associated with the options unless there is a cost so high that you describe it in the explanation as to why the option is discounted.

Example: As part of Defra's revised approach, the preferred management tools are MMO byelaws within 6 to 12nm, and for the MMO to lead the management of sites that straddle the 6nm boundary. Following discussions between the MMO and Eastern IFCA, it has been agreed that, a MMO byelaw will be used to manage the *Sabellaria spinulosa* reef feature within the 0 to 12nm.

Option 0: Do nothing: This option would not involve introducing any permanent management measure. This option would mean that risks to the site from damaging activities would not be addressed and that obligations under Defra's revised approach and Article 6 (2) of the Habitats Directive would not be met.

Option 1: MMO byelaw to prohibit bottom towed gears over *Sabellaria spinulosa* reef features with appropriate buffering ('zoned management').

Option 2: MMO byelaw prohibiting bottom towed gear throughout the SCI ('full site closure')

Prohibiting bottom towed gear throughout the whole Cape Bank part of the SCI is not necessary to achieve protection of the bedrock reef feature and would result in unnecessary economic loss for fishermen using other parts of the SCI. Therefore this option is not considered further.

⁵² Link to BRPs <https://www.gov.uk/government/publications/better-regulation-framework-manual>

⁵³ This is only the case if voluntary measures are cheaper than other options. A full description of the voluntary measures envisaged and how effective these will be in terms of risk mitigation.

Option 3: Management of activity through a statutory instrument, regulating order or fishing licence condition

These mechanisms for management are deemed to be not appropriate in this instance. MMO byelaw making powers as designated under the MaCAA are more appropriate because they are designed to be used to manage activity within marine protected areas providing the appropriate level of power, flexibility, consultation and speed.

Option 4: Voluntary agreement: *This option would involve the development of voluntary codes of practice to protect features. MMO has considered this option in light of Better Regulation Principles, which require that new regulation is introduced only as a last resort, and Defra's revised approach, under which there is an expectation that management measures will need to be regulatory in nature to ensure adequate protection is achieved. Defra's revised approach also requires measures to be implemented to address high risk (red) interactions between designated features and fishing gears by the end of December 2013. MMO considers that due to the need to protect features quickly, and the risk that even low levels of interaction could lead to deterioration of the feature, voluntary measures are not appropriate in this case.*

As options 2-4 are not suitable in this instance, option 1 is therefore considered in the costs and benefits analysis.

6 Analysis of costs and benefits⁵⁴

At the beginning of this section it is important that you set out any assumptions used, this should at a minimum include

- **State that the option analysed is compared to option 0.**
- **Price base year**
- **Present value base year**
- **Number of years analysis is carried out over**
- **Discount rate (3.5%)**
- **A description of key data used**

An example of a description of the key data used: Information used to assess the impacts of the proposed closure has been taken from:

- *Landings data for vessels from 2008 to 2011 taken from entered log book and sales note data provided by the MMO statistics*
- *Landings data to ICES rectangle level. Further analysis to estimate catch and estimated landings for EMS and reef/buffer area for UK and other member states (Tables 1 and 2)*
- *Information gathered from fishers during pre-consultation engagement June-August 2013 by MMO*

⁵⁴ UKFEN (2012) offers useful industry related guidance for financial and economic impact assessments.

- *Information gathered from stakeholders during MMO formal byelaw consultation, 10 September to 22 October 2013*
- *Local MMO and IFCA coastal officer's knowledge*

Average cost estimates have been based on landings values estimated within the SCI within ICES statistical rectangles 35F1, 35F2, 34F1 and 34F2 (See Figure 2). It is unknown what proportion of the total landings value was actually derived directly from the proposed closed area which makes up less than 0.25% of the four ICES statistical rectangles. The statistical data was produced using reported activity within the ICES rectangles that cover the defined SCI areas. The reported activity (quantity and value of landings along with details of gear involved) is taken from MMO Ifish database. See Annex A for further information on the methodology used and the statistic tables for this SCI.

The proposed prohibited area values have been derived by taking the values estimated within the SCI and applying a percentage based on the square area prohibited within the SCI itself. In most cases the square area of the proposed prohibited areas are relatively small compared to the SCI as a whole. Therefore, the estimation detailed should be used with caution will not indicate the true value attributed within the proposed prohibited area. It is also acknowledged that possible increased biodiversity around the reef means that it could be a relatively more abundant fishing ground, and the analysis may underestimate value of reduced fishing ground.

Information gathered from fishers and other stakeholders during the pre-consultation meetings has been used to support the evidence base and assumptions, with the caveat that it is anecdotal evidence only. The information gathered was opportunistic and is only a snapshot from the respondents available to provide comments on the day. The number of respondents reflects only those who independently came forth with the information rather than the number who necessarily agree or disagree with a statement.

Other member state landings data is limited as the majority of these vessels do not land in the UK. Some assumptions can be made from the over 15m other member state fleet through VMS received into the UK FMC, detailed in 7.4.

- *Landings data for vessels from 2008 to 2011 taken from entered log book and sales note data provided by MMO statistics*
- *Landings data to ICES rectangle level. Further analysis to estimate catch and estimated landings for the SCI and reef/buffer area for UK and other member states*
- *Information gathered from fishers during pre-consultation engagement, June-August 2013, by MMO coastal and IFCA coastal officer's knowledge*
- *Information gathered from stakeholders during MMO formal byelaw consultation, 10 September to 22 October 2013*
- *Local MMO and IFCA coastal officer's knowledge*

Costs and benefits should be defined in terms of those that are monetised and those that are not⁵⁵. It can be helpful to consider the costs and benefits in a matrix such as the following to ensure that all costs and benefits are described and then quantified and monetised as far as possible. You could have a table such as the one below describing all the costs and benefits and another which documents those that can be quantified.

Table 1: Monetised and non-monetised costs/benefits

	Costs			Benefit s		
	Industr y	Governme nt	Societ y	Industr y	Governme nt	Societ y
Environment al						
Economic						
Social						

The following are areas of costs and benefits that is helpful to consider and if relevant describe and then quantify and monetise if possible.

Administrative burdens:

- Costs associated with familiarisation, record keeping and reporting (inc. inspection)
- Essential costs of meeting policy objectives i.e. compliance costs
- Enforcement costs

Potential economic impacts, will proposals:

- Impact on the market and specifically consumers and businesses⁵⁶?
- Impact all businesses in the same way, or will there be some that benefit, while others bear costs?
- Displaced activities (such as fishing)?
- Impact the wider economy (e.g. labour market)?
- Impact competition? Will the number or range of suppliers be limited? Will their ability to compete be limited or the incentive to compete vigorously be reduced?

Potential social impacts⁵⁷, will proposals:

⁵⁵ Displacement should also be considered. If displacement costs can be monetised these should also be documented within the table. If not these should be noted in the non-monetised

⁵⁶ Impacts should be differentiated between impacts to fishers and related businesses. For example, the intervention may bring a potential reduction in demand for services such as fish processing, packaging, storage and transport, as well as a reduction in the demand for supplemental services such as vessel and gear maintenance. Some ports could be affected by reduction in landings and a decrease in income from fisheries. On the other hand, recreation and tourism (e.g., scuba diving) may benefit.

⁵⁷ For example: disappearance of traditional fishing communities or coastal communities located next to the no fishing area may be negatively impacted, socially and economically. More examples of social impacts can be found in MMO, 2013.

- Have an impact on social, wellbeing or health inequalities?
- Influence safety at work or risk of accidents in the community?
- Affect the rate of crime or crime prevention or create a new offence/opportunity for crime?
- Affect provision of facilities or services that support community cohesion or in other ways that affect the quality of life in the local community?
- Impact rural areas can be different to urban areas? Will there be specific regional or local effects?
- Impacts on human rights (right to life, liberty and security, a fair trial and prohibition of torture, slavery, forced labour)?
- Impact on the responsibilities under the Equality Act 2010 i.e. do they impact on age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

Potential environmental impacts, will proposals:

- Change the amount or variety of living species inside and outside of the protected areas?
- Change the amount, variety or quality of ecosystems?
- Lead to overfishing and habitat destruction in adjacent fished areas?
- Lead to change in the emission of greenhouse gases? This information is required to track performance against carbon budgets?
- Will proposals contribute to or mitigate climate change?

In addition consider issues around sustainable development for examples

- What is the distribution over time of the key monetised and non-monetised costs and benefits of your proposal?
- Are there any significant impacts which may disproportionately fall on future generations? If so, describe them briefly but proportionately.
- Are there any mitigating or compensatory actions that can be taken to reduce the environmental/social impacts over time? Provide details.

In terms of evidence, you should use the best available, where there is evidence make sure it is clearly referenced. Where evidence is weak be clear about why and what the uncertainties are, for example, in terms of area fished/effected if you only have the proportion of a much larger area be clear that is the case and state whether the quantification could be an over or underestimation and why. It is important in this section that you are clear about what you do and do not know. This also provides a good opportunity to highlight key evidence weaknesses/gaps for which you can ask specific questions around as part of the consultation.

In terms of the technical presentation of the monetised information, in addition to total cost and benefits, you should present values in terms of net present value (NPV). This is a policy's total costs and benefits using:

- Appraisal period: the standard period is 10 years – if it is different to this, the rationale must be clearly stated

- **Discount rate:** this compares the costs and benefits across different time period, is a separate concept inflation, is based on principle that generally, people prefer to receive goods and services now vs. later and the discount rate over 10 years is 3.5% per year (see green book for discount rate over 30 years if needed).

In order to calculate NPVs you can use the Impact Assessment calculator⁵⁸, the guidance in the HMT green book⁵⁹ or the spreadsheet tool accompanying this guidance

At the end of the costs and benefits section it is also good practise to add a section on uncertainty where you can discuss weaknesses in analysis and show how the costs and benefits may change if key assumptions were altered (this is called sensitivity analysis), for example you could change the number of businesses effected, the costs to the businesses etc.

Costs for recommended option

The prohibition of bottom towed gear in the proposed area would result in the following costs:

- *Direct cost to the fishing industry from reduced fishing grounds*
- *Costs to the fishing industry associated with displacement to other fishing grounds*
- *Potential environmental impacts related to possible increased damage to habitats on other areas due to displacement*
- *Costs to the MMO for the administrative and enforcement of management*

Costs to the fishing industry, including potential displacement costs, and administrative and enforcement costs to the MMO can be monetised and these estimated values have been collated and presented as part of this impact assessment (Tables 1 and 2 below). Environmental costs due to possible increased damage of habitats are difficult to value and are therefore described here as non-monetised costs.

Valuation of affected landings

UK: *The direct impact on fishing vessels would be a reduction in catch and therefore landings from bottom towed gear in the proposed prohibited area. In order to estimate potential impacts, landings data collated by the MMO was analysed.*

Calculation of affected landings from ICES rectangle area 35F1, 35F2, 34F1 and 34F2 (for the UK vessels identified as fishing in the area since January 2008) is shown in Table 2. Estimates in Table 2 are based on average landings from January 2008 to December 2011.

⁵⁸ <https://www.gov.uk/government/publications/impact-assessment-calculator--3>

⁵⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

Table 2: UK landings from ICES area 35F1, 35F2, 34F1 and 34F2 as an average per year and estimated average landings within the EMS (January 2008 – December 2011)

Gear Type	Landed weight (tonnes)	Value within 35F1, 35F2, 34F1 and 34F2 (£)	Value within EMS (£)	New Value within prohibited area (0.25% of EMS) (£)
<i>Beam trawlers</i>	127	336,914	32,175.29	80.44
<i>Dredgers</i>	601	1,548	147.84	0.37
<i>Nephrop trawl</i>	1	1,643	156.90	0.40
<i>Other demersal trawlers</i>	57	26,799	2,559.30	6.40
Total	786	366,904	35,039.33	87.61

Estimated values of landings within the SCI have been calculated by associating available landings data (provided by each fishing vessel at ICES rectangle level) with fishing vessel activity data (based on VMS reports) within the SCI. This approach applies a proportion of the landings for each ICES rectangle to the SCI, based on the level of activity within the SCI.

For the Haisborough, Hammond and Winterton SCI, landings data for the ICES rectangles (35F1, 35F2, 34F1 and 34F2⁶⁰) were used, and were categorised by size of vessel (over 15 metre vessels, 10 to 15 metre vessels and under 10 metre vessels).

Landings values from within the proposed prohibited area were then estimated as a proportion, (based on the size of the respective areas) of the estimated value from within the SCI.

It is estimated that average annual income for the over 15 metre beam trawling fleets from the ICES rectangles is £323,155. For the under 10 metre fleet, the gear type that will mainly impact will be on vessels using demersal trawls, which have an estimated average annual income of £228.

*It has been estimated that within the proposed prohibited area (which is **0.25%** of the area of SCI) the total loss in landings would be **£87.61**. Please refer to Annex A for further description on methodology.*

The estimated total cost is likely to be an overestimation as no displacement has been assumed.

⁶⁰ Note: due to the limited data and limited VMS data estimations are not possible within the specific EMS.

As the estimated loss of landings is low and it is expected that the impact on the UK fishing fleet from this prohibition will be limited. There is occasional bottom towed gear activity at low levels by under 15 metre vessels mainly based in East Anglia. This was indicated during MMO pre-consultation meetings and with MMO coastal staff.

Belgium

From the analysis of VMS data, Belgian fishing activity in ICES rectangles 34F1, 34F2, 35F1 and 35F2 occurs beyond the 12 nm portion of the SCI itself. In 2012, 6 Belgian vessels operated in this part SCI, no VMS activity was record in the vicinity of the proposed prohibited areas. The Belgian Fishery primarily target Sole and Plaice in this area.

Using the methodology referred in Annex B “Analysis of NON-UK Vessels in ICES rectangles”, it has been estimated that in 2012: The quantity of tonnes landed from Belgian activity within the SCI is estimated at 5.73 tonnes. This equates to a value estimated at £15,858

However, the fact that the prohibited area equates to only 0.25% of the site, and no VMS activity was reported in the vicinity of these, the actual estimated loss is considered to be very small. Please refer to

Adaptability

In order to assess the likely effects of the proposed closure on fishing activities, the extent to which vessels would be able to maintain the value of the catch by moving effort to other areas needs to be assessed.

Fishers were asked to complete a questionnaire to inform this assessment and were asked directly as to the degree of displacement incurred to other areas as a result of the proposed closure, and their ability to fish on alternative grounds and adapt in order to maintain catch value. The majority of affected fishers stated that they could not change fishing grounds or gear type but as this proposed option will only limit fishing activity over the reefs and standard buffer zone the potential for displacement will be minimal.

As a result of introducing option 1 (a specified prohibited area byelaw containing two prohibited areas) rather than closing the whole site, the level of displacement from vessels using bottom towed gear will be minimised. It is envisaged that proof of advances in gear technology and impact on sensitive features will be considered during the amber/green process.

Administrative and enforcement costs

The MMO will undertake intelligence led, risk based enforcement approach as adopted by a number of regulatory bodies across government in accordance with the National Intelligence Model⁶¹. Where intelligence suggests non compliance or a risk of non compliance we will develop an enforcement strategy specific to the needs of the MPA and where necessary deploy resources accordingly. This may include a

⁶¹ www.marinemanagement.org.uk/about/documents/risk-based-enforcement.pdf

Navy presence, aerial surveillance or joint operations with other agencies (for example the IFCAs, UK Border force or EA). The MMO would coordinate any joint operations. The principals by which the MMO will regulate MPAs are set out by the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code and aim to ensure that the MMO is proportionate, accountable, consistent, transparent and targeted in any enforcement action it takes⁶².

The enforcement of the proposed byelaw will be met within the current budget. The EU VMS will be used as a management tool for sea and air enforcement of over 12m vessels. As a result of the low fishing activity within the inshore part of the site (within 12nm) the risk of non-compliance will be minimal or low risk. Table 3 highlights the estimated enforcement costs for the management of this preferred option.

Table 3: Annual additional costs of enforcement of recommended option⁶³

Activity	Cost per unit (£)	Estimated number of units per year	Total cost per year (£)
<i>Royal Navy Surface surveillance per site</i>	<i>£ 4,000 per day</i>	<i>1</i>	<i>£4,000</i>
<i>Joint enforcement patrols with local IFCA per site</i>	<i>Between £800-1,000 per day</i>	<i>5</i>	<i>£4,000-5,000</i>
<i>Aerial surveillance per site</i>	<i>£ 2,050 per hour</i>	<i>2</i>	<i>£4,100</i>
<i>Investigations/prosecutions per site</i>	<i>£10,375 per case</i>	<i>1</i>	<i>£10,375</i>
Total		9	22,475 – 23,475

Indirect costs: *For the recommended option, there will be minimal potential for increased costs in terms of fuel costs for vessels travelling further afield to access alternative fishing grounds, as other fishing grounds are easily accessible. There is potential for increased fishing effort outside of the spatially prohibited areas which could have an effect on biodiversity and habitats (Rees et al, 2013).*

Table 4: Annual profile of monetised costs of recommended option- (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
<i>Transition cost</i>	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
<i>Annual recurring</i>	0.022	0.022	0.022	0.022	0.022	0.022	0.022	0.022	0.022	0.022

⁶² www.marinemanagement.org.uk/about/documents/compliance_enforcement.pdf

⁶³ Enforcement cost estimates from original submission for Defra's revised approach to minister.

cost – Best estimate										
Low	0.022	0.022	0.022	0.022	0.022	0.022	0.022	0.022	0.022	0.022
High	0.023	0.023	0.023	0.023	0.023	0.023	0.023	0.023	0.023	0.023
Total present value of annual costs*:										£0.2m
*For the estimation the Impact Assessment Calculator (https://www.gov.uk/government/publications/impact-assessment-calculator--3) was used considering a 3.5% discount rate, a 10 years appraisal period and 2013 as the price and present value base year.										

Benefits of recommended option

The exclusion of bottom towed gear from the proposed prohibited areas would prevent the use of bottom towed gear over the Sabellaria spinulosa reef features and result in environmental benefits of maintaining or restoring Sabellaria spinulosa reef habitats. It is not possible to quantify and monetise these benefits and therefore they are described here.

The Sabellaria spinulosa reefs provide an important hard substrate within a predominately soft-sediment environment, which provides unique refuge for certain species. Biogenic reefs increase habitat heterogeneity and offer associated species a surface for attachment (e.g. tubeworms, hydroids, bryozoans, sponges and ascidians), and a place to escape from predation (Bruno & Bertness, 2001)².

Sabellaria spinulosa reefs also provide some degree of coastal protection and are important areas for nutrient cycling, carbon and nitrogen fixing and sediment stabilisation.

A protected reef habitat is a natural refuge for creating populations of targeted and by catch species.

The benefits of this byelaw are to afford appropriate protection and a safeguarding of the ecological characteristics that can possibly lead to more abundance of biodiversity compared to the rest of the fishing grounds. The environmental benefits from the introduction of this byelaw will be significant as it will protect the Sabellaria spinulosa reef features within the site from bottom towed gear. This will contribute to meeting the 'maintain or restore' conservation objective. This will have an added benefit on other features within the SCI and will have an overall benefit to the reef habitat as a result of the prohibition recommended.

In addition to environmental benefits there is potential for socio-economic benefits⁶⁴. There is a possibility that that the maintained or restore condition of the Sabellaria

⁶⁴ EVRI and MESP initiatives are useful inventories of valuation studies. If an attempt is made to transfer values, Eftac (2010) provides useful guidelines. In addition, DECC (2011) can be consulted for carbon estimates.

spinulosa reef features and habitat may increase the attraction for recreational users, including divers and anglers (Rees et al, 2013⁶⁵; Chae et al, 2012⁶⁶). This could also increase tourism to the area and therefore increase spending in local businesses (Rees et al, 2013). Implementing a zoned approach to management rather than closing the whole site limits the displacement of vessels operating bottom towed gear.

Net impact of option 1

Here you should set out an overall summary of the analysis, ideally this should be in a table which sets out the NPVs and average annual figures that you will use on the cover sheets. Note that a positive NPV occurs where benefits are greater than costs and a negative NPV occurs where benefits are lower than costs.

	Average Annual	Total	Present Value
Costs			
Benefits			
Net impact			

One In Two Out (OITO)

OITO is not applicable for byelaws implemented for MPA management as they are local government byelaws introducing local regulation and therefore not subject to central government processes.

Small firms impact test and competition assessment

No firms are exempt from this byelaw as it applies to all firms who use the area, it does not have a disproportionate impact on small firms. It also has no impact on competition as it applies equally to all businesses that utilise the area.

Conclusion

In this section you should state your preferred option and the rationale behind that decision.

Recommended option: MMO byelaw to prohibit bottom towed gears over the *Sabellaria spinulosa* reef features with appropriate buffering ('zoned management').

<https://www.evri.ca/Other/AboutEVRI.aspx>

<http://www.marineecosystems-services.org/>

⁶⁵ Rees, S.E., Attrill, M.J., Austen, M.C., Mangi, S.C., Rodwell, L.D (2013). A thematic cost-benefit analysis of a marine protected area. *Journal of Environment management*, 114, 476 – 485.

⁶⁶ Chae, D., Wattage, P., Pascoe, S. (2012). Recreational benefits from marine protected area: A travel cost analysis of Lundy. *Tourism Management*, 33, 971 – 977.

This option is recommended because it is the most cost effective option. MMO is the most appropriate authority to take forward fisheries management measures between 0 and 12nm. The boundary of the proposed prohibited areas were determined taking into account the best available existing evidence of the extent of the features as well as the need for a 'buffer zone' between the features and the byelaw boundary. Ease of enforcement and the need to have clear demarcation to promote compliance was also taken into account when considering the shape of the prohibited area.

Annex A: Policy and Planning

The MMO/IFCAs are required under the Marine and Coastal Access Act 2009 (MCCA) to make its decisions in accordance with the marine plans. Specifically it is a legal duty under Section 58 (1) Marine and Coastal Access Act for all public authorities (of which the MMO is one) taking authorisation or enforcement decisions to make them in accordance with the appropriate marine policy documents. In the East plan areas these are the East Inshore and East Offshore marine plans and the Marine Policy Statement (MPS) unless relevant considerations indicate otherwise.

Section 58 (2) of MCAA states that where an authorisation or enforcement decision is not taken in accordance with the appropriate marine policy documents, a public authority must state its reasons for doing so.

It is important in that case that the IA documents decisions made in accordance with the marine plans and/or marine policy documents.

Which marine plan area is the MPA and management measure in?

Have you assessed whether the decision on this MPA management measure is in accordance with the Marine Policy Statement and any relevant marine plan?

- Yes/No.

If so, please give details of the assessments completed:

- Which policies support this management measure and which policies this management measure may not comply with. For the latter, the assessor will be asked to explain the case for proceeding.
- The assessment must not consider the marine plan policies in isolation but all policies where relevant.
- Where an assessment takes place in a marine plan area that does not have an adopted marine plan consideration must be given to the MPS in the assessment.

Appendix 1: References/useful tools

- Better Regulation Framework Manual:
<https://www.gov.uk/government/publications/better-regulation-framework-manual>
- Impact Assessment calculator:
<https://www.gov.uk/government/publications/impact-assessment-calculator--3>
- Green Book & supplementary guidance:
<https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>
- GDP deflators:
<https://www.gov.uk/government/publications/gdp-deflators-at-market-prices-and-money-gdp-march-2013>
- Regional MCZ project IA materials (with guidance on assessing sector specific impacts):
<http://publications.naturalengland.org.uk/publication/2071071?category=1730361>

Other industry related guidance:

- UKFEN, 2012. Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments.

Social impacts guidance:

- MMO, 2013. Social impacts of fisheries, aquaculture, recreation, tourism and marine protected areas (MPAs) in marine plan areas in England. MMO 1035. <http://www.marinemanagement.org.uk/evidence/documents/1035.pdf>
- Rees, S.E., Attrill, M.J, Austen, M.C, Mangi, S.C., Rodwell, L.D (2013). A thematic cost-benefit analysis of a marine protected area. Journal of Environment management, 114, 476 – 485.¹
- Chae, D., Wattage, P., Pascoe, S (2012). Recreational benefits from marine protected area: A travel cost analysis of Lundy. Tourism Management, 33, 971 – 977.

Sources of environmental valuation studies:

- Environmental Valuation Reference Inventory

<https://www.evri.ca/Other/AboutEVRI.aspx>

- Marine Ecosystem Services Partnership (MESP)
<http://www.marineecosystems-services.org/>
- DECC, 2011. A brief guide to the carbon valuation methodology for UK policy appraisal. October, 2011.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48184/3136-guide-carbon-valuation-methodology.pdf

Benefit Transfer guidance:

- Eftic, 2010. Valuing Environmental Impacts: Practical Guidelines for the Use of Value Transfer in Policy and Project Appraisal.

Annex 4 IFCA Byelaw QA and Confirmation Process Review: IFCA Consultation Templates

This questionnaire provides an opportunity for you to provide feedback on your experiences of the IFCA byelaw making process in relation to the MMO and Defra Quality Assurance (QA) and Confirmation process.

We are particularly interested to learn more about your experiences of interactions with the MMO and Defra during the following three stages of the Quality Assurance and Confirmation process:

- A. MMO Informal review
- B. MMO Quality Assurance
- C. Defra confirmation

In responding to the questions, where appropriate, please use the numbering in Figure 1 below (or Stages A-C listed above if more appropriate) to provide cross-references to the relevant stages in the process.

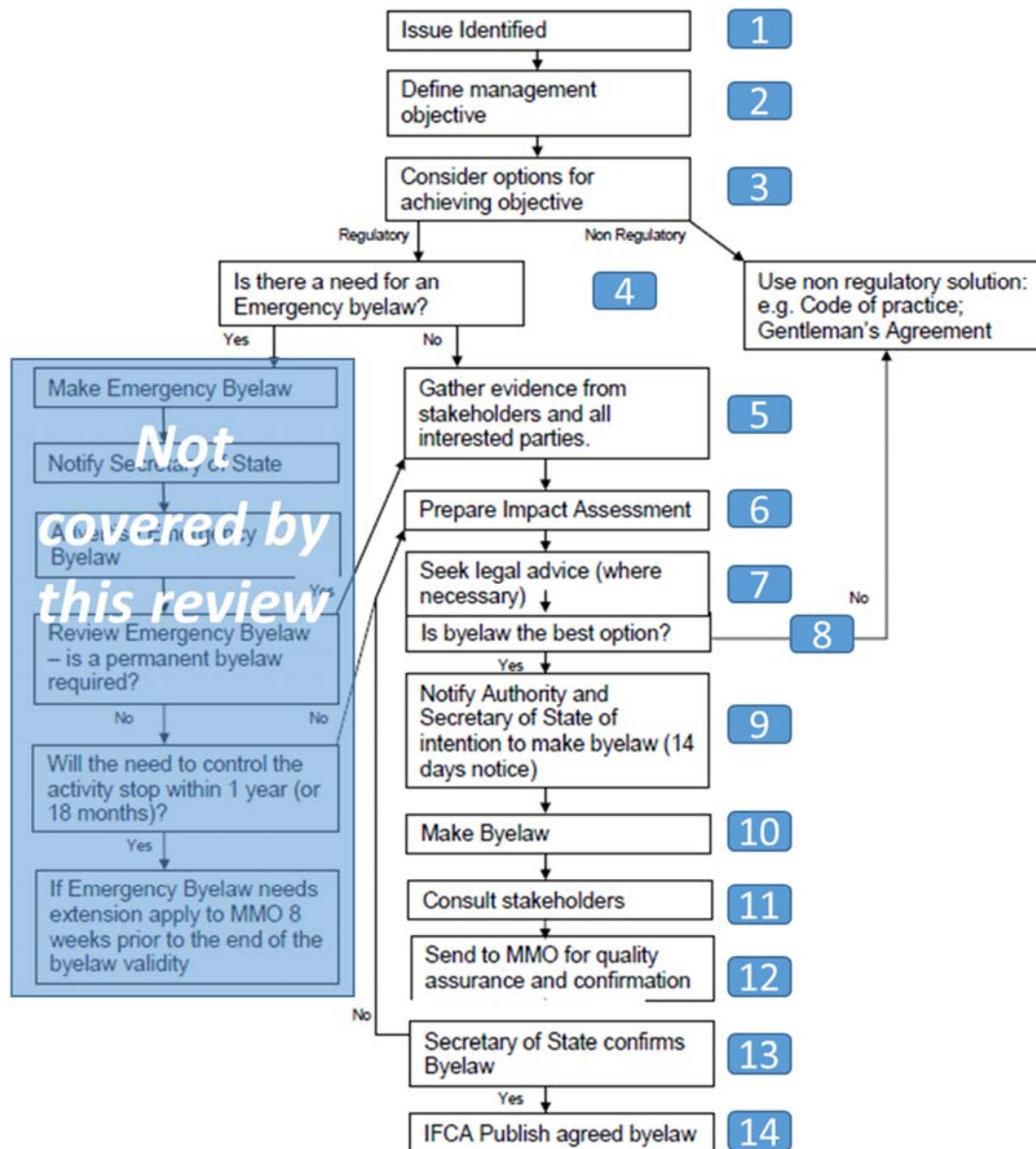


Figure 3 IFCA Byelaw process, taken from Defra IFCA Byelaw Guidance

Please try to include all staff involved in the process in this consultation.

You may provide feedback as one combined IFCA response, or separately for each staff member involved in the process within your organisation.

IFCA Questionnaire

Contact Information	
Name:	Email address:
Organisation:	Telephone Number:
Role:	

Part A: Experience of the IFCA Byelaw making QA and Confirmation process

The following questions explore your general experiences of IFCA Byelaw making QA and Confirmation process.

1. Do you experience any problems during the byelaw making QA and confirmation process? If so, at which stages do issues arise?			
Problem Reference #	Process Stage # or letter	Details	Specific Byelaw Examples
1.	<i>e.g. Stage 5</i>	<i>Please provide a brief explanation of the problem and how frequently this issue has arisen</i>	<i>Please provide examples i.e. for which byelaws this problem was experienced</i>
2.			
3			
4		<i>Add rows as necessary</i>	

2. Out of the above issues, which of these has/have the most significant impact on:	Problem Ref #/s	Additional comments
Staff capacity & time	<i>e.g. 4 & 3</i>	
Funding resources (i.e. non-staff-time related costs)	<i>e.g. 1</i>	
Relationships with stakeholders		
Other factors? <i>Please specify here:</i>		
<i>Add rows as necessary</i>		

3. Out of the above issues, do you have ideas/suggestions for how they could be alleviated?	Problem Ref #/##s	Ideas/suggestions

4. Which stages of the byelaw making QA and Confirmation process currently work well?		
Process Stage # or letter	Details	Specific Byelaw Examples
<i>e.g. Stage #</i>	<i>Details: Please provide a brief explanation of the problem</i>	<i>Please provide examples i.e. for which byelaws this problem was experienced</i>

5. In general how satisfied are you with the MMO informal review process? Please mark your response with an X.				
Very satisfied	Somewhat satisfied	Neither satisfied nor dissatisfied	Somewhat dissatisfied	Very dissatisfied

6. In general how satisfied are you with the MMO QA process? Please mark your response with an X.

Very satisfied	Somewhat satisfied	Neither satisfied nor dissatisfied	Somewhat dissatisfied	Very dissatisfied

7. In general how satisfied are you with the Defra confirmation process? Please mark your response with an X.

Very satisfied	Somewhat satisfied	Neither satisfied nor dissatisfied	Somewhat dissatisfied	Very dissatisfied

8. Do you have any other general comments on the QA and confirmation process or suggestion for how this process could be improved, modified or streamlined?

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Part B: Interactions with MMO, Defra and other stakeholders

The following questions explore your interactions with MMO, Defra and other stakeholders in the byelaw making process. Please mark X for respective interactions.

9. At which stages of the byelaw making process do you usually interact/consult with:										
Process Stage #	Stakeholders	Natural England	IFCA Legal Advisors	IFCA Committee	MMO	MMO Legal Advisors	Defra	Defra Legal Advisors	Other (Please specify)	Additional Comments
1	e.g. X			X						
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										

10. Are there any stages in the process where you would like to have more / less interaction with or support from the MMO?	Process stage Ref #/##s	Please provide details/explain why:

11. Are there any stages in the process where you would like to have more / less interaction with or support from Defra?	Process stage Ref #/##s	Please provide details/explain why:

12. Are there any stages in the process where you would like to have more / less interaction with or support from Legal Advisors?	Process stage Ref #/##s	Please provide details/explain why:

13. Do you have any other general comments on interactions with the MMO, Defra or other stakeholders during the byelaw making process or suggestion for how these interactions could be improved, modified or streamlined?

Part C: Guidance documents

The following questions explore your experience of the guidance documents available for carrying out the byelaw making process.

14. Which of the following documents do you usually refer to during the byelaw making process?	Referred to? Y/N
Marine and Coastal Access Act (2009)	
Defra IFCA Byelaw Guidance	
20130514 IA framework with examples	
BIT_Impact_Assessment_Calculator_2017_07_July	
Guide to making legislation (e.g. Chapter 14 on Impact assessment)	
Impact Assessment Guidance	
Guidance to IFCA's on evidence-based marine management	
Guidance to Inshore Fisheries and Conservation Authorities on monitoring and evaluation, and measuring performance	
Guidance to Inshore Fisheries and Conservation Authorities on their contribution to the achievement of sustainable development	
Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments	
Economic Impact Assessments of Spatial Interventions on Commercial Fishing: Guidance for Practitioners Second Edition	
Please detail any other documents you use as guidance during the process:	

15. Do you have sufficient guidance / reference material for the byelaw making process?	
16. If not, please explain how the guidance documents are lacking for the respective stage of the process?	
17. Is training provided for the byelaw making process?	

18. Are there stages in the byelaw making process where you feel additional training would be beneficial?	
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19. How satisfied are you with the guidance / reference material for IFCA byelaw making? Please mark your response with an X.				
Very satisfied	Somewhat satisfied	Neither satisfied nor dissatisfied	Somewhat dissatisfied	Very dissatisfied

20. Do you have any other general comments on Guidance documents currently available for the byelaw making process or suggestions for how these could be improved, modified or streamlined?

Part D: Experience of the byelaw making process overall

The following questions explore your interpretation and approach to some specific parts of the IFCA byelaw making process and general feedback on the process overall.

21. What do you believe the role of the Impact Assessment should be in the process?				
22. Who completes the Impact Assessment within your organisation?				
23. At what stage in the process do you usually begin the Impact Assessment?				
24. At what stage in the process do you usually complete/finalise the Impact Assessment?				
25. Who usually drafts the byelaw within your organisation?				
26. At what stages of the process do you carry out internal quality control of the IFCA byelaw making process and who does this?				
27. How satisfied are you with the byelaw making process overall? Please mark your response with an X.				
Very satisfied	Somewhat satisfied	Neither satisfied nor dissatisfied	Somewhat dissatisfied	Very dissatisfied

28. Do you have any other general comments on the byelaw making process in general or suggestion for how the process could be improved, modified or streamlined?