



**Regulation & Compliance
Sub-Committee Meeting**

To be held at:

**EIFCA Offices, 6 North Lynn Business Village
Bergen Way, King's Lynn, PE30 2JG**

**Wednesday
24th February 2016
1300 hours**

Meeting: **Regulation and Compliance Sub-Committee**
Date: 24 February 2016
Time: 13:00
Venue: Eastern IFCA office, Kings Lynn



"Eastern Inshore Fisheries and Conservation Authority will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry."

- 1 Welcome - *Chair*
- 2 Declaration of members' interests - *Chair*

Action Items

- 3 Minutes of the Regulation & Compliance Sub-Committee meeting on 17th November 2015 - *Chair*
- 4 Matters Arising - *Clerk*
- 5 Whelk management - *Acting CEO / Staff Officer*
- 6 Application and Saving Byelaw - *Acting CEO / Staff Officer*
- 7 Protected Area Byelaw review - *Acting CEO / Staff Officer*

Information Items

- 8 Any other urgent business
To consider any other items which the Chair is of the opinion are matters of urgency by reason of special circumstances which must be specified

Julian Gregory
Acting Chief Executive Officer
9th February 2016

Regulation & Compliance Sub-Committee

"EIFCA will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economical benefits to ensure healthy seas, sustainable fisheries and a viable industry".



A meeting of the Regulation & Compliance Sub-Committee took place at Eastern IFCA offices in King's Lynn on 17th November 2015 at 1030 hours

Members Present:

Mr Tom Pinborough	Chair	MMO Appointee
Cllr Peter Byatt		Suffolk County Council
Cllr Hilary Cox		Norfolk County Council
Mr John Davies		MMO Appointee
Mr Conor Donnelly		NE Representative
Mr Paul Garnett		MMO Appointee
Mr Ceri Morgan		MMO Appointee
Mr Rob Spray		MMO Appointee
Mr Stephen Williamson		MMO Appointee

Eastern IFCA Officers Present:

Frances Burrows	Environment Officer
Luke Godwin	Marine Protection Project Officer
Julian Gregory	Acting CEO
Ron Jessop	Senior Research Officer
Simon Lee	Senior IFCO (Compliance)
Judith Stoutt	Senior Marine Environment Officer

R&C15/01 Welcome by the Chair

Members were welcomed to the meeting prior to proceedings beginning at 1030 hours. The Chair advised members that items 6, 7 & 8 would be going for full public consultation and EIFCA would be duty bound to respond to all concerns.

R&C15/02 Apologies for Absence

Apologies for absence were received from Mr Hirst (EA Representative) and Mr Stipetic (MMO Representative).

R&C15/03 Declaration of Members Interests

Messrs Davies and Williamson reiterated the Declarations of Interest which were already recorded by the Authority.

R&C15/04 Minutes of the Regulation & Compliance Sub-Committee meeting on 25th November 2014

The Minutes were accepted as a true record of proceedings.

R&C15/05 Matters Arising

There were no matters arising.

R&C15/06 EIFCA Regulations : plan of works

The Project Officer advised members that moving forward there was a lot of work to complete. He gave members a brief resume of the workstreams being undertaken. Amongst these were the transition from a temporary Whelk byelaw to a permanent version, introduction of shrimp management measures plus the inclusion of a recently adopted area of

sabellaria which would most likely involve the revoking of the current byelaw for it to be rewritten to include the Inner Dowsing.

Members were advised that partially due to the activities during the current cockle fishery the WFO 1992 was in need of an overhaul which would allow new management measures to be put in place. Hopefully this would be achieved in time for the next fishery.

The Byelaw review was an on-going process. The initial phase was to tidy up and review existing byelaws. It was noted that previously private fisheries had not been subject to the guidance of EIFCA byelaws however if these private fisheries occur in MPAs they must now comply with the relevant byelaws, this may result in a need for additional management measures.

iVMS was a tool which some IFCA's were already implementing through their byelaw process, hopefully the introduction of iVMS would assist in both management and enforcement issues.

With so many work streams to complete officers were conscious that not everything could be done at once and therefore looked to members to provide guidance on which projects should be given priority.

Mr Williamson expressed his concern that the money being received by IFCA had increased considerably in the last 15 years but it seemed EIFCA were constantly claiming there was no funding to carry out work being requested, such as investigating shrimp technology. He felt there was no concern being put into keeping the fishermen working, the shrimp regulations being suggested could be the death knell for Wash fishermen particularly as they no longer have a mussel fishery. He really hoped the shrimp technology study could be prioritised.

The Acting CEO felt this discussion was better had under a later agenda item, but added that it was not his understanding that the proposed shrimp management measures would have the impact being described.

The Chair acknowledged the point being made but added that protecting MPAs was a European requirement with a threat of very high fines if the regulations are not adhered to. Mr Williamson accepted the threat from Europe was colossal but felt the Authority were morally making the wrong decision.

The Chair advised members that the byelaw making process could take 9-12 months to complete, prior to completion there was the need to informally gather data, consult, collate data from the consultation, report to the authority for ratification, then apply to the MMO and Defra. The Deadline for byelaw review was April 2016 and currently the officers were at the stage of consulting the industry.

Mr Garnett queried whether the process would allow for a second round of consultation once the data collected from the first round had been collated.

At this point Connor Donnelly arrived.

The Acting CEO advised the debate at this meeting was the first stage, after which the industry would be consulted.

He also advised that the WFO consultation would have a deadline of June which would hopefully be in time for the next fishery, however, if it was necessary to open the fishery early due to a risk from atypical mortality then any new management measure would be applied to the following fishery.

Members Resolved to note the current work streams regarding Eastern IFCA regulation and to Agree to implement the plan of works as prioritised in the meeting papers.

Proposed: Mr Spray

Seconded: Cllr Cox

All Agreed

R&C15/07 Byelaw Review Update

The Project Officer advised members that initially the byelaws inherited from North Eastern IFCA, which applied to the extended area of the district, would be reviewed. Any redundant or duplicate byelaws would be revoked, four had been identified as applicable and would be retained, these were Trawling Prohibition Exceptions, Shrimp and Prawn Fishing, Fixed Engine Byelaw and Humber Estuary cockle fishery byelaw. In addition there was a proposal for a new byelaw to extend the application of all EIFCA byelaws to cover the whole of the district.

As previously noted there was now the conflict with private fisheries which had come about under the Marine and Coastal Access Act, the legality of which had been confirmed by both the Authority's solicitors and Defra. The Environment team were in the process of reviewing the impact of these fisheries within the MPA and until this work was complete it was intended to maintain the status quo.

Members were advised that the future approach to byelaws would essentially be through a permitting scheme, which it was felt would provide a more streamlined approach to regulation and allow for more dynamic fisheries.

Members Resolved to

- **Note the review of those byelaws inherited by EIFCA from North Eastern Sea Fisheries Committee;**
- **Note the conclusions of the associated Impact Assessment;**
- **Agree to make the new Applications and Exemptions byelaw;**
- **Direct Officers to conduct a formal consultation on the Eastern IFCA Application and Exemptions Byelaw;**
- **Agree to endorse policy relating to the enforcement of byelaws within private fisheries within marine protected areas;**
- **Note the new regulatory approach in the form of permitting measures**

Proposed: Mr Morgan

Seconded: Mr Donnelly

All Agreed

R&C15/08 Whelk Management

Members were advised there was a need to formalise the temporary whelk byelaw and to consider putting forward a permitting byelaw. It was emphasised that each species would still require formal consultation before it became subject to a permit.

The Project Officer gave a presentation on why and how the proposed management measures had been developed.

It was felt that whelks did not reach maturity until they were greater in length than 45mm, consequently they were biologically vulnerable to over fishing. Officers did not believe the species would survive without regulation and there was a need to provide a long term sustainable fishery. Informal consultation had been undertaken, which had produced a very poor return and not much data to analyse.

The proposed pot limitation – suggested maximum 500 pots – remained a bone of contention with larger vessel owners wanting more and smaller vessel owners believing 500 was too many. EIFCA were aware limiting pots to 500 would have a disproportional impact on larger vessels, but it was necessary to apply the precautionary principle where exact data was not available.

It was proposed to slightly amend the gear marking requirement as it was only necessary for fishers to mark the gear so that other fishers were aware it was there.

Members were advised the objective of this regulation was to prevent the removal of pre-spawning individuals, collection of data, effective management & enforcement and cost recovery.

The new permitting mechanism was considered, by officers, to provide a means of making inshore fisheries dynamic, allowing management through permits with conditions attached. It was again reiterated that the initial permitting scheme would be for whelks and any other species would have to go through a full byelaw process before they could be part of the permitting scheme.

The Acting CEO reminded members that the Whelk byelaw had been debated at the full Authority meeting in April, the requirement at this meeting was to put it into place on a permanent basis. Pot limitation could be varied when more information was available.

The Chair advised this permitting byelaw was a similar principle to the Regulatory Notice byelaw already in place so there was already a precedent in place.

Mr Williamson advised that fishermen were concerned the cockle fishery would have the permitting regulation applied to it and licence entitlements would be lost. The Acting CEO advised there was no current thinking that would change the management of the cockle fishery. Any debate would be had when the Wash Fishery Order 1992 was reviewed.

Mr Williamson also requested that whelk fishing vessels with a history of fishing in the area be given a dispensation to work 750 pots – the Chair advised this was a point which could be included in consultation responses.

Mr Davies advised that he had not received any correspondence with regard to whelk consultation, but he believed the industry were reasonably happy but there was concern re the MLS as nobody measures a whelk as they come in various shapes and sizes, they were however, happy with the riddle size. There was also concern with escape holes and a belief they do

not work, otherwise smaller whelks would not be retained. Again the Chair advised this information should be captured in a consultation response. The Acting CEO advised that when inspections were being made the riddle size would be looked at to ensure the fisher was making an effort to comply, the MLS would then be reviewed and in the event of retention of undersize a percentage would be considered. However, when questioned he was not able to advise what percentage would be acceptable, only that 20% would not be acceptable.

Mr Garnett advised that it some percentage of undersize whelks was expected this should be explicit in the regulation that some percentage would be acceptable. The Acting CEO advised the Enforcement Strategy was about being proportionate and sensible, but it was not possible to cater for every circumstance.

The Chair advised that under the permitting scheme there would be flexibility to review management measures if necessary.

Noting there had previously been a poor response to consultation, Cllr Byatt questioned how the consultation process was carried out.

The Project officer advised that previously for informal consultation over 250 letters had been sent out as well as meetings being held and officers advising fishers when they have seen them on the quayside. Formal consultation would take place under Defra guidance which included two consecutive weeks in a newspaper after which there would be a 28 day consultation period. This would be supplemented with information on the EIFCA website and letters.

The Chair advised that the Permitting Byelaw would need additional advertising as it needed to reach all stakeholders. He did not feel two weeks in the Fishing News would cover all sectors and suggested a public notice in the East Anglian Daily Times or somewhere similar. The Acting CEO advised there would be a cost implication to this.

Members Resolved to:

- **Note the results of the informal consultation with regards to the permanent Whelk management measures;**
- **Note the proposed approach to managing fisheries;**
- **Agree to the proposed management measures for whelk fisheries;**
- **Note the conclusions of the associated draft Impact Assessment;**
- **Agree to make the Proposed Eastern IFCA Permitting Byelaw and the proposed Eastern IFCA Whelk Byelaw;**
- **Direct Officers to conduct a formal consultation on the Eastern IFCA Permitting Byelaw and the Eastern IFCA Whelk Byelaw.**

Proposed: Cllr Cox

Seconded: Mr Spray

With 1 abstention the Resolution was carried.

R&C15/09 Shrimp management in the Wash and North Norfolk Coast EMS

Members were advised that shrimp trawling was potentially having an effect on sub-tidal mixed sediment and sub-tidal mud. It was believed shrimping had a significant footprint in the site and was attributing to the adverse effect. As EIFCA have a responsibility to protect the feature management options were considered and a list of 7 potential options was compiled.

Although members were provided with the list of options it was suggested by officers that option 3 would be the preferred option. This included a closure to fishing in areas deeper than 10m, with potential closures in shallower areas to protect mud.

There was concern about the extent of the area being closed as 19.3% of the area was over 10m in depth, with a buffer zone and additional closures to protect mud it would mean a large area where shrimp trawling could not take place, and this would be in addition to areas closed by Regulatory Notices.

Mr Morgan noted that there had been comment that the shrimp fishermen were being squeezed out, and hoped continued investigation was made to try to limit the impact. He acknowledged there were no plans in place to look at different gear types but felt there needed to be a plan to this effect to ascertain whether gear is in fact having a negative effect.

Mr Garnett believed there was potential to do a lot of damage to the shrimp fishery, with the suggested option likely to close the shrimp fishery at certain times of the year. He was concerned that the authority were trying to protect two types of habitat but had given no consideration to the possibility that those two habitats may only exist due to the shrimp fishery. There was the potential that the habitat could change to another feature if shrimp fishing did not take place, if this occurred then the Authority would be in breach of the precautionary principle.

Mr Donnelly acknowledged that the evidence base had only been acquired during times of the fishery being in operation but advised it did not represent what the habitat should be without the pressure of the fishery on it. He believed there was a need to take account of the damage the fishery could be causing.

This was disputed by Mr Garnett who advised the precautionary principle stated that you must not start anything new, but the shrimp fishery had been going for hundreds of years. He reiterated that the reverse could also apply and some affect might occur from a reduction in fishing. He advised the site was designated for what it is now not what it was 500 years ago, pre fishing.

Mr Williamson advised that shrimp fishermen had already given up grounds to sabellaria reef and now more was being taken, he queried whether there would be even more taken next year, when would it end.

The Chair advised that hopefully the end result would be the best available compromise.

Mr Garnett noted that the suggested closed area did not even contain sub-tidal mixed and queried whether it would be possible for these large areas to be changed to smaller boxes like those in the Regulatory Notices byelaw.

Mr Davies queried what effect the increased effort on the rest of the fisheries would be. The Chair advised this was a balancing act and maybe the end result would be a compromise between more than one of the proposed options.

There followed further discussion about the extent to which shrimp fishers would be affected and areas of shrimp ground where officers were not aware that fishing was taking place.

Councillor Byatt noted that 7 options had been listed for members but only one option was being suggested and questioned whether all seven options would be open to consultation. The Acting CEO advised he was looking to the members for a direction of travel, he was not proposing to consult on all 7 options.

Mr Donnelly suggested it would be best to relay to the industry that the proposed trial measures need to be in place, but that EIFCA recognise the potential for mitigation in the future when better evidence is available.

With reference to the 7 options Councillor Cox suggested the wording should be amended so it did not state all but one option had been discounted. The Acting CEO advised that options 4-7 had been discounted but whilst 1-3 would meet the legal obligations option 3 was the preferred option.

Mr Donnelly accepted that option 4 was not viable as the gear was not proven yet it could not be stated legally that it would be effective. Mr Williamson was concerned when it would be possible to trial gear as he had ordered new gear which reportedly had a 75% reduction on footprint on the ground.

The Senior Environment Officer advised there was no evidence available to prove this gear would have the right effect within the available timeframe but EIFCA could work with Mr Williamson in the future to trial new equipment.

When considering the recommendations the Chair requested that consideration be given to Option 2 as well as 3. The Acting CEO advised that spatial closures were the Authority's preferred option (options 2 & 3). Mr Morgan also requested that an undertaking to look into technical measures be built in. The Acting CEO advised this may be desirable but it would be stepping outside the planning process.

Members Resolved to:

- **Note the options appraisal and conclusions of the Shrimp Management Options Paper (Annex 1);**
- **Agree to explore spatial closures in the context of options 2 & 3 as the Authority's preferred management option; and**
- **Direct Officers to develop options for spatial closures through the development and introduction of a Regulatory Notice under the Protected Areas byelaw**
- **Note that officers will develop proposals for further management measures and technical gear innovations in the shrimp fishery.**

Proposed: Cllr Cox

Seconded: Mr Garnett

With 1 abstention the Resolution was carried.

R&C15/10 Any Other Urgent Business

There were no items of urgent business to consider but the Chair took the opportunity to thank the officers involved for their hard work and the members around the table for a productive meeting.

Councillor Cox urged all those involved to respond to the consultation.

The meeting closed at 1235 hours.

Vision

The Eastern Inshore Fisheries and Conservation Authority will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry



Regulation and Compliance Sub Committee meeting

Action Item 5

24th February 2016

Whelk Byelaw and Permit Byelaw

Report By: L P Godwin – IFCO / Project Officer & J Gregory – Acting Chief Executive Officer

Purpose of report

To present the sub-committee with the results of the formal consultation for the proposed Eastern IFCA Permit byelaw and Eastern IFCA Whelk Byelaw and to consider the recommendations regarding amendments prior to sending the byelaw for consent from the Minister.

Recommendations

Members are recommended to:

- **Note** the results of the formal consultation with regards to the Whelk byelaw and the Permit byelaw;
- **Note** the rationale and justification for the final draft of the Permit Byelaw and Whelk Byelaw;
- **Agree** to the recommended amendments to both byelaws;
- **Agree** to the Permit Endorsement Process and the Flexible Permit Conditions Process;
- **Direct** officers to submit the proposed byelaws to the Minister for consideration;
- **Agree** to delegate responsibility to the ACEO to make minor wording amendments on the byelaws.

Supporting documents

- **Annex 1** – Proposed Permit Byelaw 2016
- **Annex 2** – Proposed Whelk Byelaw 2016
- **Annex 3** – Proposed Permit Endorsement Process and Flexible Permit Conditions process
- **Annex 4** – Impact Assessment for the proposed Permitting Byelaw and the proposed Whelk Byelaw

Background

The Whelk and Permit byelaws were made at the Regulation and Compliance Sub-Committee meeting held on 17th November 2015. Officers were directed to conduct formal consultation on the two byelaws; the Eastern IFCA Permit Byelaw and the Eastern IFCA Whelk Byelaw. The results of the consultation are presented below.

Formal consultation results

Seven formal responses were received regarding the whelk measures. Objections and comments are detailed in table 1.

Objection/comment	Number of objections	Officer comments	Proposed actions
Whelks are not under threat from fishing activities	1	The combination of an inappropriate MLS, sudden, dramatic increase in effort and coinciding drop in landings per vessel and lack of fisheries data as evidence lead to the introduction of emergency measures in April 2015. Subsequent to this, no further evidence has been made available to indicate that the fishery is capable of being sustainable without management measures – particularly given the vulnerability of whelk to over-fishing and historical 'boom-and-bust' approach. Furthermore, the built in flexibility of the byelaws will ensure that management measures are appropriate to the status of the fishery.	<ul style="list-style-type: none"> • No amendments to the byelaws recommended; • Ensure IFCOs engage with industry to educate on the risks associated with the whelk fishery.
Concerns regarding the process for limiting permits	4	<p>The Permitting Byelaw includes a provision for Eastern IFCA to limit the number of permit endorsements (i.e. the number of vessels which can fish in a fishery) should the fishery require it. The Permitting Byelaw is intentionally generic in this respect to allow Eastern IFCA to meet the requirements of a specific fishery at a specific time. The process as written in the byelaw is as follows;</p> <ul style="list-style-type: none"> • There is evidence that limiting the number of permits would be of benefit to the fishery; • Officers recommend criteria for limiting the number of permits (e.g. vessel length, track history etc.); • These criteria are put to the fishers via consultation and an Impact Assessment is produced; • The Authority considers the criteria and direct officers to limit permit endorsements accordingly. <p>It is felt that this process, which the Authority is bound to by the byelaw provision, is proportionate and offers the flexibility required to appropriately managing the fishery according to best available evidence.</p>	<ul style="list-style-type: none"> • No amendments to the byelaw recommended; • Formalise a process explaining the key principles by which criteria would be introduced; • Ensure engagement includes an explanation of the due process the Authority is bound to by the byelaw.
High cost of marking gear	1	The proposed measures have reflected previous concerns regarding the high cost associated with the Emergency Whelk Byelaw which reflected MCA	<ul style="list-style-type: none"> • No amendment recommended.

		guidance. The proposed measures are considered the minimum to effectively enforce the byelaw.	
Permit charge is unfair	2	The Marine and Coastal Access Act has a provision which allows IFCAs to charge for the issuing of permits. The cost to the public of the proposed measures was estimated within the Impact Assessment at £16,131 of which the permit charge offsets an estimated £5,838 (circa 30%). It should be noted that the further explanation of the permit charge was also complimented in another representation.	<ul style="list-style-type: none"> • No amendment recommended; • Ensure engagement includes an explanation of the permit charge and the offset to the public cost of the fishery.
Victimises vessels less than 8 metres in length as these vessels cannot sail outside of the 6nm limit to set more than 500 pots	1	In the analysis of vessel size and number of pots presented in the Impact Assessment for the Emergency Byelaw, it was determined that vessels of less than 8 meters in length were unlikely to be able to fish with more than 500 pots. Allowing for smaller vessels to have greater number of pots per vessel would likely result in higher effort.	<ul style="list-style-type: none"> • No amendment recommended
Rope pots should be exempt	1	Whilst traditional rope pots are thought to fish for whelks more effectively (by retaining a better quality of catch thought to be due to higher water flow through the pot which washes away the rotten bait) there is no evidence to suggest that they will remove fewer whelk from a fishery. There is no evidence to indicate that rope pots will have a lesser impact on the Whelk fishery.	<ul style="list-style-type: none"> • No amendments recommended.
Inadequate consultation process – formal consultation	2	The statutory minimum number of days for a formal consultation to be run is 28 days and must include advertising in appropriate newspapers. Eastern IFCA's formal consultation was run for 34 days and in addition to advertising in the 'Fishing News' for two weeks, letters and emails were sent out to each fisher Eastern IFCA has records for. Furthermore, the timing of the consultation was thought to be beneficial to fishers as it coincided with the least busy month in terms of fishing activity.	<ul style="list-style-type: none"> • n/a
Minimum Landing Size – needs to be reviewed as it is potentially too high	2	The proposed minimum landing size was selected as a proportionate balance between a reflection of scientific evidence and a viable industry. CEFAS advice suggests that fisheries off the N. Norfolk Coast should be in the	<ul style="list-style-type: none"> • No amendment recommended; • Ensure engagement includes an explanation

		<p>region of 67mm however, there is insufficient evidence to indicate an appropriate MLS in other parts of the district. An MLS of 67mm would likely make the whelk fishery unviable throughout most of the district, particularly in Suffolk where it is reported that whelks are smaller</p> <p>The measure is proposed as a flexible permit condition – the minimum landing size can be varied through a due process to reflect the best available evidence.</p>	<p>of the planned research project to determine appropriate minimum landing sizes throughout the district and the flexible measures which can reflect this.</p>
Byelaw should allow for 10% bycatch of whelks caught by methods other than whelks pots	1	<p>Landing by-catch of whelks has effectively been banned by the emergency byelaw and no provision to allow it has been recommended for the permanent byelaw. Allowances for by-catch would be difficult to enforce and analysis of landings data presented in the Impact Assessment for the Emergency Whelk Byelaw indicated only a minimal impact associated with its prohibition as most fishers who would land whelks as by-catch (i.e. crab and lobster fishers) would also have commercial whelk pots.</p>	<ul style="list-style-type: none"> • No amendments recommended.
Pot limitation is unviable (500) for larger, company owned vessels	2	<p>The pot limitation is the primary measure by which the effort is currently being managed. The 500 pot limitation reflects a need to ensure there is a sufficient effort gap between the peak reached in 2014 and the potential effort. The pot limitation is not guaranteed to prevent high effort but is proportionate to the number of fishers currently fishing and still represents adequate opportunity to fish even for larger vessels albeit with a smaller margin of profit.</p>	<ul style="list-style-type: none"> • No amendments recommended; • Detailed analysis presented below
Various wording revisions (legal advice from MMO)	n/a	<p>Various recommendations on the wording of the byelaw received from MMO</p>	<ul style="list-style-type: none"> • Amendments made where appropriate.

In addition to the above, there was a general appreciation of the flexible approach which allows for best available evidence to be reflected in the measures. Fishers and associations were also appreciative of the change in the requirement to mark gear.

The most controversial issue is still the number of pots associated with the pot limitation. The proposal which went to formal consultation was to keep the pot limitation at 500 pots as directed by the Regulation and Compliance Sub-Committee (17th November 2015). The issue is discussed in more detail below.

Representations made regarding the pot limitation

There is concern from both the National Federation of Fishermen's Organisations (NFFO) and the Vessel Owners and Skippers Association (VOSA) regarding the 500 pot limitation. Both felt that alternatives had not been explored enough and that the measure would have disproportionate impacts on larger vessels.

Larger, company owned vessels generally have higher overheads than independent fishers. Often they operate with a higher number of crew and a share of the catch is always taken by the company in addition to the cost to the crew of using the vessel (for example fuel costs). As such, crew of these vessels will earn less money per trip and do not consider the activity to be a viable exercise unless they can travel outside the district to set further pots which, as indicated in the formal consultation, is not possible for vessels who operate from ports of The Wash.

The Impact Assessment conducted for the whelk measures includes a 'crew earnings model'. This indicates that the crew of the larger company owned vessels will earn around half as much as that of independent vessels given average conditions (e.g. bait costs, catch per pot etc.). Representation was also made that this model didn't take into account a representative catch per unit effort – the model used a figure of 2.5 kg per pot (which was indicated by fishers in the informal consultation for the emergency whelk byelaw), a representation from the Vessel Owners and Skippers Association indicated that in their experience, a catch of 1.2 kg per pot was normal.

There were also calls for a limitation on the number of permits to effectively limit the whelk fishing effort. Representation was made to the effect that the whelk fisheries could not be managed effectively under a pot limitation alone as more fishers could join the fishery, increasing the effort.

Rationale for the pot limitation

It is an unavoidable consequence of effort limitation which applies to the entire sector that some vessels will be able to earn more money than others. Moderately sized vessels which use a moderate amount of fuel and require two crewmembers will make less in profit on a trip than a small vessel with one crewmember.

It was not intended that a pot limitation would effectively stop larger vessels from entering the fishery but simply to temper the continuing rise in effort until such a time as Eastern IFCA could provide evidence as to what the appropriate level of effort should be. 500 pots was initially chosen for two reasons: i) it was the average number of pots used by fishers (data gathered from the informal consultation) and ii) it was a trade-off for increasing the minimum landing size as compared to the Kent and Essex IFCA measures of a 300 pot-limitation – greater effort could be put into the fishery but this was offset by lower catches as a result of the increase in minimum landing size.

Eastern IFCA has not since identified evidence which suggests the fishery could sustain a higher level of effort. The contrary has actually been indicated by Cefas who, at the Kent and Essex whelk technical panel meeting, verbally indicated that that fishery was not sustainable even though the measures there included a pot limitation of only 300 pots. 500 pots is therefore considered proportionate given our current level of understanding – at current levels of fishing, effort in inshore fisheries is sufficiently below the peak reached in 2014 which is thought to be partly responsible for the drop in catch per vessel.

Other methods of effort control include limiting pots by the number of crew and by limiting permits.

Pot per crew method

The NFFO and VOSA suggested having a pot limitation based on crew number of 250 pots per crew member. A pot-per-crew method would be unlikely to have a different effect than simply increasing the pot limitation to 750 which would bring effort levels very close to the peak in 2014. In addition, very few company-owned vessels actually fished in 2014 - only three out of eleven vessels identified in The Wash as large, company owned vessels have landed in excess of 1 tonne of whelks in the period 2010-2014, the remaining three landed a total of 33 tonnes over the same period. As such, increasing the pot-limitation in any way, to 750 pots per vessel would actually result in huge increases in effort in The Wash if fishers actually fished the average number of fishing days (49 days per year) – far beyond the 2014 peak (see fig 1).

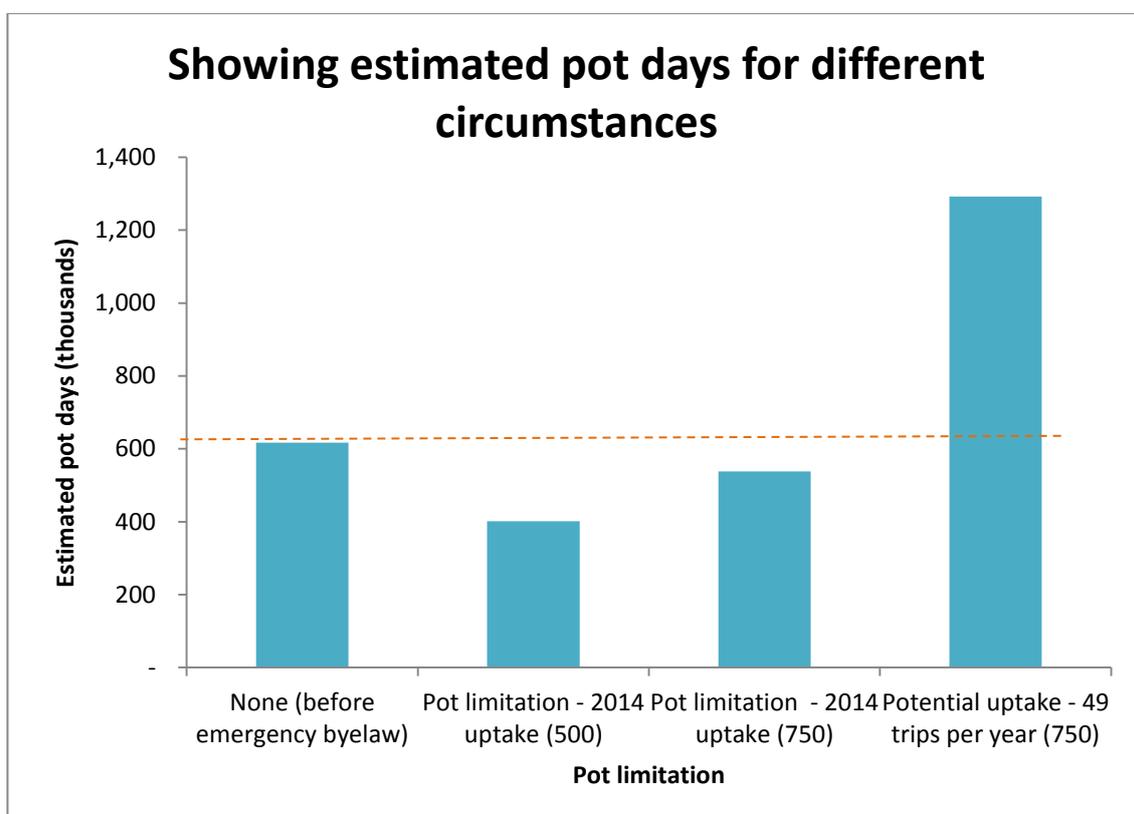


Figure 1. Bars left to right – i) estimated effort based on 2014 MMO landings data – the ‘peak’ in effort which led to emergency measures, ii) estimated effort given a 500 pot limitation based on 2014 fishing activity, iii) estimated effort given a 750 pot limitation based on 2014 fishing activity and iv) estimated effort if all fishers took 49 trips per year with 750 pots (estimate for part time whelk fishing effort gained from informal information gathering).

To summarise, a pot-per-crew method would likely lead to effort in excess of what the fishery can sustain and presents a very high risk of fishery collapse.

Exemption for vessels in The Wash

There have also been representations made that certain vessels in The Wash, namely the larger, company owned vessels, should be granted an exemption because of their inability to leave the six mile boundary to set additional pots.

VOSA have made the case that six vessels should be granted this exemption to enable them to take part in the fishery. Part of the rationale for this exemption would be that, circa 20 of the larger, company owned vessels could, in theory all apply for a permit to fish with 500 pots under the existing rules (noting that there is not currently a limit on the number of permits). This would represent a much larger increase in effort than six vessels with 750 pots each.

The risks involved with allowing for exemptions are as follows:

- Increased effort in The Wash – as stated in the section above, very few vessels actually took part in whelk fishing over the period 2010 to 2014. Allowing six vessels to have 750 pots would represent a very large increase in effort and would constitute a serious risk;
- Medium sized vessels which actively fish in The Wash have made the case that more pots would allow them to earn more per trip also – there would likely be an issue of fairness with regards to only issuing exemptions to these six vessels as other vessels (including those vessels which are not from King's Lynn or Boston) to fish with additional pots in The Wash on the same grounds;
- Allowing vessels to fish with additional pots would enable them to fish whelk stocks down to lower levels than under a 500 pot limitation which also presents a risk to the fishery.

There is a relationship between whelk catch per pot and viability. Where a vessel can catch, for example 2.4 kg of whelks per pot the fishery has been considered as 'viable' by one of the owners of the larger, company owned vessels. If catch per pot falls too far below this, the fisher will either move to a new ground or stop fishing until catch per pot increases. In this way, fishers are 'naturally' limiting effort based on the economics of the trip – where catch per pot drops below a certain point (which indicates decreased stock health) fishers won't be able to fish that area as the returns are not viable.

Allowing vessels to fish with additional pots means that a fishing trip is still viable economically at a lower catch per pot and where the health of the stock in that area is poorer. This introduces additional risk to the fishery.

Limiting the number of permits

The proposed Permit byelaw has wording to the effect that the Authority can, through due process, introduce criteria which could limit the number of permit endorsements issued for whelk fishing. In this way, the Authority could more completely limit the whelk fishing effort.

Part of the rationale for not implementing a permit limitation initially was to allow more fishers the opportunity to fish for whelk in a climate of ever decreasing fish quotas, restrictions on bass fishing and a poor mussel fishery. In this way, more fishers could

benefit from a whelk fishery. It was not intended that the permit limitation could be used to allow a few larger vessels a greater share of the fishery compared to other fishers.

Present levels of whelk fishing in Eastern IFCA's district are low – 23 permits have been taken out but fishing effort has been disrupted by poor weather and other fishing activities. That said; the potential effort for 23 permits is 91% of the peak in 2014 (based on 49 trips per year) – if fishing activity fulfilled this potential there would be an increased risk sustainability issues.

Pot limitation – summary

In summary, the risk posed by increasing the pot limitation to 750, either through a pot-per-person scheme or by simple increase would pose a higher risk to the fishery. A dispensation could be written into the byelaw for Wash vessels however, this would also likely result in over fishing in The Wash given that it is not a large area.

Until such a time as more evidence is available, it is recommended that the 500 pot limitation remains in place. This balances a precautionary approach with proportionality which is possible at present because fishing effort is low.

With regards to limiting the number of permits endorsed for whelk fishing, there is potential that the limit threshold of the 2014 peak could be reached in the near future. In addition, several fishers have made representation that the process for limiting permits through endorsement criteria (e.g. vessel size, track record etc.) lacks clarity at present. As such, a draft policy has been written for the sub-committee's consideration.

Formal consultation results – summary

Amendments have been made to the byelaws as a result of the formal consultation with regards to the byelaw wording, as recommended by the MMO. The byelaws are presented in Annex 1 (Permitting Byelaw) and Annex 2 (Whelk Byelaw).

The 500 pot limitation presents a proportionate approach to the risk of over-fishing in the whelk fishery and it is recommended that it remains in place. Research projects are planned to gather evidence relating to minimum landing size and the pot limitation but will take time to make conclusions. A proposed policy for limiting permit endorsements and introducing, varying or revoking permit conditions is also presented below in response to concerns on clarity of process.

Permit Endorsement Process and the Flexible Permit Conditions Process

The Permitting Byelaw includes provision for introducing permit endorsement criteria (i.e. criteria which need to be met to get a permit endorsed for whelk fishing) and for introducing, varying or revoking permit conditions. In both cases, due process is required by virtue of the byelaw wording (paragraphs 11 to 18).

Several representations have been made which ask for more clarity on how we will introduce endorsement criteria or flexible permits conditions.

The mechanism presented in the permitting byelaw is similar to that for issuing, varying or revoking Regulatory Notices under the Protected Areas Byelaw which itself has a process which sets out how this will happen. This process was agreed at the 4th Regulation and Compliance Sub-Committee meeting.

Using the Protected Areas byelaw procedure as a template, a process for both endorsement criteria and flexible permit conditions is proposed in Annex 3. The process also includes the policy which drives the use of the process. It is recommended that a clear procedure would be of benefit to fishers.

Next steps

The Emergency Whelk Byelaw expires on the 31st April 2016. If the Sub-Committee considers that the proposed measures are adequate, the byelaws will be sent to the MMO for Quality Assurance before going to the Minister to confirm the byelaws – at which point the byelaws will be in force.

Minor amendments may be required as a result of the MMO Quality Assurance process. It is recommended that the sub-committee agrees to delegate responsibility to Acting CEO to make such amendments required for the byelaws to pass the MMO QA. Any substantial changes to the byelaws would be brought before the chair of the sub-committee to consider whether the full sub-committee would need to reconvene the sub-committee.



**Eastern
Inshore Fisheries and Conservation Authority**

MARINE AND COASTAL ACCESS ACT 2009

Permit Byelaw 2016

The Authority for the Eastern Inshore Fisheries and Conservation District in exercise of its powers under sections 155, 156 and 158 of the Marine and Coastal Access Act 2009 hereby makes the following byelaw for the District.

Interpretation

1. In this byelaw:
 - a) 'the Authority' means the Eastern Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010/2189);
 - b) 'District' means the Eastern Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010 No 2189);
 - c) 'fishing' includes: digging for bait; the shooting, setting, towing and hauling of fishing gear; gathering sea fisheries resources by hand or using a hand operated implement; catching, taking or removing sea fisheries resources and fish are to be construed accordingly;
 - d) 'fishing gear' includes: any nets, pots, ropes, anchors, surface markers, lines, dredges, grabs, rakes or other implements used or deployed during fishing;
 - e) 'permit' means the authorisation granted by the Authority under this byelaw which can also include an endorsement to fish for species or within a fishery as granted under an associated Authority Byelaw;
 - f) 'flexible permit conditions' means the conditions under which a permit must be used in fishing for species or within fisheries, which can be issued, varied or revoked through the process set out in this byelaw;

- g) 'endorsement' means authorisation from the Authority to fish for a specified species or within a specified fishery as is required under an Authority byelaw;
- h) 'registered fishing vessel' means a vessel:
 - i. registered under Part II of The Registry of Shipping and Seaman as governed by the provisions of the Merchant Shipping Act 1995 and the Merchant Shipping (Registration of Ships) Regulations 1993 (SI 1993/3138), or in the Channel Islands or Isle of Man; and
 - ii. in respect of which there is a valid fishing licence issued under the Sea Fish (Conservation) Act 1967;
- i) 'vessel' means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) and a hover craft or any other amphibious vehicle, used or capable or being used as a means of transportation on water;
- j) 'fishing for commercial purposes' means to fish for sea fisheries resources that will be sold;
- k) 'fishing for recreational purposes' means to fish for sea fisheries resources for personal consumption;
 -
- l) 'Category One Permit' means a permit granted for fishing for commercial purposes and as set out in paragraph 2 of this byelaw;
- m) 'Category Two Permit' means a permit granted for fishing for recreational purposes and as set out in paragraph 3 of this byelaw;
- n) 'named representative' means a person suitably qualified to skipper a vessel who has been granted permission to fish from a vessel from the owner of that vessel, and has been nominated by the owner of a vessel for the purposes of paragraph 6 of this byelaw;
- o) 'owner' means the person named as the owner of a vessel in an associated Certificate of British Registry granted under The Merchant Shipping Act 1995, The Merchant Shipping (Registration of Ships) Regulations 1993, as amended.

Permits

2. The Authority may issue a Category One Permit to the owner of a registered fishing vessel, or to a person fishing for commercial purposes other than from a vessel.
3. The Authority may issue a Category Two Permit to the owner of a vessel which is not a registered fishing vessel, or to a person fishing for recreational purposes other than from a vessel.
4. Only one permit may be issued to each named person without a vessel.

5. Only one permit may be issued in respect of each vessel.
6. Application for a permit must be made using printed forms available from the Authority. These forms will require applicant and vessel details. The applicant may nominate up to 2 persons as their named representatives whose details must also be entered on the application form.
7. A person, other than the holder of a Category One Permit or a Category Two Permit, or a named representative, must not fish for a species or within a fishery under the authority of a permit from a vessel other than the vessel named on the associated permit without firstly obtaining the agreement of the Authority. Such agreement will usually only be given in circumstances where the permit holder, named representative and/or the named vessel are unable to put to sea.

Endorsement

8. The Authority may authorise the fishing for a specified species or within a specified fishery, for which a permit is required under an Authority byelaw, by endorsing a permit for that species or fishery.

General provisions

9. The holder of a permit must submit to the Authority, no later than the 10th day of each the month such information as is required by the Authority on forms which will be provided by the Authority.
10. The information referred to in paragraph 9 may fall into one or more of the following categories;
 - a) Spatial information;
 - b) fishing effort;
 - c) catch data;
 - d) by-catch information;
 - e) Gear information;
 - f) Date and time information;
 - g) Vessel information;
 - h) A combination of the above

Flexible permit conditions

11. The Authority may attach to permits flexible conditions which fall within one or more of the categories listed in paragraph 12.
12. The categories referred to in paragraph 11 are:
 - a) Catch restrictions;
 - b) Fishing Gear restrictions;
 - c) Fishing Effort restrictions;

- d) Spatial restrictions;
 - e) Time restrictions;
 - f) A combination of the above.
13. Permit conditions for each fishery will be issued by the Authority in a Permit Conditions Notice.
14. The Authority may issue, vary or revoke any Permit Conditions Notice following a review conducted in accordance with the procedure as set out in paragraphs 15 to 18.

Procedure

15. The procedure for issuing, varying or revoking a Permit Conditions Notice or restricting the number of endorsements issued in any year for fisheries management purposes must include the following steps:
- a) Acquisition of relevant available evidence including:
 - i. Scientific and survey data, and scientific advice provided by the Authority, the Centre for Environment, Fisheries and Aquaculture Sciences or such other persons as the Authority thinks fit;
 - ii. Advice given by Natural England or other external authorities, organisations, persons or bodies as the Authority thinks fit; and
 - iii. Information from any other relevant source including that which is relevant to effective enforcement;
 - b) Consultation by such methods as the Authority considers appropriate, with such stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by any flexible permit condition or restriction in the number of endorsements;
 - c) Undertaking an impact assessment on the issuing, varying or revoking flexible permit conditions or any restriction in the number of endorsements;
 - d) Consideration by the Authority of all information arising from subparagraphs (a) to (c) above.
16. The Authority must review each Permit Conditions Notice no less frequently than every four years after the date that a Notice has taken effect.
17. The review of a Permit Conditions Notice will be in accordance with a formal operational procedure agreed by the Authority and will include:
- a) The steps set out in subparagraphs 15(a) and 15(b) above and, where a variation of flexible permit conditions is being considered the steps set out in subparagraph 15(c);
 - b) Consideration by the Authority of all information arising from subparagraph 15(a).

18. Where a Permit Conditions Notice is maintained, varied or revoked permit holders will be notified in writing.

Endorsements

19. Endorsements will be valid until the 31st of April of each year.
20. Application for an endorsement should be made using printed forms available from the Authority.
21. An endorsement will be issued for a permit if:
 - a) a completed application form is submitted;
 - b) the associated fee is paid in full; and
 - c) the person applying for the endorsement meets any endorsement criteria.
22. The fee for an endorsement will be set out in the Authority byelaw.

Endorsement restrictions

23. The Authority may restrict the number of endorsements issued in any year for fisheries management purposes. The criteria by which endorsements are restricted will be determined following a review conducted in accordance with the procedure set out in paragraph 15 above and permit holders will be notified in writing.

Application

24. Contravention of a provision of a Permit Conditions Notice constitutes a contravention of this byelaw.

Explanatory Note

(This note does not form part of the byelaw)

This byelaw enables the Authority to provide fishers with a permit which can be endorsed to fish for species or within fisheries for which an endorsement is required under another Eastern IFCA byelaw.

This byelaw also allows for Eastern IFCA to implement flexible permit conditions which will reflect best available evidence. These permit conditions will be used to protect fisheries and to ensure long-term, sustainable fisheries.

The number of permits which will be endorsed for a specified species or fishery can be capped by Eastern IFCA. Criteria can be introduced which will limit the number of fishers who will be eligible for an endorsement.

To introduce, vary or revoke permit conditions or to implement endorsement criteria requires Eastern IFCA to carry out a consultation with potentially affected stakeholders and produce an Impact Assessment.



**Eastern
Inshore Fisheries and Conservation Authority**

MARINE AND COASTAL ACCESS ACT 2009

Whelk Byelaw 2016

The Authority for the Eastern Inshore Fisheries and Conservation District in exercise of its powers under sections 155, 156 and 158 of the Marine and Coastal Access Act 2009 hereby makes the following byelaw for the District.

Interpretation

1. In this byelaw:
 - a) 'District' means the Eastern Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010 No 2189);
 - b) 'fishing' includes: digging for bait; the shooting, setting, towing and hauling of fishing gear; gathering sea fisheries resources by hand or using a hand operated implement; catching, taking or removing sea fisheries resources and fish are to be construed accordingly;
 - c) 'fishing gear' includes: any nets, pots, ropes, anchors, surface markers, lines, dredges, grabs, rakes or other implements used or deployed during fishing;
 - d) 'permit' means a Category One Permit or a Category Two Permit issued under the Eastern IFCA Permitting Byelaw.
 - e) 'the Authority' means the Eastern Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010/2189);
 - f) 'whelk' means a marine gastropod of the species *Buccinum undatum*;
 - g) 'whelk pot' means a pot or trap set for the purpose of catching whelks and which ordinarily consists of a weighted, rope or plastic container with an open top through which whelks can enter but are restricted in escaping by a mesh covering the opening;

Prohibitions

2. A person must not fish for whelks within the District unless:
 - a) in the presence of the holder of a permit which is endorsed for whelks;
 - b) in the presence of a named representative, nominated by the holder of a permit which is also endorsed for whelks.
3. A person must not set whelk pots within the District unless the whelk pots are marked with whelk permit tags provided by the Authority.
4. A person must not fish for whelks using a whelk pot fitted with a tag which has been reported as lost.
5. A person must not use fishing gear of any other description other than a whelk pot in fishing for whelks within the District.
6. A person must not set whelk pots within the District unless each string of whelk pots is marked as follows:
 - a) Buoys which are of sufficient size and shape to be clearly visible must be present at each end of a string of pots;
 - b) Buoys must be marked with the number of the permit under which the associated pots are used in such a way that they are clearly visible;
 - c) Where the endorsement under which the whelk tags were issued is associated with a relevant fishing vessel, buoys must be marked with the port letters and number of that vessel;
 - d) Buoys must set so as to remain fully afloat and visible at all times.

Whelk Permit Tags

7. Whelk permit tags are not be transferrable and must be surrendered to the Authority immediately if no longer required by the person to whom they are issued.
8. Lost tags must be reported to the Authority within 21 days of the loss.
9. Claims for replacement of less than 10% of whelk permit tags issued under each permit, or those issued to the holder of a Category Two Permit, will be considered by the Chief Executive Officer or Deputy Chief Executive Officer. Claims for more than 20% of whelk permit tags for Category One Permit will be considered by either the Chairman or the Vice Chairman and Chief Executive Officer or Deputy Chief Executive Officer. Appeal may be made to the Authority if an applicant feels that their claim has not been properly dealt with. The replacement of whelk permit tags will be at a cost of 30 pence per whelk permit tag.

Endorsement charges

10. A fee will be charged for each endorsement to fish for whelks, granted under the Eastern IFCA Permitting Byelaw 2015 which will be payable prior to the issuing of an endorsement.
11. The fee for an endorsement to fish for whelks is :
 - a) For endorsement issued in association with a Category One permit the fee is:
 - i. £50 for endorsements for fewer than 100 pots; or
 - ii. £0.50 per pot for endorsements of 100 or more pots.
 - b) For endorsement issued in association with a Category Two permit the fee is £5 per pot.

Explanatory Note

(This note does not form part of the byelaw)

This byelaws requires fishers who wish to fish for whelks within the district to obtain a permit which is endorsed for whelks. Fishers are also required to fish within the conditions set out in the Permit Conditions Notice.

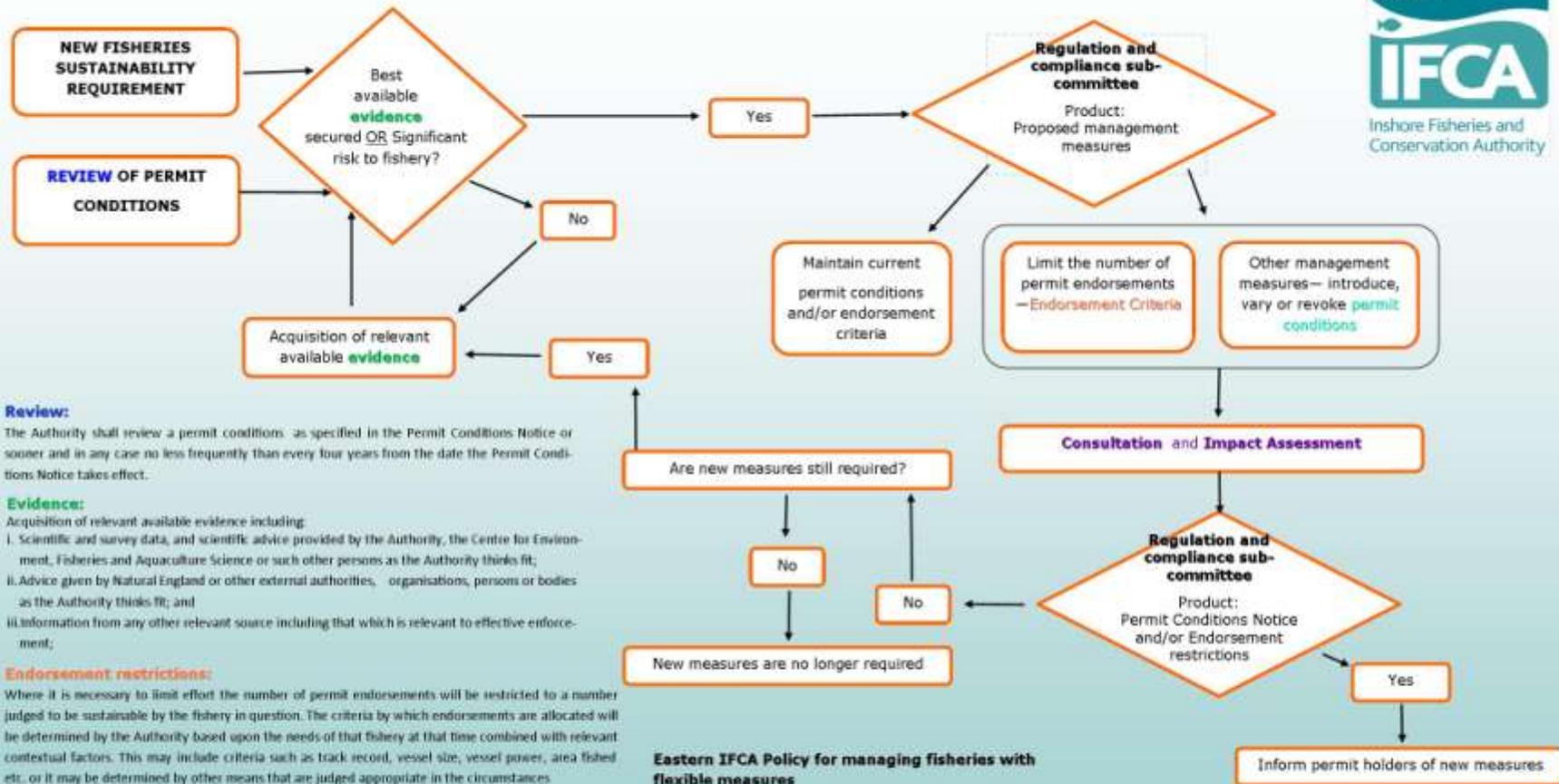
The byelaw requires fishers to use pots only for targeting whelk and requires pots to be tagged with tags provided by the Authority. Gear must also be marked with buoys which are visible at all times and have the vessels Port Letters and Numbers and Whelk Permit number also clearly visible.

A fee is payable to the Authority to endorse a permit for whelk fishing. The minimum charge is set at £50 for a Category One permit (commercial fishing) and £0.50 per pot for more than 100 pots. The charge for a whelk fishing endorsement on a Category 2 permit is £5 per pot.

If pots and tags are lost then fishers are required to apply for replacements. A charge of £0.30 per replacement tag is payable to the Authority. If fishers wish to replace in excess of 20% of their tags the Chairmen or Vice Chairmen and the CEO or deputy CEO will consider whether to replace all the tags.

Annex 3 – Proposed permitting byelaw process flowchart

Permitting Byelaw - Procedure to Issue, Vary or Revoke permit conditions or limit the number of permit endorsements through endorsement restrictions



Review:

The Authority shall review a permit conditions as specified in the Permit Conditions Notice or sooner and in any case no less frequently than every four years from the date the Permit Conditions Notice takes effect.

Evidence:

- Acquisition of relevant available evidence including:
- i. Scientific and survey data, and scientific advice provided by the Authority, the Centre for Environment, Fisheries and Aquaculture Science or such other persons as the Authority thinks fit;
 - ii. Advice given by Natural England or other external authorities, organisations, persons or bodies as the Authority thinks fit; and
 - iii. Information from any other relevant source including that which is relevant to effective enforcement;

Endorsement restrictions:

Where it is necessary to limit effort the number of permit endorsements will be restricted to a number judged to be sustainable by the fishery in question. The criteria by which endorsements are allocated will be determined by the Authority based upon the needs of that fishery at that time combined with relevant contextual factors. This may include criteria such as track record, vessel size, vessel power, area fished etc. or it may be determined by other means that are judged appropriate in the circumstances

Permit conditions Notices:

Permit conditions are set in the Permit Conditions Notice. These measures include, for example, effort limitation, gear specifications and spatial restrictions.

Consultation and Impact Assessment:

Consultation by such methods as the Authority considers appropriate, with such stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by any restriction or prohibition. An Impact Assessment will also be produced detailing potential impacts of the proposed measures.

Eastern IFCA Policy for managing fisheries with flexible measures

It is the intention of Eastern IFCA to reflect up-to-date evidence in the management of the fisheries within the district. By using flexible measures, Eastern IFCA aims to provide fishing opportunity for as many fishers as possible whilst also delivering viability for those fishers.

Measures will as far as possible reflect a proportional approach as well as precaution where necessary. This will be achieved by using a combination of limiting the number of vessels in a fishery and permit conditions in the most appropriate balance.

.... Local seas managed well

Annex 4 – Impact Assessment for the proposed Permitting Byelaw and Whelk Byelaw

Title: Eastern IFCA Permitting Byelaw, Eastern IFCA Permitting Byelaw (Flexible Conditions), Eastern IFCA Whelk Byelaw IA No: EIFCA001 Lead department or agency: Eastern Inshore Fisheries and Conservation Authority Other departments or agencies:	Impact Assessment (IA)		
	Date:		
	Stage: Consultation		
	Source of intervention: Domestic		
		Type of measure: Secondary Legislation	
		Contact for enquiries: Julian Gregory – Acting CEO (01553 775321)	
Summary: Intervention and Options		RPC Opinion: N/A	

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

What is the problem under consideration? Available scientific literature and case study evidence indicated that whelks are very vulnerable to over-fishing. Peak levels of fishing effort in 2014 and removal of pre-spawning individuals are likely to have contributed to the observed reduction in catch per unit effort. Due to the importance of whelk as a non-quota species, particularly to inshore fishermen who regularly diversify, ensuring a long-term, sustainable fishery will provide better economic security for fishes in the long term.

Why is government intervention necessary? The fishery has historically operated under a 'boom-and-bust' model, where fishers remove the majority of the population through intense fishing mortality. Due to limited available evidence regarding whelk population dynamics and fishing activity a precautionary approach is required until Eastern IFCA's evidence base is more robust.

What are the policy objectives and the intended effects? To collect data relevant to operating the fishery at maximum sustainable yield, introduce flexible effort restrictions which will allow Eastern IFCA to manage a fishery at maximum sustainable yield as data becomes available, reduce the removal of pre-spawning individuals, partial cost recovery for the associated measures, introduce measures which are enforceable, initially introduce measures which are precautionary to lessen immediate impacts on fishery.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) The preferred option is a combination of flexible permit conditions (administered through a permitting byelaw) and byelaw provisions (administered through an Eastern IFCA byelaw) to balance flexibility with proportionate deterrent for non-compliance. This option is proportionate and presents a low risk to fisheries sustainability. Other options considered include; do nothing, non-flexible permitting scheme, and total closures.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 6 years

Does implementation go beyond minimum EU requirements?	Yes		
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

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

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: Unknown	High: Unknown	Best Estimate: Unknown	

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. (Constant Price)	Annual (Transition)	Total (Present Value)	Cost
Low	£57,915		£173,799		£1,553,922	
High	£169,290		£578,060		£5,145,049	
Best Estimate	£113,602		£247,829		£2,249,836	

Description and scale of key monetised costs by 'main affected groups'

Fishers will incur costs associated with reducing effort (and landings as a result), lost catch as a result of using riddle screens, the charge for a permit and the modification of fishing gear. Public costs include the likely increase in sea patrols (estimated 2-3 per month for 6 months and as required on a risk assessed basis subsequently) and the cost of personnel involved in assessing the presence of undersize whelks based on previous experience, administration and research associated with collecting and analysis of permit holder data (relevant for achieving MSY). Public costs have been partially offset by the permit charge.

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

Fishers will likely incur additional costs associated with loss of catch due to an increased minimum landing size which cannot be estimated due to variable size of maturity of whelks across the district and loss of fishing gear marking items (buoys and dhans).

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. (Constant Price)	Annual (Transition)	Total (Present Value)	Benefit
Low	Unknown		Unknown		Unknown	Unknown
High	Unknown		Unknown		Unknown	Unknown
Best Estimate						

Description and scale of key monetised benefits by 'main affected groups'

Monetised benefits cannot be estimated.

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

A long-term, sustainable whelk fishery will provide income over a longer period resulting in a net gain over time. The whelk fishery within Eastern IFCA's district had a first sale value of £1.32 million in 2014. The main benefit of the measures will be to maintain this valuable fishery in the long-term and prevent the 'boom-and-bust' fishing culture historically associated with whelk fisheries in the district. The vulnerability of whelk populations to overfishing and historical 'boom-and-bust' nature of the fishery indicates that costs will only actually be short-term and be offset by longer-term income over time resulting in a net benefit.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Assumption: MSY can be achieved and reflected in flexible permit conditions. Sensitivities/risk: whelk fisheries are already overfished and recovery not possible.

BUSINESS ASSESSMENT (Option 1)

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

Evidence base

1. Introduction

Eastern IFCA has a duty to take action to ensure the sustainable exploitation of fisheries within its district as per section 153 of the Marine and Coastal Access Act 2009. Furthermore, in carrying out its duties Eastern IFCA is obliged to ensure Good Environmental Status of fish and shellfish stocks as per the Marine Strategy Framework Directive (2008/56/EC) namely; sustainable fisheries with high long-term yields, stocks functioning at full reproductive capacity, and to maintain or increase the proportion of older and larger individuals.

2. Rationale for intervention

Eastern IFCA currently has in place an emergency byelaw to manage a sustainable whelk fishery – this byelaw will expire on 29 April 2016. Best available evidence has indicated that whelk stocks within Eastern IFCA's district were at a high risk of over-exploitation and potential collapse as a result of a sudden increase in fishing effort in 2014. The Emergency Whelk Byelaw has had the effect of reducing effort in the whelk fishery thus far. Failure to implement permanent management measures would potentially result the resumption of previous high levels of fishing activity and fishing mortality - historically the fishery has operated under a 'boom-and-bust' model where populations are reduced through intense fishing mortality to the point that fishing is no longer viable, whelk populations have anecdotally been reported to then recovery over several years or decades. Operating the whelk fishery under these conditions does not constitute maximum sustainable yield and would not meet the requirements set under the Marine Strategy Framework Directive.

3. Policy objectives and intended effects

The key objectives of the measures are as follows:

1. Acquisition of accurate effort and landings data to build models to identify maximum sustainable yield;
2. Introduce flexible effort controls which can be varied based on best available evidence to achieve maximum sustainable yield;
3. Introduce flexible permit conditions which can be added to, varied or removed to reflect the needs of a long-term, sustainable fishery including requirements for effective enforcement;
4. Introduce byelaw provisions relevant to a long-term, sustainable fishery and effective enforcement;
5. Initial precautionary cap on effort (pots per vessel) until such a time as assessments can determine appropriate levels of effort; and
6. Prevent or reduce removal of pre-spawning whelk.

The intended effect of the measures is to secure a long-term, sustainable whelk fishery which operates at maximum sustainable yield. Initially a precautionary approach to effort limitation has the intended effect of limiting the damage to the inshore whelk fisheries until such a time as Eastern IFCA can determine maximum sustainable yield. To cater for the dynamic nature of the marine environment and inshore fishing sector,

flexible measures likely present the most effective method of achieving this. That said, flexible permit conditions represent a lower penalty level than byelaw provisions and as such, a balance is sought between the appropriate deterrent (i.e. an appropriate penalty level) and flexibility. A combination of both is proposed as the most effective method to achieve this.

4. Background

It is well established in scientific literature that whelk are vulnerable to overfishing; primarily due to their slow growth and low mobility (Caddee et al 1995, Fahy et al 2000). In addition, the national minimum landing size for whelks (45mm) is generally considered to be far below the size at which whelks are sexually mature (Fahy et al 1995) which is also thought to vary at relatively small spatial scales (Lawler 2014).

Whelk fishing activity increased dramatically within Eastern IFCA's district over a four year period (2010-2014) and more so in 2014 than was expected. This reflects a national growth in the UK's whelk fisheries thought to be driven in part because of low quota's for controlled species (particularly in the inshore sector) and increased demand (including an increase in the price) from Asian Markets (primarily South Korea). This dramatic increase in effort preceded collapses, near collapses or poor performance in whelk fisheries in several case studies including the Irish Sea (Fahy et al 1995), the Wadden Sea (Caddee et al) and the Normandy Whelk fishery (Gascoigne et al 2015).

Whilst the increase in effort in the whelk fishery represents a greater risk to its sustainability, it also reflects the importance of whelk to the inshore fishing sector. Landed whelk in the district had a first sale value of £1.32 million in 2014 making it the most valuable fishery that year. Ensuring a long-term, sustainable fishery will have a positive effect on the local inshore fishing industry and local economy.

Using limited effort and landings data Eastern IFCA analysis determined that there was a potential reduction in catch per unit effort, reflecting a high risk to the whelk fisheries in the district in January 2015. An emergency byelaw was introduced to prevent irreparable damage to the sustainability of the fishery. The measures introduced were precautionary in nature to reflect the limited available data.

5. The options

Option 0: Do nothing – *Given the vulnerability of whelk fisheries to over-fishing, historical fishing activity (i.e. boom-and-bust) and the 2014 (current) peaks in fishing activity this option presents a very high risk to fisheries sustainability and potential long-term impacts on the local inshore fishing sector and local economy.*

Option 1: Introduce a generic permitting byelaw which will enable flexible permit conditions to be introduced, removed and varied to reflect the needs of a fishery. This byelaw will allow for additional species to require a permit to future proof against fisheries sustainability needs of any species or fishery within the district. Also introduce a specific whelk byelaw with fixed provisions which will not benefit from flexibility. Introduce flexible permits conditions which are precautionary in nature until such a time as available evidence allows Eastern IFCA to determine Maximum Sustainable Yield and appropriate minimum landing sizes of whelks across the district. This approach allows for Eastern IFCA to balance the benefits of flexible permit conditions, where required, and

higher penalty level byelaw provisions which are fixed to achieve long-term, sustainable fisheries.

Eastern IFCA Permitting Byelaw (see annex 1)

Requires fishers to obtain a permit which is endorsed for certain fisheries or species, as defined in an associated byelaw. The byelaw also allows Eastern IFCA to set flexible permit conditions for fishing through a process which includes a proportionate level of consultation and evidence gathering. This byelaw also includes the provision that permit holders return catch data to Eastern IFCA on the 10th day of each month.

Flexible permit conditions (see annex 2)

The initial Permit Conditions Notice issued will include the following; pot limitation (500 pots), requirement for a minimum of two escape holes per pots of a minimum diameter of 24mm, catch to be riddled using a screen of a minimum of 24mm spacing, a minimum landing size of 55mm, a maximum internal pot volume of 30 litres.

Eastern IFCA Whelk Byelaw (see annex 3)

This byelaw includes the provision that the species Whelk (*Buccinum undatum*) is listed on Schedule One of the Eastern IFCA Permitting Byelaw and requires an endorsed permit to fish for this species. The byelaw also includes provisions which reflect management measures which do not benefit from the flexibility of being flexible permit conditions. These include; whelk pots must be marked with tags provided by the Authority, Lost tags shall be reported and replaced by the permit holder, the use of fishing gear of any other description than whelk pots, set gear must be marked with buoys or dhans.

Option 2: *Introduce an Eastern IFCA whelk byelaw with provisions which will have the effect of capping effort in the whelk fishery, reduce/prevent the removal of pre-spawning whelks. . Introduce flexible permits conditions which are precautionary in nature until such a time as available evidence allows Eastern IFCA to determine Maximum Sustainable Yield and appropriate minimum landing sizes of whelks across the district.*

Option 3: *Introduce a Whelk permitting byelaw which would allow for flexible permit conditions to meet the requirements of the fishery as evidence becomes available.*

6 Analysis of costs and benefits

Option 0 – Do nothing

The cost and benefits of the 'do nothing' option cannot be monetised due to the massive uncertainties associated with the whelk fisheries within Eastern IFCA's district.

Case studies of other whelk fisheries have shown that, because whelk are so vulnerable to over-fishing, the potential cost of a do-nothing option in the long term can range from poor quality catch to collapse of the fishery entirely.

In 2014 the first sale value of the whelk landed into Eastern IFCA's district was £1.32 million – most of which is thought to have been caught in the inshore region. The downstream value of whelk fisheries cannot be estimated but include a range of businesses from selling cups of whelks to tourists in sea-side towns to a large export from a processing factory in King's Lynn which supports several jobs and skills including engineers, drivers and factory workers.

The benefit associated with the 'do nothing' option are likely – based on case studies – only to be felt in the short-term.

Option 1 – Combination of fixed byelaw provisions and flexible permit conditions (preferred option)

The estimated monetised costs associated with Option 1 are incomplete and the benefits could not be monetised.

The monetised costs to businesses include the transitional costs associated with fishers purchasing additional fishing gear to meet the requirements of the proposed measures. This includes the following; riddle screens, gear markers (including dhans and buoys) and the time (in loss of earnings) to make and deploy these gear markers and adapt fishing gear (including modifying whelk pots to include escape holes. The transitional costs to businesses was estimated at £113,602.

Annual costs to businesses have been estimated for the loss in earnings associated with a pot limitation and the charge associated with permits. A minimum estimate of this costs was estimated by reducing the earnings of each vessel in proportion to the reduction in the pots they were able to use and then offset by that amount for vessels which are able to travel outside of the 6nm (i.e. outside of Eastern IFCA's district) where the byelaw has no application. This is a fair assumption given that several vessels have indicated this is the approach they will take. The high estimate for these costs was estimated by reducing the earnings of each vessel in proportion to the reduction in the pots they can use, including no offset for vessels which can travel outside the 6nm boundary and using zero earnings for vessels which have indicated that 500 pots is not viable and so would not fish. The 'best' estimate includes an offset for vessels which can transit to outside of the 6nm boundary but does also subtracts the amount earned by vessels which have indicated they would not fish for whelks under a 500 pot limitation. The best estimate associated with the pot limitation was £125,693 annually.

500 pot, pot limitation

The 500 pot, pot limitation was identified in the informal information gathering exercise as the most divisive measure. Ideally Eastern IFCA would set a pot limitation in accordance with maximum sustainable yield however, the evidence base for this is not yet available (it will likely require several years of landings and effort data to calculate) and as such, the initial objective of the pot limitation is to be precautionary and prevent detrimental impacts on the whelk fishery until such a time as the evidence is available.

Informal consultation has indicated that several fishers feel the 500 pot limitation is too low to make the fishing activity viable. This view is associated with the owners and skippers of the larger vessels within the fleet which naturally have higher running costs. In contrast, several whelk fishers are written representation to the effect that the 500 pot, pot limitation is too high and risks the long-term sustainability of the whelk fisheries.

An analysis of the potential earnings per crew has highlighted that there will be a disproportionate effect on company owned, larger vessels within the district (see box 1).

Box 1 – impacts of measures on different business models

Table 1. Fixed parameters used in crew earnings model

kg whelk per pot	2.5
Bait cost (per pot)	0.4
First sale price whelk	0.775
Cost per pot (markers and tag)	8.84
Annual number of trips	49

Information gained during consultation was used to develop and run a model to determine the earnings of crew members of whelk fishing vessels. Details of the model are not shown to protect the identity of the fishers who passed on information.

Fixed parameters used in the model are shown in table 1 (left) and the

Table 2. OUTPUTS

Crew earnings per trip	No limit	Number of pots	
		500	750
Company vessel (average)	£ 198.70	£ 103.75	£ 192.29
Independent (10 and over)	£ 215.42	£ 215.42	£ 351.13
Independent (less than 10)	£ 216.85	£ 443.03	£ 669.21

Earnings hatched out in red are associated with a number of pots greater than that actually used in practice.

When the model is run with the number of pots set to 500, it is clear to see that the earnings associated with a company owned vessel are less (less than half) than that of an independent vessel. This is primarily due to company owned vessels being larger (thus having higher fuel and insurance costs) and operating with more crew. With no limit, the company owned vessels would have in the region of 750 to 800 pots which does bring the crew earnings more in line the independent vessels. That said, it has been anecdotally reported that, although the crew of independent vessels could earn as much as set out in table 2, crew for independent fishers often operate under a fixed daily rate which is sometimes as little as £30 per trip.

One representation made during the informal consultation indicated that the 500 pot limit could constitute a safety risk as larger vessels feel forced to operate with fewer crew to allow for lower earnings in whelk catch. It is important to note that, the model for crew earnings does also include a share of the catch for 'the vessel' which is the share of catch which goes to the company in ownership of the vessel; - effectively increasing the number of crew by at least one.

Several representations from the larger, company owned vessels indicated that a pot limitation of 750 pots would make fishing within the Eastern IFCA district viable and as such, has been considered alongside the current (Emergency Byelaw) pot limitation of 500.

The case study of the Normandy Whelk fishery was used to test whether there would be a case for increasing the initial pot limitation from 500 to 750. A detailed report on the productivity and management of the Normandy Whelk fishery was prepared by Gascoigne *et al.* The report shows how the fishing effort on the Normandy whelk fishery increased to the detriment of the fishery, resulting in poor catch per unit effort. This increase in effort was sudden and unfortunately, management of the fishery could not affect quickly enough the fishing mortality on the Normandy whelk population. A series of management measures have been used to reduce effort including pot limitations and daily quotas.

Currently, the pot limitation is set at 720 pots per vessel. Given also that the number of vessels permitted is 70, the effort within the Normandy whelk fishery is well in excess of

that in Eastern IFCA's district. However, the daily catch quota is currently set at 300kg per person (crew) up to a maximum of 900kg per vessel per day. If vessels are having to use the full 720 pots to catch 900 kg this represents a poor catch per unit effort, well below that which is anecdotally thought to be the case within Eastern IFCA's district.

The management of the Normandy whelk fishery currently includes a one-in-two-out policy to try and continue to reduce the effort in the fishery. Unless voluntarily relinquished, the management measures of the Normandy whelk fishery do not include an ability to limit the number of permits for fisheries sustainability and instead, each vessel has had to accept poor catch per unit effort and small daily quotas.

By comparison, vessels fishing within the Eastern IFCA district under the 500 pot pot-limitation are thought to catch between 1000 and 1500 kg per trip, representing a healthier catch per unit effort. At 750 pots, the estimated catch per vessel per day would be between 1500 and 1875 kg, far in excess of the current limitations in place for the Normandy fishery.

As such, the 500 pot pot-limitation still appears to be the most appropriate limitation. Given the paucity of data on the current health of the whelk stocks within the district a precautionary approach is required until such time as the IFCA can determine maximum sustainable yield. The 500 pot limitation will not restrict fishers to the same extent as in the Normandy fishery due to the higher catch per unit effort.

It is also important to note that costs of the measures have been estimated based on 2014 data which represents a peak in whelk catches which is unlikely to be sustainable in the long-term. Calculating the impacts of the measures based on the 2014 data has likely inflated the potential impacts. Furthermore, the majority of vessels who have made representation to the extent that they will not be able to go fishing have a very limited track record according to MMO landings data. The majority of the larger, company owned vessels who will be disproportionately affected by these measures have only landed whelks in one out of the last 5 years (most often 2014) and most of those landed less than 1 tonne in that year. As such, the impacts on these vessels should be considered as lost opportunity rather than an actual impact on current activity.

Granting of additional permits

The proposed initial measures do not include a limitation on the number of permits however, the Permitting Byelaw has a provision such that whelk fishing endorsements can be limited should there be a need via a proportionate process (including consultation). Several representations were made regarding concerns that additional permits granted would lead to over fishing.

An analysis was conducted to estimate the number of pot days (the number of days each pot from each vessel had fished) based on the 2014 landings data. Using this information, estimates on the number of pot days resulting from the pot limitations were determined. The results are shown in table 3.

Table 3. Estimates of the fishing effort in the whelk fishery based on 2014 data. Estimates on the reduction in fishing effort were calculated using an average catch per unit effort of 2.5 kg per pot and an average soak time of 2 days. Latent capacity was estimated assuming an average number of trips per year of 49 and shows the number of additional vessels which could join the fishery before effort reaches the peak levels seen in 2014.			
Pot limitation	Pot days	% reduction	Latent capacity (number of vessels based on average)
2014 estimate (no limitation)	617,202	0	0
500 pot limitation	401,464	34.95	9.93
750 pot limitation	538,075	12.82	2.66

The analysis indicated that, assuming average fishing effort per year, an additional 10 vessels could join the fishery if operated at a 500 pot, pot-limitation compared to an additional 3 vessels in the case of a 750 pot, pot-limitation.

As such, the 500 pot, pot-limitation has the benefit of increasing the latent capacity of the fishery based on 2014 landings and effort (which saw 38 vessels actively fish in the inshore region). That said, it would not be beneficial to allow effort to increase to the levels seen in 2014 as the increase in effort is thought to have been partly responsible for the decrease in catch per unit effort (in addition to removal of pre-spawning individuals).

Permit charge

The permit charge is set at 50 pence per pot. The estimated cost has taken into account to the fishers is based on 13 vessels with 500 pots (low), 38 vessels with 500 pots (high) and 25 vessels (best). The permit charge is an annual charge which contributes to the annual cost of the whelk fishery to the public. The estimated cost to the public is £16,131 annually of which the permit charge offsets £5,838 (best estimate) reducing the cost to the public to an estimated £10,294 annually.

Public costs include the administration requirements (such as the cost of the pot tags, entering landings data into the database and processing permit applications), research requirements (developing a maximum sustainable yield model, projects regarding the

size of maturity of whelks) and the enforcement costs (which includes 6 extra sea patrols and the time in man-hours to check the catch for undersize).

Increase in minimum landing size

The increase in minimum landing size will potentially reduce the amount of catch per trip in comparison to the 2014 landings data. The extent to which catch is reduced cannot be monetised for two reasons. Firstly, the size distribution of whelks within different stocklets is highly variable (for example it is thought to be different in The Wash in comparison to the North Norfolk Coast) and as such, the amount of catch lost though an increase in the mls will differ. Secondly the requirement to use escape holes in whelk pots is thought to offset the loss of catch, as has been reported from some fishers. A whelk pot will usually stop fishing when the bait has been eaten or the pot is full. By using escape holes, some fishers have reported that the whelk pots have the same number of whelks in as before but the majority are closer to 55mm in length as the smaller whelks can escape through the holes – i.e. the pots do not stop fishing when full as smaller whelks can leave the pots.

The current minimum landing size is considered in the scientific literature to be well below the size at which whelk are sexually mature. A study conducted using whelks caught off the North Norfolk coast found that the size of maturity is closer 67mm. The removal of pre-spawning individuals from a population can very quickly reduce the capability of the population to recover from fishing mortality and potentially lead to a collapse of the fishery given enough fishing effort. It is likely that the 'boom-and-bust' nature of this fishery in the past is a consequence of the removal of pre-spawning individuals given that the national mls is only 45mm.

Whilst the increase in mls may have the effect of reducing the catch of fishers in the short term, this is more than offset by potential fishing opportunities in the long-term which, without intervention, are unlikely to occur.

Requirement to riddle catch – bar spacing of 24 mm

Sorting gear (e.g. riddles or grids) are used to separate undersized whelk catch from commercial whelk catch. Informal consultation with the fishing industry has indicated that bar spacing of sorting gear varies from 20-25mm; a spacing of 20mm has been shown to be effective at selecting whelks of greater than the 45mm minimum landing size (Lawler et al 2012). Lawler et al 2012 found that the effectiveness of a riddle size depended on the location of the fishery with differences found in the width/length relationship between the four sample sites. The bar spacing at which whelk of a size of 55mm was retained varied between 23 and 24mm.

Whelks vary in width for a given length. For a given minimum landing size (length) the width of these whelk will vary and, as such, fit through riddles of different sizes. The intension of choosing a minimum bar spacing for riddles is to balance the amount of undersized whelk which will be discarded with as smaller loss of commercial sized whelk as possible.

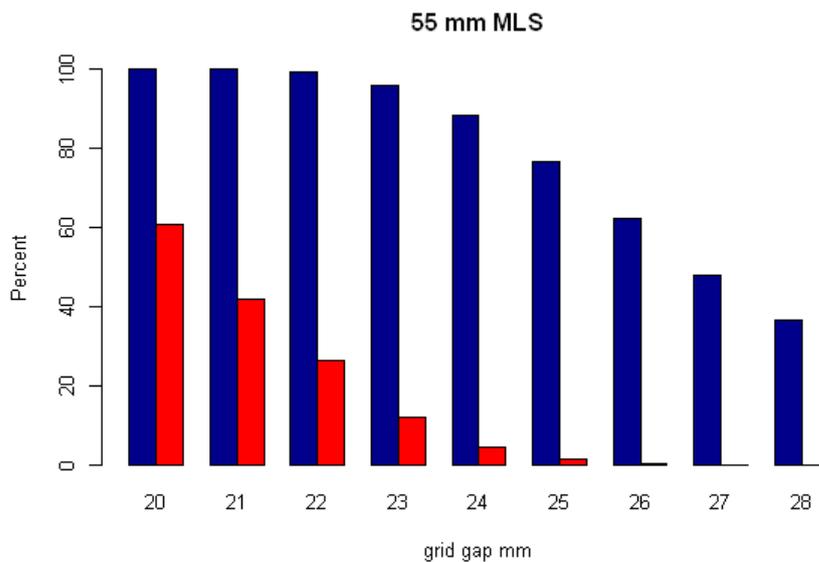


Figure 1 - extracted from Lawler et al 2012. Catch retention by riddle grid gap of both commercial (blue) and undersized (red) whelks for different assumed minimum landing sizes.

The most effective size of riddle for discarding cockles of the length 55mm would be 27 or 28mm - no whelks of 55mm will be

retained (figure 1). However, this will also result in a loss of commercial whelk in the region of 50-60%.

A riddle size of 24mm would reduce the proportion of under 55mm whelk retained to under 10% and would result in the loss of commercial sized whelk in the region of 10%.

A riddle of 25mm would result of a reduction in the retention of undersized whelk to only a few percent but would reduce the retention of commercial sized whelk to around 80%.

A small study was conducted with whelk caught from within Eastern IFCA's district to ascertain if the Cefas study was comparable. As riddles select for whelks based on their width (rather than length), differences in the width-length relationship may result in differences in whelk retention. The study indicated that, for a riddle with bar spacing of 24mm, the proportion of commercial catch lost was comparable to that of the Cefas study.

A minimum riddle size of 24mm represents the best balance between a limited economic impact on the fishers whilst still having a protective effect. A study will be conducted over the next 12 months which will provide more evidence towards the most effective riddle size.

Benefits

The overriding non-monetised benefit to this option is that the fishery will operate as a more stable, long-term fishery rather than as a 'boom-and-bust' fishery as it has in the past. Given the worth (first sale value) of the whelk fishery in 2014, this could provide an important source of income to the inshore fishers and local economy.

In addition, the flexibility of this option will allow for measures to be tailored to minimise the impact on fishers where there is enough evidence - removing the necessity to rely on a precautionary approach. This will also have the effect of saving public money with regards to a streamlined process for adding, removing or varying permit conditions rather than conducting revisions to byelaws which involves more time and process.

Option 2 - Fixed byelaw provisions

The monetised costs and benefits estimated for this option are essentially the same as for option 1. The main difference between the two options relate to the non-monetised benefits of the options.

Without the flexibility of flexible permit conditions, over time the fishery may be over-fished (possibly resulting in a cost relating to reduced catch per unit effort) or under-fished with regards to maximum sustainable yield. The benefits of this option are not as great as in option 1.

In addition, this option would not allow for effort to reflect maximum sustainable yield on an annual basis and would likely not reflect Eastern IFCA's obligations under the Marine and Coastal Access Act (2009) or the Marine Strategy Framework Directive.

Option 3 – introduce flexible permit conditions only

The monetised costs and benefits estimated for this option are essentially the same as for option 1. The main difference between the two options relate to the potential reduced effectiveness of measures as flexible permit conditions.

Permit conditions have a lower penalty level (Fixed Administrative Penalties) than byelaw provisions. The benefit of using a combination of byelaw provisions and flexible permit conditions is that, where measures do not benefit from flexibility they can remain as fixed byelaw provisions to maintain the deterrent of non-compliance. In the case of all the measures being flexible permit conditions, the deterrent for non-compliance may be perceived as worth the risk and encourage offending to the detriment of the fishery's sustainability.

One In Two Out (OITO)

OITO is not applicable for byelaws 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

Recommended option:

The recommended option is option 1 – a combination of a flexible permit conditions issued through a generic permitting byelaw and fixed byelaw provisions as set out in a Whelk byelaw.

The implementation of a generic Eastern IFCA permitting byelaw will future proof the regulatory framework to allow for new species requiring management measures. The permitting byelaw will also allow for flexible measure which can reflect the needs of the fishery (i.e. maximum sustainable yield). In addition, the whelk byelaw will contain byelaw provisions for measures which do not require flexibility.

The cost of the measures to businesses is likely to be offset by the long-term gains of a sustainable whelk fishery. Historically the fishery has run in accordance with a 'boom-and-bust' model with high levels of fishing mortality (and the removal of pre-spawning individuals) contributing to the rapid collapse of whelk stocks within an area. These measures should reduce the risk of this occurring such that inshore fishers benefit from a more stable catch of whelks.

Annex A: Policy and Planning

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.

Vision

The Eastern Inshore Fisheries and Conservation Authority will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry



Regulation and Compliance Sub Committee meeting

24 February 2016

Action Item 6

Application and Exemptions Byelaw

Report By: L P Godwin – IFCO / Project Officer & J Gregory – Acting Chief Executive Officer

Purpose of report

To present the sub-committee with the recommendation for the new Application and Exemptions Byelaw.

Recommendations

Members are recommended to:

- **Note** the rationale and justification for the final draft of the Application and Exemptions Byelaw 2016;
- **Direct** officers to submit the proposed byelaws to the Minister for consideration;
- **Agree** to delegate responsibility to the Acting CEO to make minor wording amendments on the byelaws.

Supporting documents

- **Annex 1** – Proposed Application and Exemptions Byelaw 2016
- **Annex 2** – Impact Assessment for proposed byelaw

Background

Officers were directed to conduct formal consultation on the proposed Application and Exemptions Byelaw at the 5th Regulation and Compliance Sub-Committee (17th November 2015).

Formal consultation results

No representations were made as a result of the formal consultation. This is likely to be a reflection of the limited (if any) impact of the proposed byelaw as highlighted in the associated Impact Assessment (Annex 2). The informal consultation indicated that none of the fishers known to be active in the so called 'inherited area' would be affected by the new byelaw.

Rationale and Justification for byelaw

The proposed byelaw has the following effects:

- Increase the application of most of Eastern IFCA's Byelaws to include the area inherited from North Eastern Sea Fisheries Committee (NESFC) in 2011;
- Revoke byelaws inherited from NESFC which have been assessed as either duplications of Eastern IFCA Byelaws or redundant;

- Revoke Byelaw 2 (Application and Saving for Scientific Purposes) of Eastern IFCA's byelaws;
- Increase Eastern IFCA's ability to grant dispensation to include reasons of fisheries management.

The intention of this byelaw is to simplify the regulations within Eastern IFCA's district to the benefit of fishers.

Remaining byelaws (of which there are four) inherited from NESFC will be reviewed in line the review of all Eastern IFCA byelaws, which is driven by the Strategic Assessment.

The proposed byelaw is presented in Annex 1.

Next Steps

If the Sub-Committee considers that the proposed byelaw is adequate, the byelaw will be sent to the MMO for Quality Assurance before going to the Minister for Defra to confirm the byelaw.

Minor amendments may be required as a result of the MMO Quality Assurance process. It is recommended that the sub-committee agrees to delegate responsibility to the ACEO to make such amendments required for the byelaw to pass the MMO QA. Any substantial changes to the byelaw (for example anything that would likely change the effect on fishers) would be brought before the chair of the sub-committee to consider whether the full sub-committee would need to reconvene the sub-committee.



**Eastern
Inshore Fisheries and Conservation Authority**

MARINE AND COASTAL ACCESS ACT 2009

APPLICATION AND EXEMPTIONS BYELAW 2016

The Authority for the Eastern Inshore Fisheries and Conservation District in exercise of its powers under sections 155, 156 and 158 of the Marine and Coastal Access Act 2009 hereby makes the following byelaw for the District.

Interpretation

1. In this byelaw
 - a. 'District' means the Eastern Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010 No 2189)

Provisions

2. All byelaws shall apply to the whole area of the District unless;
 - a. Otherwise specified in a particular byelaw;
 - b. In cases to which the provisions of section 158 of the Marine and Coastal Access Act 2009 apply; or
 - c. To any person bona fide fishing for sea fish for scientific or for stocking or breeding purposes or for reasons relating to fisheries management under the written authority in that behalf of Eastern Inshore Fisheries and Conservation Authority, signed by their Clerk, or the Minister of the Department for Environment, Food and Rural Affairs and in accordance with the conditions contained in that authority.

Revocations

3. The following byelaws are hereby revoked such as they applied within the district:
 - a. BYELAW 2. Application and saving for scientific purposes
 - b. BYELAW II. Application and saving for scientific purposes;
 - c. BYELAW IV. Seine net, draw net or 'Snurrevaad': prohibition of;
 - d. BYELAW V. Push net;
 - e. BYELAW VIII. Mussels: minimum size;
 - f. BYELAW X. Shellfish: re-deposit of;
 - g. BYELAW XI. Shellfish beds: regulations of;
 - h. BYELAW XIV. Removal of parts of lobsters from any fishery: prohibition of;

- i. BYELAW XV. Application of byelaws;
- j. BYELAW XIX. Parts of crab;
- k. BYELAW XX. Prohibition on use of crab (*Cancer pagurus*) for bait;
- l. BYELAW XXI. Protection of 'V' notched lobsters;
- m. BYELAW XXII. Permit to fish for lobster, crab, velvet crab and whelk
- n. BYELAW XXIII. Method and area of fishing (dredges) byelaw
- o. BYELAW XXV. Prohibition on removal of tope or parts thereof
- p. BYELAW XXVIII. Crustacea conservation byelaw

Title: Eastern IFCA Application and Exemptions Byelaw	Impact Assessment (IA)
IA No: EIFCA002	Date:
Lead department or agency: Eastern Inshore Fisheries and Conservation Authority	Stage: Consultation
Other departments or agencies:	Source of intervention: Domestic
Summary: Intervention and Options	Type of measure: Secondary Legislation
	Contact for enquiries: Julian Gregory – Acting CEO (01553 775321)
	RPC Opinion: N/A

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£m	£	NA	No	NA

What is the problem under consideration?

In 2011 Eastern Sea Fisheries Joint Committee became Eastern IFCA and inherited part of North Eastern Sea Fisheries Committee's district and all of their byelaws. Eastern IFCA conducted a review of these inherited byelaws and 15 were identified as being either a duplicate of Eastern IFCA byelaws or redundant within the inherited area. Byelaw 2 of Eastern IFCA's byelaws sets the spatial application of Eastern IFCA's byelaws which currently doesn't include the inherited area.

Why is government intervention necessary?

A new byelaw is required with the provision that Eastern IFCA's byelaws shall apply within the whole of Eastern IFCA's district – this can only be achieved through new regulation. In addition, the new byelaw will revoke those byelaws which were found to be redundant or duplications including Byelaw 2 – Application and saving for scientific purposes.

What are the policy objectives and the intended effects? To revoke those byelaws inherited from North Eastern Sea Fisheries Committee which were identified as redundant or duplications, to redefine the spatial application of Eastern IFCA's byelaws to include the inherited area and to retain the provisions which allow for exemptions for reasons of scientific research or breeding or stocking and add a provision to allow dispensation from Eastern IFCA byelaws for reasons relating to fisheries management. This will have the effect of a common set of byelaws across the whole district, reducing complexity to the benefit of fishers.

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

The preferred option is the implementation of a new byelaw which will revoke 15 inherited byelaws and one Eastern IFCA byelaw and redefine the spatial application of byelaws in line with the Eastern IFCA district. The other option considered is the do nothing option.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** n/a

Does implementation go beyond minimum EU requirements? **Yes**

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		

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:

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years	Net Benefit (Present Value (PV) (£m))		
			Low: Unknown	High: Unknown	Best Estimate: Unknown

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excluding transition) (Constant Price)	Total Cost (Present Value)
Low	£0	£0	£0
High	£0	£0	£0
Best Estimate	£0	£0	£0

Description and scale of key monetised costs by 'main affected groups'
 The only area affected by the new byelaw is the area inherited by Eastern IFCA from North Eastern Sea Fisheries Committee (circa 12700ha of sea along the south bank of the Humber estuary). Some of the byelaws which will have application in the inherited area are more restrictive than the byelaws inherited from North Eastern Sea Fisheries Committee. Fishers have been engaged informally and have indicated that the more restrictive byelaws will not have an impact on their fishing activity. As such, no costs were identified with regards to private businesses.

Other key non-monetised costs by 'main affected groups'
 None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Unknown	Unknown	Unknown
High	Unknown	Unknown	Unknown
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'
 Monetised benefits cannot be estimated.

Other key non-monetised benefits by 'main affected groups'
 The main benefit of the regulation will be better clarity for fishers utilising sea fisheries resources in the inherited area and commonality of regulation throughout Eastern IFCA's district.

Key assumptions/sensitivities/risks **Discount rate (%)** n/a
 Assumptions: all fishers were identified through informal engagement. Key risks: fishers active in the inherited area not identified during information gathering.

BUSINESS ASSESSMENT (Option 2)

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

Evidence base

1. Introduction

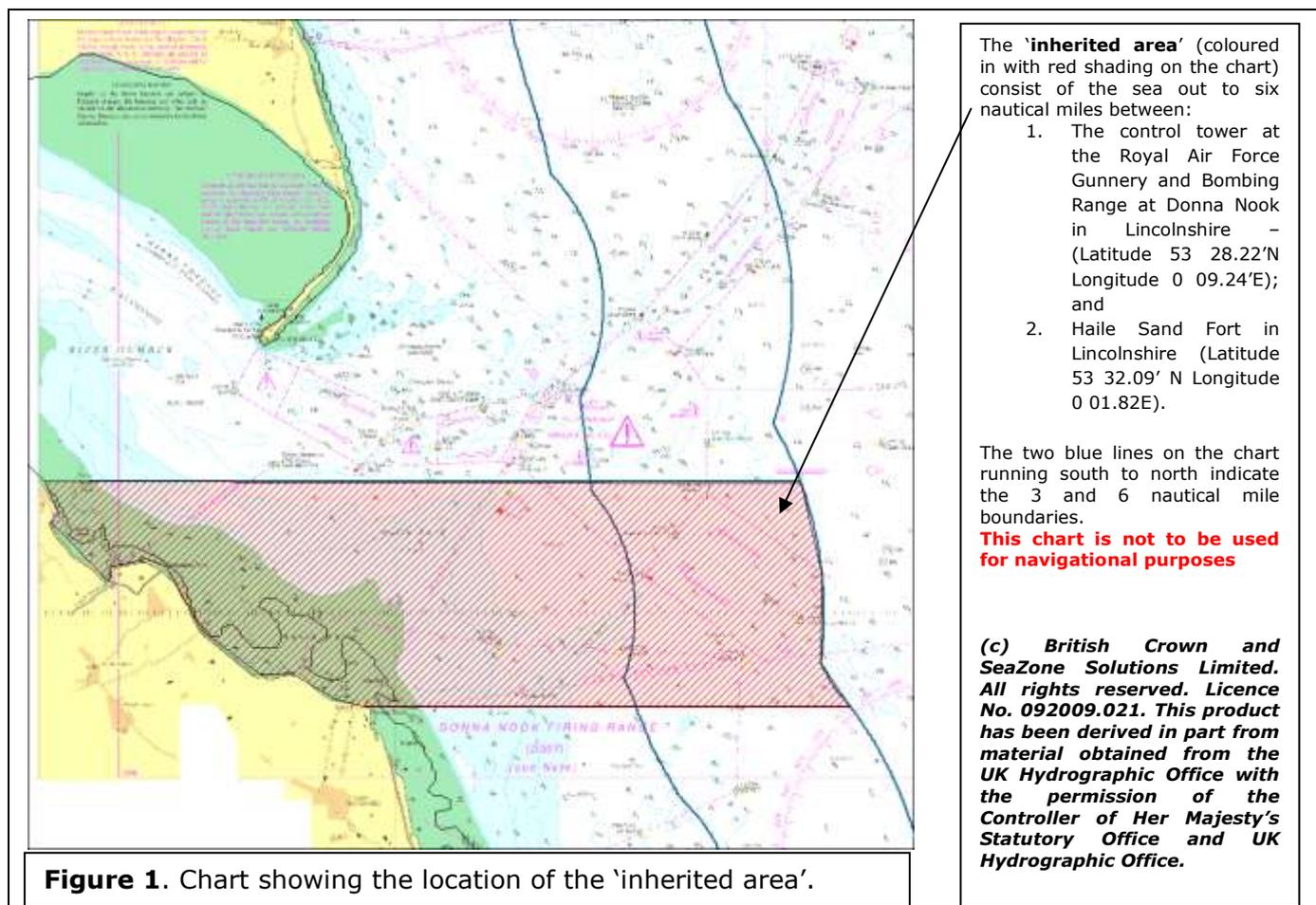
Eastern Sea Fisheries Joint Committee became Eastern IFCA in 2011 and, under the Marine and Coastal Access Act 2009 (Transactional and Saving Provisions) Order 2011, Eastern IFCA inherited part of North Eastern Sea Fisheries Committee's District and all of their byelaws.

Eastern IFCA high level objective performance indicator 2.2a sets out that Eastern IFCA would review all of its own byelaws in addition to those inherited from North Eastern Sea Fisheries Committee. This is to ensure that our regulatory measures are consistent in format and approach and reflect contemporary regulatory frameworks and fisheries.

2. Rationale for intervention

The issue under consideration is the wording of the current Eastern IFCA Byelaw, Byelaw 2 – Application and saving for scientific purposes. The first provision of this byelaw sets out that Eastern IFCA's byelaws shall apply within the 'Eastern Sea Fisheries District' which excludes the inherited area. Revoking this byelaw and replacing the provision which excludes the inherited area with one which reflects Eastern IFCA's district is required to remedy the issue.

As a first step in the byelaw review process, it is proposed that those inherited byelaws which represent a duplication (or close duplication) of Eastern IFCA byelaws or are redundant (i.e. do not reflect a regulatory need consistent with the rest of Eastern IFCA's district) are revoked and that the application of Eastern IFCA's byelaws be extended into the 'inherited area' (figure 1). This will result in commonality of regulations across Eastern IFCA's District. It is intended that the remaining byelaws will be more thoroughly reviewed in line with the priorities highlighted in the Strategic Assessment.



The inherited byelaws were reviewed as in table 1.

North Eastern IFCA BYELAW	Summary of Offence / Byelaw	EIFCA Equivalent (Y/N)	Recommended Action	Explanation	Economic Impacts (Including the impact of replacing with Eastern Byelaw)	Environmental Impacts (Including the impact of replacing with Eastern Byelaw)
II. Application & Saving for scientific purposes		Y - Byelaw 2 : EIFCA refers to sec 6 Sea Fisheries Regulation Act 1966, NEIFCA refers to Section 13 Sea Fisheries Regulation Act 1888	Revoke	ESFJC equivalent includes more up-to-date legislation	N/A	N/A
III. Trawling Prohibition : Exceptions	Trawling without a Permit	N - eastern IFCA only has trawling restrictions in specified areas	Retain - further review	The NESFC byelaw prohibits fishing within the inherited area. Removal of this byelaw would allow trawling in the inherited area - Options for removal include extending EIFCA byelaw 12 (which would restrict the length of vessels which can trawl) or amending our byelaw 12 to include a prohibition in this area. There are important sole nursery/spawning grounds around the Humber Estuary. There is a case to keep it until EIFCA byelaw 12 is reviewed.	N/A	N/A

IV. Seine Net, Draw Net Prohibition	Use of a Seine net, or any drawn net of the kind known as the Danish seine or 'snurrevaad'	N	Revoke	The NESFC byelaw prohibits the use of seine nets (and snurrevaad) in this area. The byelaw is generic and doesn't specify this area. Need to consider the impact of allowing seine netting in this area (i.e. sole grounds) and the current level of activity - would seine netting have an impact on the sole grounds?	N/A	Potential conflict with the sole spawning grounds - need to consider the likelihood of this activity actually taking place should the byelaw be revoked
V. Push Net	Push nets must be raised and cleared at least once in every half hour	N	Revoke	The NESFC byelaws prohibits the use of shrimp push nets in this area. This byelaw is generic and doesn't specify this area. Need to consider impact of allowing push netting in this area (i.e. sole grounds) and the current level of activity.	N/A	Potential conflict with the sole spawning grounds - need to consider the likelihood of this activity actually taking place should the byelaw be revoked
VIII. Mussels : Minimum Size	removal from a fishery of mussels less than 51mm in length	Y - Byelaw 4 : Minimum sizes differ between the two byelaws	Revoke	There are currently no known mussel beds within inherited part of Eastern IFCA district - Eastern IFCA has no reason to believe an increase in the MLS of mussel is required within its district. Removal of this byelaw will make regulation across district consistent.	N/A - Positive	Potential impact on mussels if taking smaller size

X. Re-Deposit of Shellfish	Removal of prohibited shellfish - must be redeposit as close as possible to the place from which it was taken.	Y - Byelaw 9	Revoke	This byelaw represents a duplication of the EIFCA byelaw and can be removed with no effect.	N/A	N/A
XI. Regulations of Shellfish Beds	Removal of shellfish from a closed area	Y - Byelaw 8	Revoke	EIFCA has an equivalent byelaw - Byelaw 8 includes the ability to temporarily close a bed for 'protection of the fishery' which may include more metrics than juvenile density and stock levels. EIFCA byelaw is more appropriate.	N/A	N/A
XII. Shrimp & Prawn Fishing	Failure to raise or clear nets when fishing for shrimp or prawn, at least once in every hour	N	Retain - further review	The byelaw requires fishers to lift and clear gear every hour - presumably to prevent the death of by-catch. Given that the area is a sole nursery area this is likely to be important. EIFCA are currently reviewing shrimp measures with a view to implement new measures. There is a case to keep this byelaw and look to revoke it at conclusion of our shrimp measures.	N/A	N/A
XIV. Prohibition of Removal of parts of lobsters from any fishery	Removal of lobsters below MLS, or tail, claw or any other detached part of a lobster	Y - Byelaw 7 - refers to edible crab, velvet crab and lobsters	Revoke	This byelaw duplicates the Eastern IFCA byelaw 7 but includes more species - includes edible crab and velvet crab	Potential impact if current fishing practices include landing parts of velvet crab or edible crab	N/A - positive
XV. Application of Byelaws	Byelaws in force prior to 22nd Dec 1992 apply only to inside three nautical miles from baselines	N - Reference is made to where byelaws are applied in the paragraph prior to Byelaw 1.	Revoke	Not relevant	N/A	N/A

XVIII. Fixed Engine (Authorisation) Byelaw	Use of fixed engines only in specified areas, for specified species and for a period of 5 years after the date the byelaw was made.	Y - BYELAW 13 - this prohibits the use of fixed engines in waters inland of the ESFJC District except where historical rights of several fisheries make the prohibition exempt	Retain - further review	Removal of this byelaw would allow the targeting of sole, cod and all sea fish within 'Box B'. The byelaw specifically names an area within Eastern IFCA's district which is also a known sole spawning/nursery area. Revoking this byelaw would potentially have impacts on the sustainability of sole fisheries. Recommendation is to keep this byelaw and remake at a later stage in line with up-to-date byelaw guidance.	N/A	N/A
XIX. Parts of a Crab	prevents the landing of parts of a crab which cannot be measured to ensure compliance with the MLS, with the exceptions stated as (a) and (b)	Y - Byelaw 7 - refers to edible crab, velvet crab and lobsters	Revoke	Eastern IFCA byelaw is more restrictive - i.e. NESFC byelaw has exemptions where it is permitted to remove parts of (edible crab) - if removed the increased regulation would need to be reflected in an Impact Assessment	Potential impact if parts of crab is caught as by-catch (not more than 10%) or by a trammel, gill, entangling etc. Should consider potential loss of earnings if this is prohibited.	N/A - positive
XX. Prohibition on use of Crab(Cancer Pagurus) for Bait	use of edible crab for bait with the exception of cooked crab offal	Y - Byelaw 5 - no reference is made to cooked crab offal being an exception	Revoke	Eastern IFCA byelaw is more restrictive - i.e. has no exception for cooked crab offal. This increase in regulation will need to be reflected in an IA	Potential impact on cost of bait if cooked offal is currently being used as bait.	Potential impact if fishers start capturing other bait sources

XXI. Protection of 'V' notched lobsters	fishing for or taking lobster which have a v-notch in any of their tail fan flaps, or which have any form of mutilation to any of the tail fan flaps	N - SI (2000 No.874) prohibits the landing of v-notched lobsters	Revoke	The Lobsters and Crawfish (Prohibition of Fishing and Landing) Order 2000 (SI 874) prohibits the fishing of v notched or mutilated lobsters however the byelaw would allow for fishers not associated with a relevant vessel (i.e. recreational fishers). There is unlikely to be a significant impact on the lobster fishery from recreational fishers taking lobster in this area - should be considered in IA.	N/A	Potential for v-notched lobsters to be caught by recreational fishers
XXII. Permit to fish for lobster, crab, velvet crab and whelk	fishing for or removing lobster, crab, velvet crab or whelk without a specified permit	N	Revoke	Removal of this byelaw will allow fishing for the species prescribed in the byelaw to occur as in the rest of Eastern IFCA district - as we do not currently issue any permits for this area fishing for these species is currently banned in the inherited area. Removal would bring fisheries management in line with rest of district and will potentially be considered during Whelk byelaw/potting byelaw. It currently contradicts the whelk potting byelaw.	N/A - Positive (technically potting is prohibited in this area as we have not issued any permits)	Lobster, edible crab and velvet crab fishing could take place without any conditions on gear which could have an impact. Whelk effort is controlled under the EIFCA whelk byelaw.
XXIII. Method and area of fishing (Dredges) byelaw	Use of a dredge other than between 1st July and 30th September, dredges must be limited to max of 10 and of specified construction. Dredging is not permitted inside 3nm from baselines	Y - Byelaw 3, byelaw 15	Revoke	Byelaw relevant to scallop dredging which is prohibited under the byelaw. Fishers will not be able to use any gear to take scallops (or any shellfish prescribed in Byelaw 3) without authorisation from Eastern IFCA under byelaw 3. As such we have a byelaw which has the same protective effect at the moment.	N/A	N/A

XXIV. Humber Estuary Cockle Fishery Byelaw	Removal or disturbance of cockle without a permit	Y/N - Byelaw 3 - prevents the removal of cockles except by hand, hand-rake or gear approved by the Authority. Byelaw 8 allows us to close a shellfish bed. Byelaw 11 allows us to ask for returns.	Retain - further review	Permits will be provided to anyone on demand who accurately completes an application form - we can only refuse a permit on the grounds that the application form is not complete. i.e. there would be no real way to limit the number of permits under this byelaw. use of byelaw 8 and 11 of our byelaws could be used in its stead however we would still have same issue. Recommended that the byelaw remains in place until further review can be completed.	N/A	N/A
XXV. Prohibition on removal of tope or parts thereof	Removal of tope or the species (<i>Galeorhinus galeus</i>) of parts thereof.	Y - Byelaw 14	Revoke	Eastern IFCA equivalent	N/A	N/A
XXVIII. Crustacea Conservation Byelaw	Use of pots, creel or traps which do not meet the guidelines set out in the byelaw	N	Revoke	This byelaw does not apply in the inherited part of Eastern IFCA's district	N/A	N/A

3. Policy objectives and intended effects

The intended objectives of the proposed byelaw are as follows:

1. Change the spatial application of Eastern IFCA's byelaws to reflect the spatial extent of Eastern IFCA's district as per the Eastern Inshore Fisheries and Conservation Order 2010;
2. To add a provision for granting dispensation from Eastern IFCA's byelaws for reasons relating to fisheries management; and
3. Revoke those byelaws inherited by North Eastern Sea Fisheries Committee which have been reviewed as being either a duplication of Eastern IFCA byelaws (or close duplication) or as being redundant.

The intended effects of the proposed byelaw is as follows –

1. Clarity of regulations across the Eastern IFCA district; and
2. Consistency of regulations across the Eastern IFCA district.

4. The options

Option 0 – do nothing

The do nothing option would result in a mixture of byelaws inherited from North Eastern IFCA which only have application in the 'inherited' part of the district and Eastern IFCA byelaws which do not have application within the inherited area.

This presents a lack of clarity to fishers how would be overburdened by confusing and conflicting regulations.

Option 1 – Eastern IFCA Application and Exemption Byelaw

This option would have the effect of creating a common set of regulations across the district.

5. Analysis of costs and benefits

Option 0 – Do nothing

This option would maintain the status quo and there are no associated costs or benefits to this option.

Option 1 – Application and exemptions byelaw

The associated costs with this byelaw have been identified as zero. There are no identified costs associated with retaining the provisions to grant dispensation for reasons relating to scientific research or breeding or stocking purposes. In addition, no costs are

associated with adding the provisions to grant exemptions from Eastern IFCA byelaws for reasons relating to fisheries management. Informal information gathering was conducted with fishers who are thought to fish within the 'inherited area'. The purpose of this consultation was to determine the costs associated with the revocation and replacement of North Eastern Sea Fisheries Committee byelaws with more restrictive Eastern IFCA byelaws.

The fishing activity which could be impacted by these changes is potting for crabs and lobster within the inherited area. The differences between the inherited regulation and the proposed regulation are summarised below and explored in more detail in Table 1.

Removal of parts of shellfish

Several IFCA's have byelaws which prohibit the landing of crabs and lobsters unless they are landed whole – i.e. it is prohibited to land a crab claw detached from the rest of the crab. Under the current regulation in the inherited area, it is permitted to land parts of edible crab (*Cancer pagurus*) and velvet crabs (*Necora puber*) if:

- The parts of crab do not make up more than 10% by weight, the total landed catch on one occasion; or
- The crab was caught in a trammel, gill or other enmeshing net and the claw became detached from the crab in clearing the net.

Under the proposed regulations it would be prohibited to land any parts of crabs (edible crabs or velvet crabs) regardless of how it was caught or its percentage with regards to total catch.

Using edible crab for bait

Under the current regulations it is permitted to use edible crab (*Cancer pagurus*) within the inherited area if that crab is cooked offal.

Under the proposed regulations it would be prohibited to use any edible crab as bait even if cooked offal.

Consultation with the industry

Officers have undertaken to engage the industry likely to be actively fishing the inherited area on an informal basis. At present there is thought to be no impact to fishers as those we have liaised with are already fishing in accordance with Eastern IFCA byelaws.

The key non-monetised benefits of the proposed byelaw is commonality of regulation throughout the Eastern IFCA district.

One In Two Out (OITO)

OITO is not applicable for byelaws 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

Recommended option: Option 1 – Eastern IFCA Application and Exemptions Byelaw

This option is considered the only option to address the issue of current byelaw wording which currently has the effect of Eastern IFCA byelaws having no application within the inherited part of the district. Revocation of duplicate and redundant byelaws through this option will provide a commonality of regulation throughout the district.

Annex A: Policy and Planning

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.

Vision

The Eastern Inshore Fisheries and Conservation Authority will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry



Regulation and Compliance Sub Committee meeting

Action Item 7

24 February 2016

Protected Areas Byelaw Review

Report By: L P Godwin – IFCA / Project Officer & J Gregory – Acting Chief Executive Officer

Purpose of report

To present the sub-committee with the rationale for reviewing the Protected Areas Byelaw and to present a proposed byelaw for the sub-committee's consideration.

Recommendations

Members are recommended to:

- **Note** the rationale for the review of the Protected Area Byelaw;
- **Agree** to Make the Protected Areas Byelaw 2016;
- **Direct** officers to conduct a formal consultation for the Protected Areas Byelaw.

Supporting documents

- Annex 1 – Proposed Marine Protected Areas 2016 Byelaw
- Annex 2 – Impact Assessment for the proposed byelaw

Background

The Protected Areas Byelaw came into effect on the 16th May 2014. The intention of the byelaw was to enable Eastern IFCA to restrict or prohibit fishing activity in Marine Protected Areas (MPAs) for the protection of sensitive habitats and species by using Regulatory Notices to manage fishing activity. The byelaw was the first of its kind as a flexible byelaw and required considerable debate with Defra.

The byelaw is limited in as much as Regulatory Notices can only be applied to MPAs which are listed in Schedule One of the Byelaw. The reason for this is that Defra/MMO legal teams felt that a definitive list of MPAs where Regulatory Notices could be introduced was required in order to avoid any suggestion of unlawful delegation of powers. At that time the level of flexibility sought by Eastern IFCA had not previously been introduced and it would appear that a precautionary view was taken in this regard.

Inner Dowsing, Race Bank and North Ridge Special Area of Conservation

In 2012, the MMO agreed to manage any European Marine Sites that straddled the IFCA's seaward boundary – for example, the Inner Dowsing, Race Bank and North Ridge (IDRBNR) SAC, and the Haisborough, Hammond & Winterton (HHW) SAC, parts of which

are located within our district. As such, these sites were not included in Schedule One of the Protected Areas Byelaw as we did not, at the time, need to manage these sites.

Since then, Natural England has updated the conservation advice for *Sabellaria spinulosa* reef (a protected feature of the IDRBNR and HHW) within that part of the EMS which is within Eastern IFCA's district. As a red risk interaction, management measures are required as soon as possible to protect the reef habitats from towed demersal fishing gear disturbance.

Discussions with the MMO concluded the most appropriate management approach would be for Eastern IFCA to introduce management measures rather than the MMO. In doing so, more clarity would be achieved as fishers are already familiar with Eastern IFCA's Protected Areas Byelaw.

However, in order to use the Protected Areas Byelaw an amendment is necessary to include the IDRBNR and HHW sites in the Schedule.

Proposed solution

In addition to the management required in the IDRBNR SAC and HHW SAC, the Cromer Shoal Marine Conservation Zone (MCZ) has recently been designated which could potentially require management measures in the future. This would also require an amendment to the byelaw as would any additional conservation sites yet to be confirmed. Furthermore, consultation is currently underway for an additional SAC that would partially overlap the Eastern IFCA district, and the extension of an existing Special Protection Area (SPA) to include additional parts of the Eastern IFCA district. A further additional SPA is anticipated to be consulted upon in Spring 2016, and it is highly likely that two further MCZs will be designated in the Eastern IFCA district in Tranche 3 (2017).

As such, it is proposed that the byelaw is revoked and replaced with an amended version to include a provision that would allow for a Regulatory Notice to be implemented in any site designated through legislation. Since the introduction of the original Protected Areas Byelaw the legal view on unlawful delegation of powers has matured. It is judged that the safeguards provided by the process for designating new sites combined with the safeguards provided by the process for introducing Regulatory Notices are sufficient to rebut any suggestion of unlawful delegation.

This level of flexibility would future-proof the byelaw to allow for any new designations in the future. The proposed byelaw is at Annex 1 and the key changes are summarised below:

Amended section	Amendment and effect	Rationale
Byelaw name	Change from 'Protected Areas Byelaw' to 'Marine Protected Areas Byelaw 2016'	MMO advice to use a naming protocol using the year of introduction to provide clarity.
Interpretation (1 -e)	Definition of a 'protected area' – amended from referring to Schedule One to sites designated under listed legislation. This will have the effect of	Considerable process is required to designate a conservation site under any of the listed designation. Such process also indicates the importance of the site for conservation.

	enabling a Regulatory Notice to be implemented in any site which has been designated – for example, future MCZs designated under the Marine and Coastal Access Act or new EMS designated through the Habitats Directive.	Due process is required to implement a new Regulatory Notice via the Protected Areas Byelaw including proportionate consultation and an Impact Assessment as required. It is considered these processes are adequate to ensure that Regulatory Notices are reasonable and proportionate.
3(e)	Remove 'in potting fisheries' from 3(e). Broaden the ability to limit effort through a Regulatory Notice.	The current wording only allows for effort restrictions to potting fisheries. It may be the case that effort limitation in relation to other fishing activities is required for the protection of sensitive habitats.
10	Replace 'local media' with 'relevant media'. This will allow for advertising to consider a wider range of media.	Local media – such as local newspapers – is not always the best form of communicating with local fishers or other potentially impacted stakeholders.
Schedule One	Removed – this has the effect of not limiting the byelaws application to only the sites listed on the Schedule.	As for the amendment of section 1(f).
Added paragraph 13	Revocation of the old Protected Areas Byelaw	To revoke the existing byelaw such that it can be replaced with the new byelaw.

As outlined above and highlighted in the 2016-17 Strategic Assessment, new conservation designations are likely to come on line over the next couple of years. The above amendments reflect this and will enable The Authority to meet its obligations with better efficiency – i.e. without having to amend the schedule of the byelaw each time.

Potential Impacts

The proposed amendments to the byelaw will not have any impacts on stakeholders as they do not have any effect on stakeholders. Impacts on fishers and other stakeholders will only occur when a Regulatory Notice is implemented. As a result of the proposed byelaw, restrictions and prohibitions could be put in place in additional areas however, in order to implement a Regulatory Notice, Eastern IFCA has to conduct a formal consultation and produce an impact assessment.

This is reflected in the Impact Assessment presented in Annex 2.

Next steps

The Sub-Committee is asked to consider the proposed byelaw and to make the byelaw.

After the byelaw is made, a formal consultation is required which will be conducted at the earliest opportunity. The formal consultation will be published in a newspaper and on the Eastern IFCA website.

Officers will report back to the Sub-Committee on the results of the formal consultation to present objections made and recommend amendments as necessary.

Summary

The proposed amendments will future-proof the byelaw and make the regulation more effective. No impacts are foreseen as the Protected Areas Byelaw 2016 itself has no effect except to enable the implementation of Regulatory Notices which themselves require formal consultation.



**EASTERN INSHORE FISHERIES AND CONSERVATION
AUTHORITY**

MARINE AND COASTAL ACCESS ACT 2009

Marine Protected Areas Byelaw 2016

The Authority for the Eastern Inshore Fisheries and Conservation District in exercise of the powers conferred by sections 155 and 156 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

Interpretation

1. In this byelaw and associated Regulatory Notices:
 - a) 'the Authority' means the Eastern Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010/2189);
 - b) 'the District' means the Eastern Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the Eastern Inshore Fisheries and Conservation Order 2010;
 - c) 'Regulatory Notice' means a notice issued by the Authority in accordance with this byelaw;
 - d) 'fishing' includes:
 - (i) digging for bait;
 - (ii) shooting, setting, towing and hauling of fishing gear;
 - (iii) gathering sea fisheries resources by hand or by using a hand operated implement;
 - (iv) catching, taking or removing sea fisheries resources; and fish shall be construed accordingly;
 - e) 'fishing gear' includes: any nets, pots, ropes, anchors, surface markers, lines, dredges, grabs, rakes or other implements used or deployed during fishing;

- f) 'management measures' means any of the measures as listed in paragraph 3.
- g) 'marine protected area' means a site of the following type insofar as they exist in the sea
 - (i) a site of special scientific interest, within the meaning of Part 2 of the Wildlife and Countryside Act 1981 (c.69);
 - (ii) a national nature reserve declared in accordance with section 35 of that Act;
 - (iii) a Ramsar site, within the meaning of section 37A of that Act;
 - (iv) a European marine site, within the meaning of paragraph 4 of regulation 8 of the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490);
 - (v) A marine conservation zone designated under section 116 of the Marine and Coastal Access Act 2009 (c.23);
- h) 'restricted area' means an area, within or adjacent to a marine protected area, defined within a Regulatory Notice and for which a management measure has been introduced by that Regulatory Notice.

Regulatory Notices

2. In order to further the conservation objectives of a Protected Area, the Authority may issue a Regulatory Notice in relation to fishing within a Restricted Area in accordance with the procedure outlined in paragraph 7.
3. A Regulatory Notice may impose any of the following management measures within a Restricted Area:
 - a) restriction or prohibition of all fishing;
 - b) restriction or prohibition of specified fishing gear types or methods of fishing:
 - i. towed fishing gear;
 - ii. dredges;
 - iii. pots and traps;
 - iv. all netting including fixed, drift and seine;
 - v. all fishing lines;
 - vi. commercial diving;
 - vii. bait collection;
 - viii. crab tiling;
 - ix. intertidal hand working;

- c) restriction or prohibition of fishing during specified periods;
- d) restriction or prohibition of fishing using fishing gear of a specified description;
- e) limitation of fishing effort;
- f) restriction or prohibition of fishing using vessels of a specified description.

In this paragraph and paragraphs 5 and 6 'specified' means specified in the Regulatory Notice.

4. A Regulatory Notice must specify:

- a) the marine protected area in which the Regulatory Notice applies;
- b) the feature for protection by the Regulatory Notice;
- c) the co-ordinates of the Restricted Area;
- d) the date from which the Regulatory Notice takes effect;
- e) the latest date for the Regulatory Notice to be reviewed;
- f) the date on which the Regulatory Notice expires if there is to be an expiry date.

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5. Where a Regulatory Notice contains a provision which restricts or prohibits fishing using fishing gear of a specified description in a Restricted Area a person must not carry any such fishing gear on board a vessel in that Restricted Area unless:

- a) it is stored in such a way that use cannot readily be made of it for any purpose; or
- b) there is an exemption to the requirement for fishing gear to be stored in such a way that use cannot readily be made of it for any purpose specified within the Regulatory Notice.

6. Any exemptions to the management measures set out in a Regulatory Notice will be specified in that notice.

Procedure

7. The procedure for issuing, varying or revoking a Regulatory Notice includes the Authority taking the following steps:

- a) acquisition of relevant available evidence including:
 - i. scientific and survey data, and scientific advice provided by the Authority, the Centre for Environment, Fisheries and Aquaculture Science or such other persons as the Authority thinks fit;
 - ii. advice given by Natural England or other external authorities, organisations, persons or bodies as the Authority thinks fit; and
 - iii. information from any other relevant source.
- b) consultation by such methods as the Authority considers appropriate, with such stakeholders, organisations and persons as appear to the

- Authority to be representative of the interests likely to be substantially affected by any restriction or prohibition;
- c) undertaking an impact assessment on the introduction of a Regulatory Notice; and
 - d) consideration by the Authority of all information arising from subparagraphs (a) to (c) above.
8. The Authority will review a Regulatory Notice as specified in the Regulatory Notice or sooner and in any case no less frequently than every four years from the date the Regulatory Notice takes effect.
9. The review of a Regulatory Notice will be in accordance with a formal operational procedure agreed by the Authority and includes:
- a) The steps set out at sub-paragraphs 7 (a) and (b) above and where a variation of the Regulatory Notice is being considered the steps set out at sub-paragraph 7 (c);
 - b) Consideration by the Authority of all the information arising from sub-paragraph 9 (a).
10. The decision of the Authority to issue, maintain, vary or revoke a Regulatory Notice will be published using relevant media.

Application

11. Contravention of a provision of a Regulatory Notice constitutes a contravention of this byelaw.
12. This byelaw does not apply to any person performing an act which would otherwise constitute an offence against this byelaw, if that act was carried out in exercise of any right of common held by that person.

Revocations

13. The byelaw with the title "Protected Areas Byelaw" made by the Authority on 18 September 2013 and in force immediately before the making of this byelaw is revoked.

Explanatory Note

(This note does not form part of the byelaw)

This byelaw enables the Authority to provide protection to sensitive marine habitats and species, in a manner that seeks to balance the needs of inshore fisheries and local socio-economic considerations with the requirement to secure a sustainable marine environment.

This Byelaw introduces flexibility in the way that the Authority manages inshore fisheries and will support the achievement of conservation objectives in marine protected areas. This Byelaw enables the Authority to issue Regulatory Notices to restrict or prohibit fishing where this is necessary (paragraphs 2 to 6). The Byelaw also sets out a procedure for issuing, varying and revoking a Regulatory Notice (paragraphs 7 to 10).

The introduction and review of Regulatory Notices will be undertaken in accordance with formal operational procedures set out by the Authority. All decisions relating to Regulatory Notices will be undertaken by the Authority or a properly constituted sub-committee in meetings that are open to the public and conducted in accordance with the Authority's Constitution and Standing Orders. Regulatory Notices will be reviewed in accordance with the review date set at the time that the notice is made or upon receipt of evidence that in the opinion of the Authority warrants an earlier review.

The areas where the byelaw has effect include any area within the District which has been designated, confirmed or notified under associated legislation for reasons of conservation or environmental protection and adjacent areas.

Paragraph 12 of this Byelaw specifically preserves personal "rights of common". These are particular specialised and defined rights held by "commoners" in respect of registered "common land". "Rights of Common" relate only to registered common land and this Byelaw retains full force and effect against all other persons, including those exercising their common law right of fishery and any person exercising a private or several right of fishery. If you have any doubts about the applicability of this Byelaw to you, you should seek guidance from the Authority before fishing for or taking any sea fisheries resources.

Annex 2 – Impact Assessment for the proposed Permitting Byelaw 2016

Title: Eastern IFCA Marine Protected Areas 2016 Byelaw IA No: EIFCA003 Lead department or agency: Eastern Inshore Fisheries and Conservation Authority Other departments or agencies:		Impact Assessment (IA)																		
		Date: 02/02/2016																		
		Stage: Consultation																		
		Source of intervention: Domestic																		
		Type of measure: Secondary Legislation																		
		Contact for enquiries: Julian Gregory – Acting CEO (01553 775321)																		
Summary: Intervention and Options		RPC Opinion: N/A																		
Cost of Preferred (or more likely) Option																				
Total Present Value £m	Net	Business Net Present Value £	Net cost to business per year (EANCB on 2009 prices) NA	In scope of One-In, Two-Out? No	Measure qualifies as NA															
<p>What is the problem under consideration? Marine Protected Areas (MPAs) require management measures for the protection of certain features and habitats from fishing activity. The Protected Areas Byelaw enabled Eastern IFCA to issue Regulatory Notices which contained management measures within MPAs listed in Schedule One of the Byelaw. Since its implementation, additional MPAs have come into Eastern IFCA’s remit (The Inner Dowsing, Race Bank and North Ridge SAC and the Haisborough Hammond and Winterton SAC) and a new MPA has been designated, the Cromer Shoals Chalk Bed Marine Conservation Zone. In order to implement a Regulatory Notice in these areas as may be required, the Protected Areas Byelaw needs to reflect these new areas. It is also the case that additional new MPAs may be designated at some point in the future; the byelaw also needs to be capable of applying to any additional MPAs so designated.</p> <p>Why is government intervention necessary? Management of ‘red risk’ fealties in European Marine Sites requires regulatory measures to manage fishing activity. The appropriateness of regulatory intervention for each MPA will be considered through the process set out in the Marine Protected Areas 2016 Byelaw.</p> <p>What are the policy objectives and the intended effects? To revoke the Protected Areas Byelaw. To implement a similar byelaw with extended flexibility to account for any additional MPAs designated such that Eastern IFCA can more effectively manage fishing activity in MPAs within its district.</p> <p>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) The preferred option is the implementation of a new byelaw which will revoke the Protected Areas Byelaw and effectively replace it with a new byelaw which will contain the provision that Regulatory Notices can be implemented in any MPA designated through legislation listed in the byelaw. This will future proof the byelaw against any new MPA designations and make for a simplified, clearer process for stakeholders to understand.</p> <p>Will the policy be reviewed? It will be reviewed. If applicable, set review date: n/a</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Does implementation go beyond minimum EU requirements?</td> <td colspan="5" style="text-align: center;">Yes</td> </tr> <tr> <td>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</td> <td style="text-align: center;">Micro Yes</td> <td style="text-align: center;">< 20 Yes</td> <td style="text-align: center;">Small Yes</td> <td style="text-align: center;">Medium Yes</td> <td style="text-align: center;">Large Yes</td> </tr> </table> <p>What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="text-align: center;">Traded: N/A</td> <td style="text-align: center;">Non-traded: N/A</td> </tr> </table>						Does implementation go beyond minimum EU requirements?	Yes					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		Traded: N/A	Non-traded: N/A
Does implementation go beyond minimum EU requirements?	Yes																			
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															
	Traded: N/A	Non-traded: N/A																		

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

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Unknown	High: Unknown	Best Estimate: Unknown	

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excluding transition) (Constant Price)	Annual (Present Value)	Total Cost
Low	£0		£0		£0
High	£0		£0		£0
Best Estimate	£0		£0		£0

Description and scale of key monetised costs by 'main affected groups'

The byelaw will not have any direct impacts or costs. A resultant Regulatory Notice may have such impacts or costs which will be detailed in the Impact Assessment which will be necessary as per the process set out in the byelaw.

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

None identified.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. transition) (Constant Price)	Annual (Present Value)	Total Benefit
Low	Unknown		Unknown		Unknown
High	Unknown		Unknown		Unknown
Best Estimate					

Description and scale of key monetised benefits by 'main affected groups'

Monetised benefits cannot be estimated - A resultant Regulatory Notice may have such benefits which will be detailed in the Impact Assessment which will be necessary as per the process set out in the byelaw.

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

The effect of the new byelaw will be better clarity for fishers who already understand the process involved in implementing new Regulatory Notices through this mechanism. There is a lesser process burden on Eastern IFCA, and as such on the public purse, to implement Regulatory Notices in new MPAs. Management of MPAs will be more dynamic.

Key assumptions/sensitivities/risks

Assumptions: none. Key risks: none identified

Discount rate (%)

n/a

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of Measure qualifies OITO?	as
Costs: N/A	Benefits: N/A	Net: N/A		

Evidence base

1. Introduction

The Department for Food, Environment, and Rural Affairs (Defra) has introduced a revised approach to the management of fisheries in EMS. This has resulted in the need for Eastern IFCA to establish measures to protect the features of MPAs from fishing activities where necessary to ensure full compliance with Article 6 of the Habitats Directive and section 154 of the Marine and Coastal Access Act 2009.

2. Rationale for intervention

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 protect European Marine Sites and the Marine and Coastal Access Act 2009 requires IFCAs to seek to ensure that the conservation objectives of any MCZ are furthered. Therefore this IA is considering measures to meet these duties and reduce the impacts of externalities and maintain/increase the level of public goods in the marine environment.

Eastern IFCA has an obligation to protect the following sites from fishing activities;

- i) a site of special scientific interest, within the meaning of Part 2 of the Wildlife and Countryside Act 1981 (c.69);
- j) a national nature reserve declared in accordance with section 35 of that Act;
- k) a Ramsar site, within the meaning of section 37A of that Act;
- l) a European marine site, within the meaning of paragraph 4 of regulation 8 of the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490);
- m) A marine conservation zone designated under section 116 of the Marine and Coastal Access Act 2009 (c.23);]

The proposed byelaw does not actually implement any restrictive or prohibitive measures on fishing activity.

To issue, vary or revoke a regulatory notice, Eastern IFCA must carry out a consultation with potentially effected stakeholders and produce an IA of the associated impacts.

3. Policy objectives and intended effects

The intended objectives of the proposed byelaw are as follows:

1. To enable Eastern IFCA to issue (and subsequently vary or revoke), as necessary, management measures for the protection of protected habitats and features within Marine Protected Areas through Regulatory Notices;
2. To allow Eastern IFCA to manage fishing activities in MPAs in a consistent manner to the benefit of stakeholders;

The intended effects of the proposed byelaw which are in addition to those associated with the Protected Areas Byelaw are as follows –

1. Enable Eastern IFCA to implement Regulatory Notices in any MPA within its district;
2. Enable Eastern IFCA to restrict levels of fishing effort in fisheries within all fisheries.

4. The options

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, Article 6 (2) of the Habitats Directive and section 154 of the Marine and Coastal Access Act 2009 would not be met.

Option 1 – Marine Protected Areas 2016 Byelaw

This byelaw includes provision for Regulatory Notices issued through the process set out in the byelaw itself have effect in any MPA within Eastern IFCA's district. This has the effect of future proofing the byelaw against any newly designated MPAs which the IFCA has a duty to protect from potentially damaging fishing activities as necessary.

This option will provide clarity to stakeholders as it uses a mechanism which is already understood and established. It will also reduce the process burden on Eastern IFCA and as such, reduce the public cost of managing fishing activities in MPAs.

Option 2 – Amend Schedule One of the Protected Areas Byelaw

This option would allow for Eastern to manage the 'red risk' features of the Inner Dowsing, Race Bank and North Ridge SAC, the Haisborough Hammond and Winterton SAC and potentially the Cromer Sholas Chalk Beds MCA as required in the short term. Any future designations of MPA would however then require additional amendments of Schedule One.

5. Analysis of costs and benefits

Option 0 – Do nothing

No monetary costs are associated with this option however, failure to comply with the Habitats Directive in a timely manner can result in infraction and large fines on member states.

Option 1 – Marine Protected Areas 2016 Byelaw

No economic costs are associated with this option. There is likely to be a monetised benefit in introducing the provision to issue Regulatory Notices in any MPA rather than amending Schedule One as less process is required. This option will also provide clarity to stakeholders as it uses a mechanism which is already understood and established.

Option 2 – Amendment of Schedule One of the Protected Areas Byelaw

No economic costs or benefits are associated with this option.

One In Two Out (OITO)

OITO is not applicable for byelaws 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

Recommended option: Option 1 – Marine Protected Areas 2016 Byelaw

This option provides a balance of flexibility and due process. The Marine protected Areas 2016 byelaw will have no direct impacts on fishing activities. The potential Regulatory Notices which may be issued as a result may have impacts associated with them. The proposed byelaw includes provisions that the issuing, varying or revocation of any Regulatory Notice will require consultation with potentially effected stakeholders and an Impact Assessment.