

Revised approach to fishing in European Marine Sites: A status report

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RECOMMENDATIONS

Based on the summary of the red risk byelaws set out in the table included in the Annex to this report and the analysis contained in this report, we make the following recommendations for the next phase of the revised approach to fishing in European Marine Sites in England:

- For sites where there is uncertainty about location or extent of features, regulators must apply the precautionary principle.
- Any proposed management measures must be made on the basis of scientific advice showing that the relevant fishing activity will not adversely affect the integrity of the site. Without scientific advice that demonstrates beyond a reasonable doubt that the activity in question will not adversely affect the integrity of the site, the favourable conservation status of the protected feature and its associated biological communities, the fishing activity must be prohibited within the relevant parts of the site.
- The statutory nature conservation advisors must provide clear and robust case specific advice that appropriately applies the legal requirements under Article 6 of the Habitats Directive.
- Fishing regulators, including Inshore Fisheries and Conservation Authorities (IFCAs) –who are charged with responsibility for implementing EU environmental law –must not prioritise socio-economic interests above compliance with EU environmental law. To do otherwise, risks being liable for breach of EU law.
- Byelaws need to be enforceable, and the inclusion of a lashed and stowed requirement helps to achieve this. The introduction of inshore vessel monitoring systems could also go some way to assist enforcement of byelaws in marine protected areas.
- It is essential that the individual instances of non-compliance identified in the table do not hinder what has essentially been a positive approach that has set England on a strong course towards compliance with the EU Birds and Habitats Directives. The byelaws identified as ‘poor’ in the table should be revisited through the next phase of the project.

1 Introduction

1. On 14 August 2012, the Department for Environment, Food and Rural Affairs (Defra) announced that it would revise its approach to fisheries management within European marine sites in England (English inshore waters and offshore waters not in the Scottish offshore region).¹ This announcement was supported by environmental NGOs - specifically ClientEarth and Marine Conservation Society - who for many years had argued that the UK's approach to managing fishing in European Marine Sites was not legal under the requisite tests of the Habitats Directive.
2. Implementation of the revised approach is being carried out by English fisheries regulators which include the Marine Management Organisation (MMO) and the Inshore Fisheries and Conservation Authorities (IFCAs). The first stage of the revised approach is now complete with a total of 17 new byelaws passed that prevent bottom towed fishing gear being used in the sensitive parts of 25 European Marine Sites. This protects more than 5680 square km of England's seas from bottom towed fishing gear.²
3. This report considers the first stage of Defra's revised approach and what has been achieved so far. Areas of concern – where, in our view, byelaws do not sufficiently adhere to the Habitats Directive requirements – are noted and an overall conclusion of what has been achieved so far is provided. Difficulties for the next phase of the project are predicted and recommendations are made, which will help to ensure that compliant protection for all European Marine Sites from all potentially damaging fishing is delivered by December 2016.

2 Background to the revised approach to fishing in European Marine Sites

4. European Marine Sites are part of an EU-wide network of protected areas established under the EU Habitats Directive.³ The aim of the network is to ensure the long-term survival of Europe's most valuable and threatened species and habitats. The network (also known as the Natura 2000 network) comprises of Special Areas of Conservation (SAC) designated by Member States under the Habitats Directive, and also incorporates Special Protection Areas (SPAs) selected under the Birds Directive.⁴
5. European Marine Sites are not intended to be strict nature reserves where all human activities are excluded. However, Article 6 of the Habitats Directive sets out the provisions governing the conservation and management of European Marine Sites. More generally, European Marine Sites are meant to enable the natural habitats and the habitats of species

¹ <https://www.gov.uk/government/collections/fisheries-in-european-marine-sites-implementation-group>

² This figure relates to inshore waters only and was provided by Associate of IFCAs in a presentation made to Defra, with a summary presentation provided to the implementation group on 3 July 2014.

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p.7) (Habitats Directive).

⁴ Directive 2009/147/EC of the European Parliament and of the Council of 20 November 2009 on the conservation of wild birds (OJ L 20 26.1.2010 p.7).

that they have been designated to protect, to achieve or maintain favourable conservation status.⁵

6. In order to practically achieve this, firstly, obligations are placed on Member States to ensure that 'necessary conservation measures' are established within protected sites.⁶ Secondly, Member States must take appropriate steps to prevent deterioration or disturbance of the natural habitats and habitats of species, which the site has been designated to protect.⁷ And finally, all human activities 'likely to have a significant effect'⁸ on the European Marine Site must be subject to an appropriate assessment before being allowed to proceed. Following an appropriate assessment, it must be shown beyond a reasonable doubt that the proposed activity will not 'adversely affect the integrity of the site' (i.e. the favourable conservation status of the protected feature and its associated biodiversity).⁹ Unless a finding of no adverse effect can be made following the appropriate assessment, the activity cannot be permitted by a competent authority.¹⁰
7. There is the possibility for the activity to be allowed despite a negative assessment, provided that there are no alternative solutions and the proposed activity is for 'imperative reasons of overriding public interest'.¹¹ It is highly unlikely that a particular fishing activity would satisfy the Article 6(4) conditions.
8. The overarching aim of Defra's revised approach to fishing in European Marine Sites is to secure compliance with Article 6 of the Habitats Directive and to ensure that all existing and potential commercial fishing activities are subject to an assessment of their impact on European Marine Sites. Defra's revised approach is being applied on a risk-prioritised, phased basis. In order to achieve this, a matrix-type approach has been used, whereby fishing activity and feature interactions have been categorised at a generic level, based primarily on peer-reviewed evidence.¹² The resulting matrix has then been used to provide regulators with an indicator as to whether the activity is so damaging to a particular feature that it requires priority management measures to be introduced to protect that feature (a red risk feature interaction). Finally, the matrix indicates to regulators whether a further assessment is necessary to inform a decision as to whether further restrictions and/or management measures within the European Marine Site are required (amber or green risk feature interactions).
9. The first stage of the revised approach was completed in March 2014. As a result there are 17 new red risk byelaws that prohibit the use of bottom towed fishing gear from the sensitive

⁵ Article 2(2).

⁶ Article 6(1) Habitats Directive.

⁷ Article 6(2) Habitats Directive.

⁸ Article 6(3) of the Habitats Directive uses the wording 'plan or project....likely to have a significant effect' however EU guidance on the provisions of Article 6 (2000) confirms that both these terms should be broadly defined with the key limiting factor of what will be captured by the wording 'plan or project' is whether or not the 'plan or project' are likely to have a significant effect on the site:

⁹ For a detailed discussion about the meaning of site integrity, refer to ClientEarth technical legal briefing: <http://www.clientearth.org/reports/natura-2000-site-integrity-briefing.pdf>

¹⁰ Article 6(3) Habitats Directive.

¹¹ Article 6(4).

¹² In cases where there is insufficient peer-reviewed evidence, advice from Natural England, expert opinion and grey literature has been relied on for the generic categorization. Please refer to Defra's Matrix Protocol for a summary of the methodology that has been followed and which sets out a consistent, transparent and auditable process to be followed in allocating fishing activity to the appropriate categories in the generic matrix: http://www.marinemangement.org.uk/protecting/conservation/documents/ems_fisheries/matrixprotocol.pdf

parts of 25 European Marine Sites. A map is included within this report, which shows all bottom towed closures in English and Welsh Special Areas of Conservation as of July 2014.¹³

10. The second stage of the revised approach is now underway. Fishing regulators are in the process of identifying whether amber or green activities (as identified by the Matrix) are likely to cause a significant effect on a European Marine Site. In order to satisfy the requirements of the Habitats Directive, in this context 'likely' must be interpreted to mean situations where there is reasonable doubt as to the absence of significant effects.¹⁴ For activities identified as potentially having a significant effect on a European Marine Site, fishing regulators will then carry out an assessment to determine whether there will be 'an adverse effect on the integrity of the site'. To comply with the Habitats Directive, if it cannot be proved beyond a reasonable doubt that there will not be an adverse effect on site integrity, then the relevant parts of the European Marine Site will need to be closed to the particular fishing activity. Alternatively, sufficiently certain mitigation measures – such as seasonal closures or effort restrictions – could be introduced, following an appropriate assessment, to enable regulators to reach a conclusion that there will be no adverse effects on site integrity.

3 A brief summary of fisheries regulation in English waters

11. Before progressing to an analysis of the red risk byelaws that are now in force, it is necessary to first consider how fisheries and environmental conservation are regulated in English waters. The primary act providing regulation for English waters is the Marine and Coastal Access Act (2009) (the Marine Act). The MMO is the overarching marine regulator and is responsible for implementing the Habitats and Birds Directives and managing potentially damaging activities in European Marine Sites.¹⁵
12. The MMO is also responsible for issuing commercial fishing licenses in the UK. These are issued as general licences for commercial fishing in all UK waters and are valid for a period of two years with automatic renewal for vessels registered in England, Wales or Northern Ireland. MMO guidance on fishing vessel licensing states that each licence will list the species that are not allowed to be fished, species of fish for which restrictions apply, and the areas in which fishing is prohibited or restricted.¹⁶ The new red risk byelaws are now in force under the revised approach and therefore according to recent MMO licensing guidance, each licence should list the red risk byelaw closures. It is not yet clear whether new licences are notifying licence holders of the new byelaw requirements.
13. Prior to implementation of the revised approach to fishing in European Marine Sites, general commercial fishing licences were issued without any requirements for site-specific assessment of the impact on potentially environmentally damaging fishing operations on European Marine Sites. ClientEarth and the Marine Conservation Society argued prior to the

¹³ Please note that while the map also includes Welsh waters closures, these were mainly brought about as a result of new legislative instruments introduced by the Welsh government including the Scallop Fishing (Wales) (No2) Order 2010 and also the Sea Fish (Specified Areas) (Prohibition of Fishing Method) (Wales) Order 2012. The 'Revised Approach' specifically relates to English waters only.

¹⁴ See for example the Waddenzee case (C-127/02), paras 44 and 45.

¹⁵ Section 9 -10 Marine Act.

¹⁶ Marine Management Organisation, 'Fishing vessel licensing: An introduction', July 2013, pg4.

announcement of the revised approach, that this practice was a breach of Article 6 of the Habitats Directive – in accordance with the case law on the matter¹⁷ – because the use of certain fishing gears, which could potentially have an impact on the favourable conservation status of a European Marine Site, was not being subjected to an appropriate assessment under Article 6(3) of the Habitats Directive nor being prevented under Article 6(2) of the Habitats Directive.

14. For inshore fisheries (0-6 nautical miles from the coastline) ten regional inshore fisheries and conservation districts have been established under the Marine Act. Each of the inshore fisheries and conservation districts are managed by an Inshore Fisheries and Conservation Authority (IFCA). The main duties of the IFCA are to manage the exploitation of sea fisheries resources in their district, to protect the marine environment from the effects of fishing and to ensure that fishing is carried out in an environmentally sustainable manner.
15. Set out more fully, the environmental conservation duties of the IFCA include the following:
 - a. ensure that the exploitation of sea fisheries resources is carried out in a sustainable way (section 153(2)(a);
 - b. balance the benefits of such exploitation 'with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation' (section 153(2)(b); and
 - c. seek to ensure the conservation objectives of any Marine Conservation Zone in the district are furthered and nothing in section 153(2) is to affect this duty (section 154).
16. While the Marine Act does not place an express duty on IFCA's to manage European Marine Sites, taking their duties as a whole, it seems self evident that their conservation duties extend beyond Marine Conservation Zones (MCZs) to, for example, European Marine Sites. This is confirmed in section 158(6) Marine Act which provides that no consent (where it would otherwise be required) is needed for byelaws that protect sites of special scientific interest, national nature reserves, Ramsar sites, European Marine Sites or MCZs.
17. The Habitats and Species Regulations (2010) (Habitats Regulations) also confirm that 'relevant authorities' under those Regulations – which implement the Birds and Habitats Directives into domestic law – include IFCA's.¹⁸ It therefore follows that the power bestowed on IFCA's under section 155 of the Marine Act to enact byelaws for the purposes of carrying out their duties (which includes ensuring sustainable management of exploitation of sea fisheries resources and protection of MCZs), empowers IFCA's to make byelaws to protect European Marine Sites.
18. In implementing the revised approach, Defra provided clear guidance that IFCA's are expected to be the lead regulatory authority for all inshore European Marine Sites (except in

¹⁷ Primarily, refer to the Waddenzee case (C-127/02)

¹⁸ Section 6 Habitats Regulation.

cases where the Environment Agency is primarily responsible for regulating the fishery).¹⁹ For sites between 6-12nm (or sites that straddle the 0-6 and 6-12nm boundary), the MMO is the lead regulatory authority. The MMO also has the role of co-ordinating delivery of the revised approach, and the MMO is to report quarterly to Defra on progress regarding delivery of the project objectives by the MMO and the IFCAs.

19. Defra has also made clear that the MMO and IFCAs will be responsible and accountable for implementation of the management measures within European Marine Sites for waters under their jurisdiction.²⁰

4 Analysis of red risk byelaws

20. The table included in the Annex to this report sets out an individual summary of each of the byelaws that has been passed under the initial phase of the project. We have identified whether a conservation measure is 'good' - where we believe it complies with the Habitats Directive - 'average' or 'poor' - where we believe that the Article 6 Habitats Directive tests have not been met. We also provide a brief explanation of the reasoning behind each conclusion. In addition, we consider the amount of fishing activity that has been affected by the conservation measure and practical enforcement considerations.
21. This section of the report provides an overarching analysis of the findings set out in the table and also provides a more detailed analysis of the particularly illustrative case study provided by the Kent and Essex red risk byelaw. Section 5 builds on this analysis to anticipate the key challenges for the next phase of the revised approach and conclusions are then drawn in the final section of the report. A complete list of recommendations is set out at the start of this report.

Impacts on the UK fishing fleet

22. We have included a column in the table considering the level of impact caused by each new red risk byelaw. This is important when considering displacement, which is relevant from both an environmental and a socio-economic perspective. Displacement of activity can result in short-term economic losses to the fishing industry and could potentially push pressures onto new marine areas not previously fished in, thus undermining the overall conservation gain brought about by the closures.
23. To date, the revised approach appears on the whole to have had a medium to low level impact on the UK fishing fleet. Our analysis indicates that many closures around reef features in European Marine Sites in England has occurred in areas where bottom towed fishing is already not occurring, either because of already existing management, legislation or because the area is currently not suitable for the use of bottom towed gear.

¹⁹ Revised Approach to the Management of Commercial Fisheries in European Marine Sites - Overarching Policy and Delivery Document (2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345970/REVISED_APPROACH_Policy_and_Delivery.pdf

²⁰ Revised approach to the management of commercial fisheries in European marine sites in England: Project Implementation Plan (2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314340/pip.pdf

24. Despite low levels of fishing in many of the areas now closed to bottom-towed fishing, these measures are still necessary and very important to ‘future proof’ the protected sites. One reckless trawl over a protected reef feature can completely destroy a reef, which may never recover from such destructive impact.²¹ Red risk byelaws ensure that IFCA and the MMO are able to prosecute for breach of byelaw if the site is damaged as a result of bottom towed fishing near or over the protected features. The byelaws also prevent damaging fishing over protected features in the future.
25. In some cases, the fishing industry *should* have been affected by red risk byelaws but reluctance by regulators to cause any socio-economic hardship on fishing vessels has prevented appropriate management. See for example the ‘average’ or ‘poor’ rated byelaws in the table: North Western IFCA Byelaw 6, Eastern IFCA Protected Areas Byelaw and Regulatory Notices, North Eastern IFCA Flamborough Head Fishing Byelaw. For each of these byelaws, red risk features are subject to continuing pressures from the use of bottom towed fishing. In these cases, the IFCA are taking a risk – for example commencement of infraction proceedings by the European Commission, which can result in large fines, or commencement of judicial review proceedings in England – by not complying with Article 6 of the Habitats Directive. For each of the ‘average’ or ‘poor’ rated byelaws, IFCA seem to be placing the interests of fishers above compliance with EU environmental legal obligations. This is not legally possible because, as explained above, Article 6 does not allow derogations for socio-economic reasons.
26. The byelaws rated as ‘good’ are generally examples of where the precautionary principle has been applied in accordance with Article 6(3). For example Devon and Severn IFCA Mobile Fishing Permit Byelaw and the Northumberland IFCA’s mobile fishing byelaw. Southern IFCA Bottom Towed Fishing Byelaw is a further example of a sound and legally compliant byelaw that will potentially impact a total of 234 fishing vessels.²² There may therefore be some displacement of fishing activity as a result of the byelaw. It will be important for Southern IFCA to continue to monitor any adverse effects of displacement within the district, but they have successfully protected the red risk features in a total of nine European Marine Sites within their district.

Uncertainty about feature location

27. ‘Poor’ rated byelaws are also apparent in situations where there is uncertainty about the location and extent of the protected feature. This is particularly so for sites hosting *Sabellaria spinulosa* reef. *Sabellaria* reef is an ephemeral biogenic reef that is formed by the tube building riss worm *Sabellaria spinulosa*. Typically *Sabellaria* reefs support epifaunal species of sponges, hydroids, bryozoans and anemones with mobile predators such as crabs and pink shrimp *Pandalus montagui*. A recent Crown Estates report²³ has also illustrated that Sole (*Solea solea*) and Dab (*Limanda limanda*) flatfish are heavily reliant on *Sabellaria*

²¹ Løkkeborg, S. (2005). Impacts of trawling and scallop dredging on benthic habitats and communities. FAO Fisheries Technical Paper. No. 472. Rome, FAO. 58pp.

²² Southern IFCA Impact Assessment, ‘Bottom Towed Fishing Gear’ byelaw, 19 September 2013: southern-ifca.gov.uk/wp-content/uploads/2013/10/Bottom-Towed-Fishing-Gear-IA1.pdf

²³ Pearce B., et al., *Sabellaria spinulosa* reef ecology and ecosystem services. The Crown Estate 120 pp. ISBN 978-1-906410-27-8. First published 2013.

spinulosa for their diet (more than 50% of stomach content), whilst Pearce *et al.* (2014)²⁴ has confirmed the importance of *Sabellaria* reef as an important habitat for structuring the abundance and diversity of species. It is widely acknowledged that the use of towed demersal gear kills the worms and reduces the ability of the reef habitat to support associated animals and plants.²⁵ For these reasons *sabellaria* reef was listed as a red risk feature within the revised approach.

28. *Sabellaria spinulosa* is common in English waters, but does not always result in a 'reef' and can sometimes result in small groups encrusting pebbles, shell, kelp, holdfasts and bedrock, or form thin crusts that may only be seasonal reef features. There is much debate about at what stage the *Sabellaria spinulosa* should be protected as a 'reef feature' within European Marine Sites. In 2007 the Joint Nature Conservation Council (JNCC) organised a workshop and developed criteria for determining when areas of *Sabellaria spinulosa* meet the definition of 'reef'. Such criteria include elevation, area and patchiness.²⁶ Natural England also applies a formula that looks at the number of times an area is visited, and the number of times *Sabellaria* (as a reef) is discovered (i.e. 'persistence' of the feature).
29. The practical application of both these approaches does not take into account historical distribution of *Sabellaria* reef. This means that management measures do not consider the impact that the use of bottom towed-gear is currently having on distribution and the potential for *sabellaria* reefs to re-form if the use of bottom-towed gear was prevented under Article 6. For these reasons, arguably neither JNCC nor Natural England are advising regulators to apply an approach that complies with the Article 6 Habitats Directive tests. As a result we have assessed that the byelaws that have been enacted by Eastern IFCA and the MMO to protect *sabellaria* reef are inadequate and do not comply with the requirements of Article 6.
30. Unknown extent and location of protected features also seem to be the main problem for Northeastern IFCA measures being compliant with the law, but this case relates to the location of the boulder and cobble habitat, and thin sediment veneers over chalk reef in the Flamborough Head SAC. Please refer to the table for further information.

An uncertain case study: Kent and Essex IFCA

31. The byelaw that was passed by Kent and Essex IFCA provides an interesting case study regarding some of the difficulties that an IFCA faces when attempting to pass a legally compliant byelaw where there is little known about the extent of a protected feature, where there is changing advice from the statutory nature conservation advisor (on the basis of consideration of additional information) and where a valuable fishing ground will be affected.

²⁴ Pearce B., et al., Repeated mapping of reefs constructed by *Sabellaria spinulosa* Leuckart 1849 at an offshore wind farm site. Continental Shelf Research (2014). <http://dx.doi.org/j.csr.2014.02.2033>

²⁵ UK Biodiversity Action Plan 2000, UK Biodiversity Group Tranche 2 action plans. Volume V – maritime species and habitats. Peterborough: English Nature (now Natural England), 242 pp; Jones, L.A., Hiscock, K., & Connor, D.W. (2000). Marine habitat review. A summary of ecological requirements and sensitivity characteristics for the conservation and management of marine SACs. Peterborough: Joint Nature Conservation Committee. (UK Marine SACs Project report); Holt, T.J., Rees, E.I., Hawkins, S.J. & Seed, R. (1998). Biogenic reefs (volume IX). An overview of dynamic and sensitivity characteristics for conservation management of marine SACs. Scottish Association for Marine Science (UK Marine SACs Project). 170 pp.

²⁶ Gubbay, S (2007) Defining and managing *Sabellaria spinulosa* reefs: report of an inter-agency workshop 1-2 May, 2007. Joint Nature Conservation Committee report no. 405. 22 pp. Peterborough: JNCC. ISSN 0963-8091.

32. The Thanet Coast SAC was designated to protect chalk reef and submerged sea caves. Chalk reef was identified as a red-risk activity in the matrix because, due to its soft nature and associated vulnerable species, chalk reef is thought to be easily susceptible to damage from bottom towed fishing gear. That is, the structural complexity and associated macrofauna of chalk reef will be damaged by heavy or intrusive fishing gear leading to loss of supporting habitat for associated dependent species and reduced biodiversity.²⁷
33. For the Thanet Coast SAC, the IFCA initially proposed to close a small coastal area of the SAC out to approximately 200m to 300m from the coast²⁸ and went to public consultation with such a proposal. In consultation responses, the Wildlife Trusts, Marine Conservation Society and ClientEarth disagreed with the proposed measures on the basis that they did not adequately protect the sub-tidal chalk reef, which is a listed feature of the site²⁹. Relying on the available data and applying the precautionary principle, the environmental organisations argued that the whole site should be closed to bottom towed gears, as previously published reports from Natural England show that sub-tidal chalk reef communities are present throughout the site.
34. After the conclusion of the public consultation, Natural England provided the IFCA with further advice that confirmed that based on the best available evidence, the chalk reef feature and its associated ecosystems exist throughout the site and therefore, in accordance with Article 6, also recommended that the whole site should be closed to bottom towed fishing.³⁰ As a result, the IFCA convened a special meeting with their Technical Panel in which closure of the whole site to bottom towed gears was proposed by the IFCA Chief Officer and discussed. The proposal was debated at the Technical Panel meeting and ultimately a decision was deferred until the next quarterly meeting in September 2013. The new proposal to close the whole site to bottom towed gears was going to have a greater socio-economic impact on the fishing industry than what had been originally proposed. This caused much controversy amongst the affected fishing industry and also with the IFCA Committee members; this was compounded by the timing of the proposal which took place after a public consultation that had focused on closure of a much smaller coastal area.
35. At the September 2013 quarterly meeting the IFCA Committee rejected – despite Natural England advice and the IFCA Chief Officer recommendation – the subsequent proposal to close the whole site to bottom towed gears.
36. Following the September meeting and resolution from the Committee to reject closure of the whole site to bottom towed gears, the IFCA obtained independent legal advice to clarify any liability risks that the September Committee decision might expose the IFCA to. Further advice was also sought from Natural England.

²⁷ See Intertidal Chalk Reef, Audit trail to the matrix:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310817/intertidalchalk.pdf

²⁸ This is a calculation made by Marine Conservation Society in response to the June 2013 public consultation.

²⁹ <http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK0013107>

³⁰ Letter from Natural England to Kent and Essex IFCA dated 12 July 2013 and included as Appendix 3 to a note from the Assistance Chief IFCO to the Kent and Essex IFCA entitled 'New byelaws for 'red risk' European Marine Sites.

37. Based on the further advice that was sought, as well as following discussions with Defra, at the next full Committee meeting in November, the IFCA revisited this matter and the Committee ultimately settled on a compromise whereby the majority of the site was closed to bottom towed gear, as well as a small area outside of the SAC. A small area of the site was left open to bottom towed trawling; this area is known as the Gore Channel and is the key fishing ground that the fishers wanted to exclude from the proposed byelaw.
38. The 2011 predictive surveys indicated that the protected chalk reef might also extend out to the Gore Channel and it is therefore possible that the continuation of bottom-towed fishing in the Gore Channel could adversely affect the integrity of the site. It is for these reasons that we have assessed the byelaw as having an 'average' rating.
39. There are two concerning aspects to this case study. Firstly, that the IFCA Committee rejected the subsequent proposal to close the whole site to bottom towed gears, which was contrary to Natural England advice at the time and also the recommendation of the IFCA Chief Officer. In taking this course of action, the IFCA Committee showed an unwillingness to accept the legal requirements of Article 6 of the Habitats Directive.
40. Secondly, in the face of the IFCA Committee's refusal to accept Natural England's subsequent advice and the Chief Officer's recommendation, Natural England was presumably faced with immense political pressure to again amend its advice to allow fishing in the Gore Channel. In response to such pressure, Natural England did amend its advice to state that the 2011 indicative data was not 'certain enough' to justify closure of the Gore Channel. This advice formed the basis of the ultimately agreed 'compromise' at the IFCA meeting in November and implies an amended understanding by Natural England that you have to 'prove' presence of a protected feature within a fishing ground, to justify closure of a fishing ground to potentially damaging fishing gears (or to prove certainty of damage to protected ecosystems). This places the onus of proof the wrong way around. Article 6 of the Habitats Directive requires an authority to be certain that there will be 'no adverse affect to site integrity' before it permits an activity to proceed within a protected site. In this case, the IFCA needed to be satisfied that bottom towed fishing in the Gore Channel would not adversely affect the integrity of site and compromise favourable conservation status of the chalk reef and its associated species. One way to achieve this would have been to undertake an additional 'ground-truthing' survey of the Gore Channel to confirm that there was no chalk reef that would be affected by the use of bottom towed gear in this area of the site. This did not occur before the byelaw permitting bottom towed gear in the Gore Channel was agreed.

Enforcement

41. Finally, the table also considers whether within each of the red risk byelaws, there is a requirement for bottom-towed gear to be lashed and stowed whilst passing through the closed areas (a 'lashed and stowed' requirement). This is relevant to ensure that enforcement officers are effectively able to implement the byelaws and hold fishers to account. To not include a 'lashed and stowed' requirement within a byelaw that prohibits a certain type of fishing activity, makes it much more difficult in practice for enforcement

officers to establish whether (and prove that) a boat transiting through a closed area is actually fishing, and therefore causing illegal damage. This difficulty can be avoided by including a requirement in the byelaw for vessels to lash and stow their gear whilst passing through closed areas. Such a provision means that all vessels that do not have their bottom towed fishing gear lashed and stowed whilst passing through a closed area risk prosecution under the relevant byelaw.

42. The introduction of inshore vessel monitoring systems could go some way to assist enforcement of byelaws in marine protected areas, particularly in relation to towed fishing gear vessels. Trials were undertaken in Lyme Bay and Torbay SAC in 2011 and 2012 and the MMO is currently working with IFCA's to develop and use an inshore vessel monitoring system. There have been delays to its introduction and we support the continued work and development to bring this technology into use as quickly as possible.

5 Looking forward: A focus on sandbanks

43. The next phase of the revised approach (addressing the 'greens' and 'ambers') which is currently underway, will potentially be even more challenging for regulators and will raise difficult questions about what the appropriate measures are where there is little known about location or extent of features. In addition, there is expected to be uncertainty about the impact of particular types of fishing activity on protected sites and their protected ecosystems. In these situations, it will be difficult for regulators to address these unknowns within the detailed site-specific assessments.
44. Applying a precautionary approach to deal with such uncertainties will therefore become even more necessary and apparent in the implementation of the next phase if the objectives of the Habitats Directive are to be met. For example, under the ambers we anticipate there to be much discussion and debate about the appropriate management measures to introduce in respect of the use of bottom towed gear within SACs that are designated to protect sandbank features (an amber interaction under the matrix). Sandbank features can be mobile and often their exact location within a site is often not known.
45. Looking to the scientific evidence available on impacts of bottom towed fishing gears over sandbanks, there is evidence to suggest that bottom towed gear can adversely affect the structure and function of the sandbank feature habitat and the long term survival of its associated species with the net result being that benthic, and associated fish communities are modified to varying degrees relative to the un-impacted state.³¹ However, it is possible that higher energy locations, such as sandy bank tops or wave/tide exposed areas may be less vulnerable to physical damage from bottom towed fishing gear and these high energy sandbanks *might* be more able to regenerate quickly.³² Therefore, it will most likely be

³¹ Kaiser M.J., Clarke, K.R., Hinz, H., Austen, M.C.V., Somerfield P.J. & Karakassis, I. (2006). Global analysis of response and recovery of benthic biota to fishing. Marine Ecology Progress Series, 311, 1–14; Bergmann, M.J.N., & Van Santbrink, J.W. (2000). Fishing mortality and populations of megafauna in sandy sediments. In: Kaiser M.J., & de Groot, S.J. (eds.) Effects of fishing on non-target species and habitats. Blackwell, Oxford.

³² Dornie, K.M., Kaiser, M.J., & Warwick, R.M. (2003). Recovery rates of benthic communities following physical disturbance. Journal of Animal Ecology, 72, 1043 – 1056; Hiddink, J.G., Jennings, S., Kaiser, M.J., Queirós, A.M., Duplisea, D.E. and Piet G.J. 2006. Cumulative impacts of seabed trawl disturbance on benthic biomass, production, and species richness in different habitats. Canadian Journal of Fisheries and Aquatic Science 63: 721–736.

appropriate, based on the best available evidence, for the areas within SACs known to contain vulnerable sandbank features to be closed to bottom closed gear. Whereas areas of the SAC known not host sandbank features, or areas where sandbank features are of lower vulnerability to bottom towed gear, could remain open (subject to ensuring that effort levels would not permanently disturb or damage the integrity of their ecosystem, which includes associated sandbank species such as sandeels, flatfish, scallops).

46. If, however, following a site-specific assessment, the extent of vulnerable and less vulnerable areas remains unknown, or it is practically difficult to implement the above proposal, then it seems unlikely that a fishing regulator would be able to exclude that there is, at the very least, a reasonable doubt as to whether fishing activities might affect site integrity. Therefore the management of the site must reflect this for the areas where sandbanks are believed to be. In such situations, the only legally compliant option for regulators will be to close sandbank features of SACs to bottom towed fishing.
47. What will be essential to enable regulators to put this into practice will be clear and robust case specific advice from the statutory nature conservation advisors. We are aware that, at a national level, Natural England are producing tools such as the 'Sandbank Feature Framework', which set out the relevant biological considerations that should be made when assessing 'site integrity' for sandbank features. We understand that such frameworks will help to inform management and casework considerations. We welcome this progress. However, we recommend that the practical application of such frameworks to specific management and questions is made sufficiently clear to regulators.

6 Conclusion

48. In summary and as demonstrated by the 'good' rated byelaws in the table, we believe that a significant amount has been achieved in marine conservation by English fisheries regulators. We continue to be supportive of the revised approach and we believe that the adoption of the red risk byelaws represents a significant step forward for the protection of precious marine sites in England.
49. Saying this, there are a number of byelaws where we feel that regulators have been provided with inadequate conservation advice from the statutory nature conservation agencies and/or the regulators have not sufficiently understood their legal duties in implementing the revised approach to fisheries in European Marine Sites. For the 'poor' rated byelaws, there is potential that problems will be rectified and inadvertently captured through amber management in the next phase of the project. For example, closure of sandbank areas to bottom towed gear at the Wash SAC may inadvertently mean that some areas that potentially also host *sabellaria* reef will also be closed to bottom towed fishing. In this way, we strongly recommend that 'poor' byelaws be revisited through the next phase of the project (see our recommendations at the start of the report). In other instances, due to the drafting of the byelaw, practical enforcement of the byelaw may be difficult.
50. The 'poor' rated byelaws are most apparent in areas where bottom towed fishing is currently occurring and where such measures would have the greatest socio-economic impact to

fishermen. This is an unsatisfactory conclusion that does not comply with the requirements of Article 6 of the Habitats Directive. It is essential that in the next phase of the project, fishing regulators – who are charged with responsibility for implementing EU environmental law – must not prioritise socio-economic interests above compliance with EU environmental law.

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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Red Risk Byelaw Analysis

1. CORNWALL IFCA: Closed Areas (European Marine Sites) Byelaw ¹					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Land's End and Cape Bank cSAC	Reefs (Sub-tidal bedrock)	Towed (demersal); Dredges (towed)	<p>The byelaw, as originally enacted, prohibited the use of all fishing gear that is towed or pushed along the seabed within the identified prohibited areas in Land's End and Cape Bank, Lizard Point, Fal and Helford, Start Point to Plymouth Sound and Eddystone (with the exception of specific areas around Eddystone Rocks), and Plymouth Sound and Estuaries SACs. The only exception was for a permitted act that is being carried out for scientific, stocking or breeding purposes and for hand worked mussel dredges from boats not using motors (i.e sail or oar vessels) operating within the River Fal and other associated rivers under a Regulating Order.</p> <p>Vessels transiting through the prohibited area with bottom towed fishing gear must have all parts of the gear above the surface water.</p> <p>Ministerial Order - under s 159 (1)(b) of the Marine and Coastal Access Act - has amended the byelaw (7 August 2014). The Ministerial Order allows for the issuing of exemptions. The Order does not specify that exemptions can only apply to areas within a safe distance of the relevant protected features and only once an appropriate assessment has been carried out to prove</p>	<p>Mobile gear vessels are already excluded from large areas of EMS (for example Fal and Helford SAC) so displacement of activity has already occurred in locations where demersal fishing would have otherwise taken place.² The overall impact of the original byelaw on vessels was therefore small.³</p> <p>The byelaw as amended, fails to ensure that bottom towed fishing will not take place near protected features of the SACs in the future because the Ministerial Order allows exemptions to be issued.</p> <p>We understand that a licence has since been granted to the Duchy Oyster Farm subsequent to the Order allowing the Duchy Oyster Farm to use specified towed gears in the Helford River. We believe the licence has been granted notwithstanding reasonable scientific doubt that the proposed activities could impact on protected maerl features and therefore does not comply with Article 6 of the Habitats Directive.</p>	Poor
Lizard Point cSAC	Reefs (Sub-tidal bedrock)	Towed (demersal); Dredges (towed)			
Fal and Helford SAC	Reefs; Large shallow inlets and bays (Sub-tidal boulder, cobble)	Towed (demersal); Dredges (towed)			
	Sandbanks which are covered by sea water (Seagrass and Maerl) ⁴	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
Start Point to Plymouth Sound and Eddystone cSAC	Reefs (Sub-tidal bedrock reefs)	Towed (demersal); Dredges (towed)			
Plymouth Sound and Estuaries SAC	Reefs; Large shallow inlets and bays (Sub-tidal boulder, cobble)	Towed (demersal); Dredges (towed)			
	Sandbanks which are slightly covered by sea water all the time (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			

¹ http://www.cornwall-ifca.gov.uk/sitedata/Byelaw_review/Restricted_areas_EMS_byela.pdf

² http://www.cornwall-ifca.gov.uk/sitedata/Byelaw_review/Restricted_Areas_EMS_v_3.pdf

³ http://www.cornwall-ifca.gov.uk/sitedata/Byelaw_review/Restricted_Areas_EMS_v_3.pdf

			that no damage will be caused. This is completely inconsistent with the Revised Approach and is in breach of the Habitats Directive. In addition, the Cornwall IFCA Committee was not notified of the proposed Order and therefore had no opportunity to object, as required under s159(2) of the Marine and Coastal Access Act and no public consultation took place. The Order was therefore passed by Defra illegally and contrary to standard practice of wide public consultation.	
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2. DEVON & SEVERN IFCA : Mobile Fishing Permit Byelaw ⁵					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Lundy SAC	Reefs (Sub-tidal boulder, cobble)	Towed (demersal); Dredges (towed)	The byelaw prohibits the use of all mobile fishing gear in the district without a permit (although this will not apply to vessels less than 7 metres in overall length using a net with a mesh size of less than 31mm to fish sandeel). In relation to red risks, no demersal mobile fishing gear is to be deployed within the closed areas (areas hosting SAC or Marine Conservation Zone features and where bottom towed gear has been identified as a high risk damaging activity).	The most significant area where demersal mobile gears may be impacted is likely to be off Start Point where controlled access by mobile demersal gear was previously permitted. However, in general impacts to fishing vessels are thought to be minimal. ⁶ The byelaw ensures that bottom towed fishing will not take place near protected features of the SAC and MCZ in the future.	Good
Lyme Bay and Torbay	Reefs (Sub-tidal boulder, cobble, mussel bed)	Towed (demersal); Dredges (towed)			
Severn Estuary/Môr Hafren	Estuaries (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
Start Point to Plymouth Sound and Eddystone cSAC (Cornwall IFCA and MMO co-regulators)	Reefs (Sub-tidal boulder, cobble)	Towed (demersal); Dredges (towed)			
Plymouth Sound and Estuaries SAC (Cornwall IFCA co-regulator)	Reefs; Large shallow inlets and bays (Sub-tidal boulder, cobble)	Towed (demersal); Dredges (towed)			

⁵ http://www.devonandsevernifca.gov.uk/sitedata/Misc/Mobile_gear_byelaw_for_con.pdf

⁶ Devon and Severn IFCA 'Mobile Fishing Gear' byelaw, IA No: D&SIFCA 0002, 3 April 2013

	Sandbanks which are slightly covered by sea water all the time (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
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3. EASTERN IFCA: Protected Areas Byelaw ⁷ and Regulatory Notices 1-4 ⁸					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Humber Estuary SAC (North Eastern IFCA co-regulator)	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	This Byelaw allows the Authority to issue Regulatory Notices to restrict or prohibit fishing within European Marine Sites for which the Eastern IFCA is the lead fisheries regulator. Under the Regulatory Notices, all bottom towed fishing gears are prohibited within 'restricted areas' of the Humber Estuary SAC to protect red risk seagrass as well as several areas of the Wash and North Norfolk Coast SAC to protect red risk subtidal boulder and cobble reef, <i>Sabellaria spp.</i> reef and seagrass. ⁹	There is an important shrimp fishery in the Wash which is in the process of re-developing, and which has historically been worth as much as £2-£3 million per year. ¹¹ While it is uncertain to what extent the brown and pink shrimp fisheries operating in the Wash will be impacted by the proposed restrictions, the pink shrimp fishery within the boulder and cobble closed area is thought to be most affected. ¹² The <i>Sabellaria spp.</i> closures are scattered within a regionally important brown shrimp fishery and there is thought to be some impacts on industry (the Impact Assessment estimates a loss of between 10-50% of income which would be between £73,510.30 and £367,551.50 per annum). ¹³ It would be good to verify the figures used in the impact assessment on a yearly basis.	Poor
The Wash and North Norfolk Coast SAC	Large shallow inlets and bays. Reefs (Boulder and Cobble, <i>Sabellaria spp.</i>)	Towed (demersal); Dredges (towed); Dredges (other): suction	<p>Justification for Poor Rating</p> <p>The Eastern IFCA's approach to protect <i>Sabellaria spp.</i> has been to protect 'core' areas of the reef.¹⁰ We have assessed the restricted areas relating to <i>Sabellaria spp.</i> reef to be too small to protect the ephemeral nature of the reef. Restricted areas should take into account historical distribution of</p>	There is not thought to be displacement of shrimp fisheries into other areas as a result	
	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			

⁷ <http://www.eastern-ifca.gov.uk/documents/EMS%20Byelaw%20april%202014.pdf>

⁸ <http://www.eastern-ifca.gov.uk/>

⁹ Eastern IFCA Impact Assessment of 'Measures to Protect Marine Protected Areas from damaging fishing activities', 15 August 2013; http://www.eastern-ifca.gov.uk/index.php?option=com_content&view=article&id=137&Itemid=202

¹⁰ Ibid, pg 15

¹¹ Ibid, pg 18

¹² Ibid, pg 21

¹³ Ibid, pg 21

			<p><i>Sabellaria spp.</i>; we have therefore rated this byelaw as 'Poor'.</p> <p>The byelaw includes a requirement for fishing gear to be stored in such a way so that it cannot be readily used while vessels transit through restricted areas. However Regulatory Notice 1 and 2 (protecting <i>Sabellaria spp.</i> and Boulder and cobble reefs) include an exemption from this requirement where vessels are fishing up to the boundary of the restricted areas (provided that the beam is hoisted above the sea and no part of the fishing gear is in contact with the seabed while in the restricted area). Despite this requirement, enforcement of the byelaw continues to be a concern given that the restricted areas are so small (<1.5% of the site) and exist within the middle of an important fishing ground.</p>	of the closures as there are no alternative sites for shrimp trawling. ¹⁴	
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4. ISLES OF SCILLY IFCA: Fishing Gear Permit Byelaw ¹⁵					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Isles of Scilly Complex (generic title of SAC)	Reefs (Subtidal boulder, cobble, bedrock)	Towed (demersal); Dredges (towed)	The byelaw prohibits all towed fishing gear from a prohibited area which includes all areas where there are protected reef features.	There has been no bottom trawling in the Isles of Scilly for the past three years and so there are no impacts to the UK fishing fleet as a result of the byelaw. ¹⁷ The byelaw does ensure that bottom towed fishing will not take place near protected features of the SAC in the future.	Good
	Sandbanks which are slightly covered by sea water all the time (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	Also included within the byelaw is a 'restricted area' (area where there are no features designated for protection, mainly to the south east and north west of the islands). ¹⁶ The use of towed fishing gear is allowed within the restricted area in accordance with a permit.		

¹⁴ Ibid, pg22

¹⁵ http://www.scillyifca.gov.uk/sitedata/pdfs/Final_version_of_Fishing_G.pdf

¹⁶ 'Towed Fishing Gear Permit Byelaw', IA No: IOSIFCA 002, 18 July 2013; http://www.scillyifca.gov.uk/sitedata/pdfs/IA_Towed_Permit_byelaw3.pdf, pg 7

¹⁷ Ibid, pg 3

5. KENT & ESSEX IFCA: Bottom Towed Fishing Gear Byelaw ¹⁸					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Thanet Coast SAC	Reefs (Chalk)	Towed (demersal); Dredges (towed)	The byelaw prohibits the use of bottom towed gear from specified parts of the Essex Estuaries and the Thanet Coast SACs and, where the data has shown significant chalk reef extent, slightly outside of the SACs boundaries. There is a small area to the North West of the Thanet Coast SAC (the Gore Channel) that has been kept open to bottom towed gear.	The Gore Channel is an area of key importance to local fishing vessels and the industry was greatly opposed to fishing restrictions in this area. ¹⁹ Leaving the Gore Channel open to bottom towed gear means that there will be minimal impacts to fishing vessels as a result of the byelaw. ²⁰	Average
Essex Estuaries SAC	Estuaries, mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	<p>Justification for Average Rating</p> <p>There are indications that the protected chalk reef also lies in the Gore Channel (2011 CCO data) that remains open to bottom towed gear. No 'ground truthing' was undertaken to confirm whether or not the feature exists in the Gore Channel and as such there is no certainty that bottom towed fishing in the Gore Channel would not adversely affect the integrity of the reef feature of the site. For these reasons, we believe that the Gore Channel should also have been closed to bottom towed gear in accordance with the precautionary approach.</p>	The byelaw does protect the majority of the Thanet Coast SAC from bottom towed fishing and the areas around the protected features of the Essex Estuaries SAC.	

¹⁸ <http://www.kentandessex-ifca.gov.uk/i-want-to-find-out-about/regulations/keifca-byelaws/keifca-district-byelaws/>

¹⁹ <http://www.kentandessex-ifca.gov.uk/wp-content/uploads/2014/06/B3.pdf>

²⁰ See Agenda Item No B3 from Kent and Essex IFCA Authority Meeting 22.11.13, 'Report on the progress of EMS byelaw'; see also KEIFCA Impact Assessment of measure to protect sensitive areas from damage by bottom towed gears, dated 19 July 2013.

6. NORTH EASTERN IFCA: XXVI Flamborough Head Fishing Byelaw ²¹					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Flamborough Head SAC	Reefs (Subtidal boulder, cobble and bedrock)	Towed (demersal); Dredges (towed)	<p>The byelaw prohibits all trawling, not authorised by a special permit, within the boundaries of the Flamborough Head SAC. No permits will be issued for trawling within the 'Flamborough Head Specified Area'.</p> <p><u>Justification for Poor Rating</u></p> <p>The areas within the site that have been left open to trawling by issue of a special permit have not been decided on the basis of scientific evidence in accordance with Article 6 of the Habitats Directive. There are remaining uncertainties in relation to 'the presence of cobble and boulder reef and periodic 'bedrock' exposure through the wider site'²² and it is these wider areas of the site - where there are 'uncertainties' - that remain open to bottom towed gear. In fact, there is evidence that the protected reef features and its associate species exist within the area that has been kept open to bottom trawling.²³ We therefore believe that this byelaw represents a breach of the requirements contained in the Habitats Directive.</p> <p>There is also no requirement that trawling gear must be 'lashed and stowed' for vessels passing through the closed specified areas of the SAC. This will make enforcement difficult.</p>	The byelaw potentially affects 9 vessels that have permits to fish in the area. The maximum net value of catches that may be impacted from the closure is estimated at £5,477 per annum. Further, it is believed that fishers predominantly use the area to 'turn' their vessels, so it isn't a primary fishing ground. It is thought, however, that impacted fishers would have the ability to maintain catch value by fishing on alternative grounds and targeting other species. ²⁴	Poor

²¹ <http://www.ne-ifca.gov.uk/legislation-and-byelaws/byelaw-regulations/>

²² Letter from North Eastern IFCA to Wildlife Trusts, Marine Conservation Society and ClientEarth dated 24 February 2014.

²³ North Eastern IFCA Impact Assessment of measures to protect Flamborough Head SAC from damaging activities dated 18.10.2013; see also photographic evidence provided by Natural England to the IFCA.

²⁴ North Eastern IFCA Impact Assessment of measures to protect Flamborough Head SAC from damaging activities dated 18.10.2013.

7. NORTH EASTERN IFCA: XXIX Humber Estuary Fishing Byelaw ²⁵					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Humber Estuary SAC (Eastern IFCA co-regulator)	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	<p>The byelaw prohibits digging, the use of any pots, traps, nets (whether fixed or not), trawls, dredges or the collection of sea fisheries resources within the 'Specified Area'.</p> <p>The Specified Area includes all seagrass beds – as mapped by the IFCA in collaboration with Natural England and the Yorkshire Wildlife Trusts - with a 10 m buffer zone.</p> <p>There is no requirement that gear must be 'lashed and stowed' if a vessel transits through the Specified Area. This will make enforcement difficult.</p>	<p>There are no known fishing vessels trawling in closed area that will be affected by the byelaw.²⁶</p> <p>The byelaw does ensure that bottom towed fishing will not take place near protected features of the SAC in the future.</p>	Good

8. NORTH WESTERN IFCA: BYELAW 6 – Protection for European Marine Site Features ²⁷					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Dee Estuary SAC	Estuaries (<i>Sabellaria spp.</i>)	Towed (demersal): Dredges (towed); Dredges (other): suction and tractor	<p>This byelaw prohibits the use, without written consent from the North Western IFCA, of all bottom towed fishing gear in the identified closed areas that contain features of conservation importance. The byelaw also prohibits bait digging and other hand gathering activities in the parts of Morecambe Bay SAC containing seagrass beds.</p> <p>Justification for Poor Rating</p> <p><u>Shell Flat and Lune Deep SAC</u> – The byelaw</p>	<p>The only bottom towed fishing gear activity currently practiced in the vicinity of Lune Deep SAC is light otter trawling for flat fish. In recent years this has been undertaken by a limited number of local vessels.²⁸ Such vessels will be eligible to apply for the exemption and so will not be displaced by the byelaw.</p>	Poor
Morecambe Bay SAC	Reefs (<i>Sabellaria spp.</i> , subtidal bolder and cobble)	Towed (demersal): Dredges (towed); Dredges (other): suction			

²⁵ <http://www.ne-ifca.gov.uk/legislation-and-byelaws/byelaw-regulations/>

²⁶ North Eastern IFCA, Impact Assessment: Humber Estuary Fishing Byelaw, 18 October 2013

²⁷ <http://www.nw-ifca.gov.uk/contents/images/Byelaws%20and%20application%20forms/Confirmed%20Byelaw%206%20%2819-5-14%29.pdf>

²⁸ North Western IFCA, Fisheries in EMS Habitats Regulations Assessment: http://www.nw-ifca.gov.uk/contents/images/Science/LuneDeep_HRA_FINAL.pdf

	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	includes an exception that allows the IFCA to issue an authorisation to fishers previously using the closed area, to continue to use bottom towed gear in the Shell Flat and Lune Deep SAC closed areas. This is an illegal exemption under Article 6 of the Habitats Directive.	
Shell Flat and Lune Deep SAC (NWIFCA lead regulator for Lune Deep area, including reef feature; MMO lead regulator for Shell Flat area)	Reefs (Subtidal boulder and cobble)	Towed (demersal); Dredges (towed)	Morecambe Bay SAC - The buffer zones around the protected reef features do not satisfy the Natural England guidelines setting out the minimum closed area requirements between bottom towed gear and boulder and cobble protected reef features. This means that in practice, bottom towed gears are legally permitted in very close proximity to the reef feature, making it vulnerable to deterioration and disturbance.	
Solway Firth SAC	Reefs (<i>Sabellaria spp.</i> , subtidal bolder and cobble)	Towed (demersal); Dredges (towed); Dredges (other): suction	There is also no requirement that gear must be 'lashed and stowed' when a vessel transits through a closed area. This will make enforcement difficult.	

9. NORTHUMBERLAND IFCA: Seagrass Protection Byelaw within the English Section of the Berwickshire and North Northumberland Coast, Special Area of Conservation (SAC) ²⁹					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Berwickshire and North Northumberland Coast SAC	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	This byelaw prohibits digging, fishing and taking of any sea fisheries resources in or from the 'Specified Area'. The Specified Area includes the area where Seagrass (<i>Zostera spp.</i>) is located within the SAC and applies the precautionary approach.	Anecdotal information suggests that only a small amount of artisanal gathering activities occur in the seagrass communities in the SAC. ³⁰ Impacts are therefore thought to be minimal.	Good
	Reefs (Subtidal bedrock, boulder and cobble)	Towed (demersal); Dredges (towed)		The byelaw does ensure that fishing and digging will not take place near the protected seagrass feature of the SAC in the future.	

²⁹ <http://www.nifca.gov.uk/wp-content/uploads/2014/01/Seagrass-protection-byelaw.pdf>

³⁰ www.nifca.gov.uk/wp-content/uploads/2013/07/DOC030913-002.pdf

10. NORTHUMBERLAND IFCA: Prohibition on the use of mobile fishing gear within the English section of the Berwickshire & North Northumberland Coast Special Area of Conservation ³¹					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Berwickshire and North Northumberland Coast SAC	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	This byelaw prohibits the use of mobile fishing gear which is designed to be in contact with the seabed, within the 'Specified Area'. Any vessel transiting through the specified area must have all mobile gear lashed and stowed.	Sightings data indicates that the use of bottom towed gear within the SAC is minimal. There is however thought to be some displacement amongst trawlers and scallop dredgers from the Northumberland District as well as some who come from outside of the district, mainly Scotland. ³² The byelaw will ensure that bottom towed fishing will not take place near protected features of the SAC in the future.	Good
	Reefs (Subtidal bedrock, boulder and cobble)	Towed (demersal); Dredges (towed)			

11. SOUTHERN IFCA: Bottom Towed Fishing Gear Byelaw ³³					
SACs affected Byelaw	Red risk feature (and high risk amber feature)	Red Risk Fishing Activity (and high risk amber fishing activity)	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Chesil and the Fleet SAC and SPA	Coastal lagoons (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	This byelaw prohibits the use of bottom towed fishing gear for the exploitation of sea fisheries resources in prohibited areas in order to protect seagrass and reef areas. The byelaw has resulted in around 660km ² of sea area to be closed to demersal fishing activity. ³⁴	While around 21% of the prohibited areas were already closed to demersal towed fishing (either by voluntary or regulatory measures), it is estimated that approximately 234 vessels may be affected by the proposed byelaw. ³⁵ The closed areas to bottom towed fishing created by the byelaw include some previously important demersal fishing areas and could result in some	Good
Solent Maritime SAC	Mudflats and sand flats not	Towed (demersal); Dredges			

³¹ Northumberland IFCA Impact Assessment, 'Northumberland IFCA 'Seagrass protection byelaw' 28 August 2013: www.nifca.gov.uk/wp-content/uploads/2013/07/DOC030913-002.pdf

³² Northumberland IFCA Impact Assessment, 'Northumberland IFCA 'Prohibition of use of Mobile Fishing Gear in Berwickshire North Northumberland Coast Special Areas of Conservation byelaw, 28 August 2013: <http://www.nifca.gov.uk/wp-content/uploads/2013/07/Number3.pdf>

³³ <http://www.southern-ifca.gov.uk/wp-content/uploads/2014/01/BYELAW-Bottom-Towed-Fishing-Gear-Byelaw-For-Website.pdf>

³⁴ Southern IFCA Impact Assessment, 'Bottom Towed Fishing Gear' byelaw, 19 September 2013: [southern-ifca.gov.uk/wp-content/uploads/2013/10/Bottom-Towed-Fishing-Gear-IA1.pdf](http://www.southern-ifca.gov.uk/wp-content/uploads/2013/10/Bottom-Towed-Fishing-Gear-IA1.pdf)

³⁵ Southern IFCA Impact Assessment, 'Bottom Towed Fishing Gear' byelaw, 19 September 2013: [southern-ifca.gov.uk/wp-content/uploads/2013/10/Bottom-Towed-Fishing-Gear-IA1.pdf](http://www.southern-ifca.gov.uk/wp-content/uploads/2013/10/Bottom-Towed-Fishing-Gear-IA1.pdf)

(Sussex IFCA lead regulator for eastern side of Chichester Harbour)	covered by seawater at low tide (Seagrass)	(towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	<p>There is a possibility for a written dispensation to the requirements of the byelaw for scientific, stocking or breeding purposes or the dredging of mussels for the purpose of relaying.</p> <p>In addition to red risk features and activities, 'high risk amber' areas of seagrass are also protected by this byelaw.</p> <p>The byelaw includes a requirement for vessels transiting through the prohibited area to have bottom towed gear inboard and above the sea.</p>	<p>displacement of fishing activity.</p> <p>The byelaw ensures that bottom towed fishing will not take place on or near protected features of the SAC in the future.</p>	
Lyme Bay and Torbay cSAC	Reefs (Sub-tidal boulder, cobble, mussel bed)	Towed (demersal); Dredges (towed)			
Studland to Portland cSAC	Reefs (Subtidal bedrock, boulder and cobble, mussel bed on rick)	Towed (demersal); Dredges (towed)			
Poole Harbour SPA	Seagrass	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
South Wight Maritime SAC	Reefs (Subtidal bedrock, boulder and cobble, chalk)	Towed (demersal); Dredges (towed)			
Solent and Southampton Water SPA	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
Chichester and Langstone Harbour SPA	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
Portsmouth Harbour SPA	Seagrass	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			

12. SOUTHERN IFCA: Prohibition of gathering (sea fisheries resources) in seagrass beds byelaw ³⁶					
SACs affected Byelaw	Red risk feature (and high risk amber feature)	Red Risk Fishing Activity (and high risk amber fishing activity)	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Chesil and the Fleet SAC and SPA	Coastal lagoons (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	<p>This byelaw prohibits the digging for, fishing for or taking of sea fisheries resources in prohibited areas to protect seagrass.</p> <p>In addition to red risk features and activities, 'high risk amber' areas of seagrass are also protected by this byelaw.</p> <p>The byelaw also includes a requirement that no person may carry a spade, rake, fork or similar tool in the specified area.</p>	<p>The fishing effort data available for hand gathering and bait digging is limited but anecdotal evidence suggests that there will be some effect on fishing effort in the closed areas.³⁷</p> <p>The byelaw ensures that digging or fishing will not take place near protected seagrass features of the SAC in the future.</p>	Good
Solent Maritime SAC	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
Chichester and Langstone Harbour SPA	Mudflats and sand flats not covered by seawater at low tide (Seagrass)	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			
Portsmouth Harbour SPA	Seagrass	Towed (demersal); Dredges (towed); Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection			

13. SUSSEX IFCA: Chichester Harbour European Marine Site (Specified Areas) Prohibition of Fishing Method Byelaw ³⁸					
SACs affected Byelaw	Red risk feature (and high risk amber feature)	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Chichester and Langstone Harbours (within Solent	Mudflats and sand flats not covered by seawater at low	Towed (demersal); Dredges (towed);	This byelaw prohibits the use of towed fishing gears, digging, collection and	Sussex IFCA does not anticipate any loss of known commercial fishing ground or associated	Good

³⁶ <http://www.southern-ifca.gov.uk/wp-content/uploads/2014/01/BYELAW-Prohibition-of-Gathering-Sea-Fisheries-Resources-in-Seagrass-beds-byelaw-for-WEBSITE.pdf>

³⁷ Southern IFCA Impact Assessment, 'Creation of Southern IFCA Prohibition of gathering (sea fisheries resources) in seagrass beds byelaw, 14 May 2013: <http://www.southern-ifca.gov.uk/wp-content/uploads/2013/06/Gathering-in-Seagrass-IA-v3-no-annexes.pdf>

³⁸ http://www.sussex-ifca.gov.uk/repository/Chi%20Hrbr%20EMS%20Prohibition%20of%20Fishing%20Method%20byelaw_FINAL.pdf

Maritime SAC) (Sussex IFCA lead regulator for eastern side of Chichester Harbour)	tide (Seagrass)	Dredges (other): suction and tractor; Intertidal handwork; Crab tiling; Bait collection	hand gathering of marine fisheries resources in specified areas of Chichester Harbour to protect seagrass. No person may possess a tool that can be used to hand gather or dig in the specified area. However there is no 'lashed or stowed' requirement in respect of towed fishing gears transiting the specified areas which could make enforcement difficult.	commercial fishing industry costs as a result of the proposed byelaw. Sussex IFCA activity data indicates no towed (demersal) and dredge (towed and other) interaction with the mapped seagrass beds. ³⁹ The byelaw ensures that bottom towed fishing, digging, collection and hand gathering of sea fisheries resources will not take place near protected features of the SAC in the future.	
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14. MMO: Haisborough, Hammond and Winterton EMS (Specified Areas) Bottom Towed Fishing Gear Byelaw ⁴⁰					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Haisborough, Hammond and Winterton SCI	Reefs (<i>Sabellaria spp</i>)	Towed (demersal): Dredges (towed); Dredges (other): suction and tractor	<p>The Byelaw prohibits the use of bottom towed fishing gear in specified areas of the Haisborough Hammond and Winterton SCI.</p> <p><u>Justification for Poor Rating</u></p> <p>Only a very small area has been closed to bottom towed fishing gears to protect <i>Sabellaria</i> reef. This is based on Natural England advice and protects 'core' areas of the reef only.⁴¹ We have assessed the restricted areas relating to <i>Sabellaria spp.</i> reef to be too small to protect the</p>	Minimal impacts on the fishing industry are expected. ⁴²	Poor

³⁹ Sussex IFCA Impact Assessment, 'Chichester Harbour European Marine Site (Specified Areas) Prohibition of Fishing Method Byelaw: http://www.sussex-ifca.gov.uk/repository/Sussex%20IFCA%20Seagrass%20byelaw%20Impact%20Assessment_FINAL.pdf

⁴⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308567/byelaw-hhw.pdf

⁴¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308569/ia-hhw.pdf

⁴² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308569/ia-hhw.pdf

			<p>ephemeral nature of the reef. Restricted areas should take into account historical distribution of <i>Sabellaria spp.</i>; we have therefore rated this byelaw as 'Poor'.</p> <p>There is also no requirement that gear must be 'lashed and stowed' when a vessel transits through a closed area. This will make enforcement difficult.</p>		
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15. MMO: The Start Point to Plymouth Sound and Eddystone EMS (Specified Areas) Bottom Towed Fishing Gear Byelaw ⁴³					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
<p>Start Point to Plymouth Sound and Eddystone SCI</p> <p>(Devon and Severn IFCA lead regulator. MMO will regulate area of site within 6-12 nm)</p>	Reefs (Subtidal bedrock)	Towed (demersal); Dredges (towed)	<p>This Byelaw prohibits the use of bottom towed fishing gear in specified areas of the Start Point Plymouth Sound and Eddystone SCI.</p> <p>This includes areas around Hatt Rock and Brentons with a buffer zone of around 200m around the protected reef features.</p> <p>There is no requirement that gear must be 'lashed and stowed' when a vessel transits through the specified areas. This will make enforcement difficult.</p>	<p>The main vessels potentially affected by the byelaw would be scallop dredgers and beam trawlers who operate within the SCI. A number of affected fishers stated during MMO pre-consultation meetings that bottom towed gear is not used over the bedrock reef features, but potential loss of earnings could potentially occur within the buffer areas around the bedrock reef features.⁴⁴</p> <p>The MMO closed area represents 1.77% of the total SCI and so impacts on the fishing industry is thought to be low.⁴⁵</p> <p>The byelaw ensures that bottom towed fishing will not take place near protected features of the SCI.</p>	Good

⁴³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308583/byelaw-sppse.pdf

⁴⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308584/ia-sppse.pdf

⁴⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308584/ia-sppse.pdf

16. MMO: The Lands End and Cape Bank EMS (Specified Area) Bottom Towed Fishing Gear Byelaw ⁴⁶					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Land's End and Cape Bank SCI (MMO lead regulator for Cape Bank area of site)	Reefs (Subtidal bedrock)	Towed (demersal); Dredges (towed)	<p>This Byelaw prohibits the use of bottom towed fishing gear in specified areas of the Lands End and Cape Bank SCI. This includes an area around the whole reef feature and applies a 300m buffer zone in accordance with Natural England guidelines. This represents a closure of bottom towed gear across 73.8% of the SCI.</p> <p>There is no requirement that gear must be 'lashed and stowed' when a vessel transits through the specified areas. This will make enforcement difficult.</p>	The main vessels affected from the prohibition would be beam trawlers, dredgers and other demersal trawls, which primarily include vessels landing into Newlyn. UK vessels indicated during pre-consultation that bottom towed gear is already not deployed over the bedrock reef feature, as this would damage their gear. The French and Belgian fishing industry representatives confirmed that there would be a loss of fishing grounds around the Western and Northern areas of the Cape Bank prohibited area however, alternative fishing grounds are easily accessible. ⁴⁷	Good

17. MMO: The Inner Dowsing, Race Bank and North Ridge EMS (Specified Areas) Bottom Towed Fishing Gear Byelaw ⁴⁸					
SACs affected Byelaw	Red risk feature	Red Risk Fishing Activity	Summary of byelaw	Impacts on the UK fishing fleet	Rating
Inner Dowsing, Race Bank and North Ridge SCI (0 to 200 nautical miles)	Reefs (<i>Sabellaria spp</i>)	Towed (demersal): Dredges (towed); Dredges (other): suction and tractor	<p>The Byelaw prohibits the use of bottom towed fishing gear in specified areas of the Inner Dowsing, Race Bank and North Ridge SCI.</p> <p><u>Justification for Poor Rating</u></p> <p>Only a very small area has been closed to</p>	There are relatively low levels of fishing activity in the site by over and under 15m vessels. There are mobile demersal towed gears, dredges and beam trawls in use primarily for brown shrimp and seed mussels. However, with only 0.2% of the SCI being closed by the MMO byelaw, minimal impacts on the fishing industry are expected as a result of the	Poor

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308595/byelaw-lecb.pdf

⁴⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308596/ia-lecb.pdf

⁴⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308581/byelaw-idrbnr.pdf

			<p>bottom towed fishing gears to protect <i>Sabellaria</i> reef. This is based on Natural England advice and protects 'core' areas of the reef only.⁴⁹ We have assessed the restricted areas relating to <i>Sabellaria spp.</i> reef to be too small to protect the ephemeral nature of the reef. Restricted areas should take into account historical distribution of <i>Sabellaria spp.</i>; we have therefore rated this byelaw as 'Poor'.</p> <p>There is also no requirement that gear must be 'lashed and stowed' when a vessel transits through a closed area. This will make enforcement difficult.</p>	closures. ⁵⁰	
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⁴⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308582/ia-idrbnr.pdf

⁵⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308582/ia-idrbnr.pdf

Bottom towed closures in English and Welsh Special Areas of Conservation (July 2014)

