

Title: Prohibition of the use of Mobile Fishing Gear within the English section of the Berwickshire and North Northumberland Coast Special Area of Conservation Byelaw 2017 IA No: NIFCA 009 Lead department or agency: Northumberland Inshore Fisheries and Conservation Authority (NIFCA) Other departments or agencies: MMO, Natural England, Defra	Impact Assessment (IA)
	Date: 03/10/2017
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Jon Green, Deputy Chief IFCO, NIFCA Jon.Green@nifca.gov.uk 01670797676
Summary: Intervention and Options	RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2016 prices)	In scope of One-In, Three-Out	Business Impact Target Status
£0	£0	£0	No	N/A

What is the problem under consideration?
 Special areas of conservation (SACs) and special protection areas (SPAs) are designated to protect habitats and species in line with the EU Habitats Directive and Birds Directive. SACs and SPAs that include a marine component are known as European marine sites (EMS). Following the Defra revised approach to management of commercial fisheries in EMSs, NIFCA made a byelaw prohibiting mobile gear within the Berwickshire and North Northumberland Coast (BNNC) SAC. The existing byelaw needs to be modified based on new evidence.

Why is government intervention necessary?
 Government intervention is required to redress market failure in the marine environment by implementing appropriate management measures (e.g. this byelaw) to conserve features to ensure negative externalities are reduced or suitably mitigated. Implementing this byelaw will ensure continued provision of public goods in the marine environment. This impact assessment (IA) is written in accordance with the Government's Marine Policy Statement and takes into account decisions affecting the marine environment.

Specifically, this byelaw will support the long term protection of reef features while allowing NIFCA to authorise trawling in specified areas of smooth ground away from reef areas. In total it is proposed to open up only 4% of the smooth ground (identified by surveys conducted by NIFCA, Centre for Environment, Fisheries and Aquaculture Science (Cefas) and the Environment Agency (EA)) which is less than 1% of the total area of the English section of the BNNC SAC. This byelaw will support the long term sustainability of fish stocks and fishing grounds by continuing to regulate potentially damaging fishing activities.

What are the policy objectives and intended effects

- To ensure the long term protection of reef features within the BNNC SAC.

- Reopen traditional trawling grounds, which will assist in supporting a viable local fishing industry as the grounds in question are close to local ports.
- To make relevant regulations easier to navigate for resource users to increase rates of compliance, the areas to be reopened are clearly defined in the byelaw.

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

The following policy options have been considered through this IA:

0. Do nothing - leave the byelaw as it stands
1. Use of non-regulatory/voluntary measures
2. Revoke the current byelaw and make a new byelaw which includes provision for NIFCA to authorise the use of mobile gear in specified areas. This will allow for traditional trawling ground to be fished while also ensuring the protection of reefs.
3. Revoke the current byelaw regulation

All options are compared to option 0. Option 2 is preferred and was determined as the most appropriate method of managing trawling within the BNNC SAC as it will update this byelaw.

Will the policy be reviewed? Yes If applicable, set review date: No later than September 2020

Does implementation go beyond minimum EU requirements? No					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

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 :

Date:

Summary: Analysis & Evidence
FULL ECONOMIC ASSESSMENT

Policy Option 1

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV) (£m))		
			Low: N/A	High: N/A	Best Estimate: 0
2017	2017	Years 10			

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

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

No monetised cost identified

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

Potential degradation of smooth ground habitat that is used by species that make up the reef communities

BENEFITS (£)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		Optional	Optional	Optional
High		Optional	Optional	Optional
Best Estimate		0	0	0

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

No monetised benefits identified, as the level of uptake of trawling in these areas cannot be predicted.

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

Opening up of fishing grounds where trawling is currently prohibited

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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That there is no overall increase in the trawlers operating within the NIFC District.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OI30?	Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	No	N/A

Evidence Base

Problems under consideration

The subject of this impact assessment is a new byelaw which revokes the NIFCA Prohibition of the use of Mobile Fishing Gear within the English section of the Berwickshire and North Northumberland Coast (BNNC) SAC byelaw, made in 2013. This proposed change to the management measures continues to prohibit detrimental fishing activity on designated bedrock and cobble reefs while at the same time allowing trawling to occur in areas that have been established as having no reef features within the BNNC SAC.

Rationale for intervention

The nationally agreed vision of the IFCA is that they will “lead, champion, and manage a sustainable marine environment and inshore fisheries within their Districts by successfully securing the right balance between social environmental and economic benefits to ensure healthy sea, sustainable fisheries and a viable industry”.

Section 153 of the Marine and Coastal Access Act 2009 details the management of inshore fisheries as follows:

The authority for an IFC district must manage the exploitation of sea fisheries resource in that district. In performing its duty under subsection (1) the authority for an IFC district must:

- a) Seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.
- b) Seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from or promote its recovery from the effects of such exploitation.
- c) Take any other steps which in the authority's opinion are necessary or expedient for the purpose of making a contribution to the achievement of sustainable development, and
- d) Seek to balance the differing needs of persons engaged in the exploitation of sea fisheries resources in the district
- e) (Subsection 10) In this Chapter “sea fisheries resources” means any animals or plants, other than fish falling within subsection (11) that habitually live in the sea, including those that are cultivated in the sea.
- f) (Subsection 11) The fish referred to in subsection (10) are—
 - (a) Salmon, trout, eels, lampreys, smelt and shad;
 - (b) any other fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;

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

Fishing activities can potentially cause negative outcomes as a result of ‘market failures’. These

failures can be described as:

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

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

- Management measures to conserve designated features of European marine sites (EMS) and marine conservation zones (MCZ) will ensure negative externalities are reduced or suitably mitigated.
- Management measures will support continued existence of public goods in the marine environment, for example, conserving the range of biodiversity in the sea of the IFC District. Changes to the byelaws will not adversely impact the marine environment and will ensure that there is no increase in the exploitation of marine species.
- Management measures will also support continued existence of common goods in the marine environment. For example ensuring the long term sustainability of fish stocks in the IFC District. The changes in the byelaws seek to ensure that there is no increase in the exploitation of fish stocks.

Policy objective:

The intention of the proposed mobile gear byelaw is to ensure that the regulations are easier to navigate for resource users by clearly identifying those fishing grounds that are to be reopened and to increase the levels of compliance while ensuring that the fisheries continue to be sustainable. It will allow some trawling activity to occur in specific designated areas where it was

previously prohibited, and in the interest of sustainability will allow exploitation of stocks, in areas previously closed to fishing thereby removing fishing effort from other areas and continue to protect designated features.

1. Background

NIFCA has high level objective to review all byelaws every three years. As a result of these reviews, some byelaws may be remade, or amended, or amalgamated and those that are irrelevant or no longer needed will be revoked. The subject of this IA is the byelaw which will replace NIFCA's byelaw (regulation) 7 Prohibition of the use of Mobile Fishing Gear within the English Section of the BNNC SAC.

During consultations prior to the making of the 2013 byelaw it was agreed with stakeholders that NIFCA would undertake a process to accurately map areas of reef (habitat feature designated by Habitat Directive) within the BNNC SAC Northumberland IFCA has gathered data about reefs in the area. NIFCA conducted surveys using a combination of survey methods including underwater acoustics and photography, within the BNNC SAC to establish if areas could be reopened to the use of mobile gear. As a result of this ground-truthing, a review of the 2013 byelaw took place in 2016, the result being a proposal to introduce trawling zones on smooth ground which are suitable for mobile towed gear. It was also agreed with stakeholders prior to the making of this byelaw in 2013 and consultations held since that NIFCA would review this byelaw as a matter of priority with the view of reopening selected areas to some mobile fishing gear.

This review was discussed during a NIFCA Technical and Scientific Committee meeting during which concerns raised by the Marine Conservation Society were considered. These concerns relate to the importance of soft ground habitats to nationally important commercial finfish species during their juvenile life stages. The members of the Committee agreed that while these habitats are important as nursery areas, as the amount of grounds (less than 1% of the entire English sector of the SAC and less than 4% of the smooth ground) is very small compared to the size of the SAC, that overall impact to juveniles would be insignificant.

It was also emphasized at the meeting that;

- Bylaw 7 is a direct response to the revised approach to Article 6 of the Habitats Directive and its application to commercial fisheries. It was implemented following the completion of a risk matrix that identified the interaction between protected rocky reefs and mobile gear as a 'red' risk requiring immediate management. Its primary purpose is to protect European protected features at most risk from commercial fishing activity, as agreed by government.
- The soft ground areas within the BNNC SAC are not a protected feature within the site and are not subject to the application of Article 6 of the Habitats Directive. The soft grounds were included in the initial byelaw remit due to a lack of evidence or data to identify the boundary of the protected reef feature to which the byelaw applies. In light of limited information, NIFCA took a precautionary approach in accordance with the EC Habitats Directive and the (England and Wales) Conservation of Habitats and Species Regulations 2010. NIFCA applied the byelaw to the entire SAC with the intention of opening the soft grounds up once sufficient data to identify the location of the reef boundary had been gathered.
- NIFCA follows an adaptive management approach that responds to new and emerging

evidence. This includes cases where new evidence demonstrates that a previously applied precautionary approach has implemented unnecessarily strict management measures.

- NIFCA has a duty under Section 153 (2) of the Marine and Coastal Access Act 2009 to manage inshore fisheries in a sustainable way, balancing social and economic benefits with the need to protect the environment. Marine protected areas and their designated features are a key tool to help IFCA's achieve their environmental duties, but NIFCA is duty bound to ensure that environmental protection is proportionate and fair.

The meeting concluded that in light of the available evidence and duties of the NIFCA that a revised byelaw should be submitted to the MMO.

This was dependent on establishing where areas of protected reefs are not present. NIFCA accomplished this by the use of scanners and drop down photography. Additional survey results were also obtained from Cefas and the EA. Initially it is proposed that the amendment will only apply to 'specified gear' means a single trawl fitted with a single cod-end and one pair of otter boards rigged for fine ground fishing using either:

- (i) grass rope with lead rings;
- (ii) light chain ground gear; or,
- (iii) rubber leg ground gear with rubber discs less than 70mm in diameter;

and not to any other form of trawl gear particularly rough ground gear (heavy trawls and dredges). The use of other gears will be considered before the next review depending upon assessment of impacts of the 'specified gear'.

Description of options considered:

The following policy options have been considered:

Option 0: Do nothing - leave the current byelaw regulation as it stands

This option would involve allowing the existing NIFCA management regime to continue unchanged. While this would ensure that reefs within the BNNC SAC remain protected it is not in keeping with national guidelines to ensure that byelaws function in a manner that ensure sustainable fisheries can be maintained.

Option 1: Use of non-regulatory/voluntary measures

Due to the size of the BNNC SAC and the potential number of vessels (including non-local vessels) that could operate in the proposed opened areas and the need for 100% compliance to be effective, it is believed that revoking the byelaw and using voluntary measures to protect the reef would not enable NIFCA to achieve the stated objectives. Within the fishing sector fishermen tend to exploit a fishery to the maximum when opportunities allow. If there is the potential for financial reward there remains the risk that they would take the opportunity to fish regardless of any non-regulatory/ voluntary measures in place. When byelaws are in place a high level of observance of regulation occurs, particularly as there are no ambiguities.

Option 2: Replace the existing legacy byelaw regulations to allow limited trawling to occur in specified areas within the BNNC SAC

A proposed regulation covering the entire English section of the BNNC SAC but opening specified areas to trawling will ensure that the reef features are protected while allowing trawling to occur on historic fishing grounds. The proposed areas to be opened form part of historic trawling grounds and were initially closed to mobile gear as part of the Red Risk approach due to the uncertainty of location of reef features, this SAC was designated for its reef features and not offshore smooth ground habitat, if the location of the reefs had been known then the assigned zones would not have been included in the current byelaw. The proposed areas constitute less than 4% of the smooth ground within the English section of the SAC and only 1% of the total area. It is believed that these areas should be opened to selective trawl gear as they would allow trawling to resume on historic fishing grounds and this would be in line with assurances given by NIFCA prior to the making of the current byelaw. One negative potential impact could be the degradation of smooth ground habitat that could be used by juvenile fish species that make up part of the reef community. It is believed that as these proposed areas only constitute 4% of the smooth ground habitat any impacts will be insignificant.

Option 3: Revoke the current byelaw regulations

This option would remove significant management and potentially lead to stock collapse by allowing fishing to occur by vessels and gear types that are acknowledged as being the most damaging to stocks and sensitive habitats and would lead to the deterioration of the SAC.

Preferred Option

Option 2 was determined as the most appropriate method of managing trawling activity within the BNNC SAC. The new byelaw will assist in regulating the trawl fishery targeting nephrops and whitefish, while protecting reefs.

Under the preferred option, the changes to byelaws are:

The new mobile gear byelaw will allow the use of 'specified gear' to be used in 3 defined historic trawling areas, these are identified as the "Amble Houp", the "Farne Ground" and the "Craster Smooth". The amended byelaw will only allow fishing to occur from vessels deploying demersal towed gear that is least likely to negatively impact the designated features of the SAC. For vessels to fish in these areas they are also required to comply with conditions set out in the byelaw with the title 'Trawling' made by the NIFCA, on 25th November 2015. These conditions include having a permit issued by NIFCA and for the vessel to be below 12 metres overall length.

2. Analysis of costs and benefits

No monetised costs identified, additional resources will not be needed to police the amended byelaw as this will continue to be part of monitoring within the SAC.

3. Consultation

Prior to the making of the original byelaw consultation occurred during a number of stakeholder events around August 2013, these meetings were held at the main ports that were likely to be impacted by the byelaw (these were at Seahouses, Amble and Berwick) they were open meeting and stakeholders from a diverse range of groups were invited. It was explained to those attending

that the byelaw was required to cover the entire English section of the BNNC SAC because of the uncertainties of the extent of the reefs within the site. At this time NIFCA gave assurances that they would undertake investigations to confirm the extent of the reefs and that subsequently if areas that mobile gear could be used that would not impact the reef where identified then NIFCA would consider opening these areas to mobile gear. These areas are historic trawling ground and only account for 4% of the total area of the SAC. In addition to these meeting further open meetings took place at the same time at the NIFCA office in Blyth and at County Hall Morpeth that were attended by additional stakeholders and where the implications of the byelaw were explained. After the making of the byelaw a 6 week public consultation took place which included notifications in the local press and Fishing News. During this period NIFCA received feedback from a number of organisations including: EA, MMO, EMS Officer, North East Sea Anglers, Natural England, Northumberland Wildlife Trust, Anglo Scottish Fish Producers Organisation, the Marine Conservation Society and ClientEarth. Only one objection to the byelaw was received.

Since the current byelaw has been in place additional meetings with stakeholders have taken place at Seahouses, Amble and the NIFCA office where assurances were again given that the NIFCA was looking at the evidence gathered with the intention of reviewing the byelaw. During the last 3 quarterly meetings of the NIFCA the issue of reopening some of the BNNC SAC to mobile gear was debated, evidence was considered from local stakeholders, the Marine Conservation Society and members of the Authority. A quarterly meeting of the NIFCA has been arranged for the 23rd October 2017 during which the making the byelaw will be considered that day. When the byelaw has been made a six week public consultation will follow.

4. Implementation

The NIFCA expect the byelaw to come into force in the spring of 2018. This is in line with existing regulations and resources are already in place to actively enforce its provisions. Although no additional implementation costs are expected, the wider application of the revised regulation may increase the number of formal enforcement actions taken (but this cannot be estimated accurately at this stage). Any subsequent changes in compliance and enforcement actions will be monitored through the Post Implementation Review Plan. This plan will form part of the NIFCA annual plan and will be published on the NIFCA website.

5. Policy objectives and intended effects

The intention of the new Prohibition of the use of Mobile Fishing Gear within the English section of the Berwickshire and North Northumberland Coast Special Area of Conservation Byelaw is to ensure that some trawling activity is permitted in areas where it was previously prohibited while maintaining a high level of protection to designated reef features within the BNNC SAC.

6. Conclusion

Recommended option:

Option 2 was determined as the most appropriate method of managing trawling activity within the BNNC SAC. The new byelaw will assist in regulating the trawl fishery targeting nephrops and whitefish, while protecting reefs. The new mobile gear byelaw will allow the use of 'specified gear' to be used in 3 defined historic trawling areas; these are identified as the "Amble Houp", the

“Farne Ground” and the “Craster Smooth”. The new byelaw will only allow fishing to occur from vessels deploying demersal towed gear that is least likely to negatively impact the designated features of the SAC.

Annex A: Policy and Planning

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

At present, there is no a Marine Plan in place in the IFC District

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, see below

When assessing this byelaw due regard was given to the UK Marine Policy Statement, the byelaws contribute to the following;

- The achievement of sustainable development of marine areas.
- Promote sustainable economic development.
- Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets.
- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.
- Achieve integration between different objectives.
- Recognise that the demand for use of our seas and the resulting pressures on them will continue to increase.
- Manage competing demands on the marine area, taking an ecosystem-based approach.
- Enable the co-existence of compatible activities wherever possible