



Developing Fisheries Management Interventions - Process Document

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1.0 Byelaw Making Process

1.1 Legislative underpinning

Section 155 of the Marine and Coastal Access Act, 2009, describes how Inshore Fisheries and Conservation Authorities (IFCA) have the power to make byelaws.

- (1) For the purposes of performing the duty imposed by section 153 or the duty imposed by section 154, the authority for an IFC district may make byelaws for that district.
- (2) Byelaws made under this section must be observed within the district for which they are made.
- (3) A byelaw made under this section does not have effect until it is confirmed by the Secretary of State.
- (4) The Secretary of State may confirm a byelaw without modification or with such modifications as are agreed to by the IFC authority that made the byelaw.
- (5) Before confirming a byelaw, the Secretary of State may cause a local inquiry to be held.

IFCAs are responsible for producing byelaws within their districts, which includes such part of the English inshore region lying six nautical miles from baselines. Byelaws must be compatible with and cannot be less stringent or inconsistent with National or Community legislation.

1.2 Defra guidance

In accordance with Section 153(3) of the Marine and Coastal Access Act, Defra have issued IFCAs with best practice Guidance¹ on making byelaws. IFCA must have regard to this guidance when carrying out their functions. The guidance outlines best practice for the delivery and implementation of byelaws, which must be based on sound evidence, follow particular decision-making routes and ensure undertaking of appropriate stakeholder consultations.

2.0 Management Intervention Process Map

In addition to the Defra Guidance, Southern IFCA have developed a Management Intervention Process Map ('Process Map') (Figure 1) to further promote consistency and transparency in the delivery of management interventions to include byelaws and to clarify the stages of complex byelaw development. It is important to note that the Process Map does not replace the Statutory Guidance provided by Defra; rather it seeks to complement it, breaking down the evolution of management interventions into five clear and distinct stages, which are described in detail in this document.

The Process Map further aims to demonstrate the roles and responsibilities of the Authority and its sub-committees in the decision-making process. The Southern IFCA Byelaw Process map is not intended to be a binding document, rather it seeks to provide a useful tool which provides context for the delivery of complex management relevant to the Southern IFCA Authority.

2.1 The Authority

The functions and roles of the Authority's Sub-Committees are provided in the Southern IFCA Standing Orders. For the purpose of this document, roles are described in relation to their function in the development of a byelaw.

¹ <http://www.association-ifca.org.uk/Upload/About/ifca-byelaw-guidance.pdf>

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Update: January 2021

2.1.1 Delegated powers

Delegated Powers: as per paragraph (36) of the Standing Orders:

Additional powers may be delegated by the Authority to any Sub-Committee to cover specific matters particularly when time is a critical factor. Such delegation must be for a clearly defined purpose and time limited. This delegation may also be final if so decided by the Authority.

2.1.2 The Executive Committee

The following powers are delegated to the Executive Committee:

- a) to consider the outcome of public consultation(s) following the 'making' of byelaws.

2.1.3 The Technical Advisory Committee

Members of the Technical Advisory Committee (TAC) will meet to consider (a) proposed new byelaws or any proposed change to any existing byelaws; (b) proposed new permit conditions or any proposed changes to any existing permit condition(s) and make recommendations to the Authority on the above matters.

2.1.4 Working Groups

Working Groups (WG) are ad-hoc groups comprised of technical experts from the Authority who are best placed to make report to the TAC. The groups are created to address technical issues; they are not in themselves decision making groups. Where necessary WGs can include other experts.

2.2 Stage 1: Evidence gathering

2.2.1 Call for information

A 'Call for Information' is an evidence gathering exercise which is undertaken with stakeholders and the community. This period of engagement seeks to address any evidence gaps and gather any information relating to the fisheries in question. The information received during this process can then be used, in combination with any other evidence gathered, to inform the Authority of whether there is a need to undertake a full review of the fishery.

2.2.2 Summary of responses

A 'Summary of Responses' document will summarise the written feedback received during the 'Call for Information', as well as provide an account of the less structured verbal responses received during stakeholder engagement. Once collated the Authority will publish the document on our website. The 'Summary of Responses' will also clarify the next stages of the review, ensuring full transparency with stakeholders.

2.2.3 Address evidence gaps

In addition to the responses received during the 'Call for Information', the Authority will source the best available evidence in order to build a picture of the fishery under review. The information gathered may include quantitative information on current effort, the participants engaged within the District and gear types and methods. In addition, up to date and historic stock assessments will be analysed in order to map the fishery over time. In depth literature reviews will also be conducted to ensure that the best available evidence is sourced in order to support the fishery review. In addition, social and economic data will be derived from all relevant sources.

2.2.4 Working Group(s): review of existing evidence

Where necessary, Members of the Authority will attend a Working Group (WG) in order to review all of the best available evidence gathered during the 'Call for Information' and when addressing evidence

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Update: January 2021

gaps. Based on the best available evidence, the WG will report to the TAC as to whether there is a need to pursue management in the fisheries in question. Depending on the scope of the review there may be a need for multiple WGs during Stage 1. The outcomes of WGs will be reported to the TAC.

2.2.5 Technical Advisory Committee: recommendations to Authority

The Technical Advisory Committee will make recommendations to the Authority on whether there is a need to pursue management intervention.

2.2.6 Authority: Determine actions

Based on the best available evidence and the wider legislative duties and responsibilities of the Authority, the Authority will decide whether management intervention is appropriate. If intervention is deemed to be appropriate then the review will enter Stage 2. Delegation of powers to the TAC may be considered by the Authority at this point, in line with paragraph (36) of the Standing Orders.

2.3 Stage 2: Draft Measures

2.3.1 Working Group(s)

Under the direction of the Authority, Working Group(s) will be constituted in order to (1) define the overall vision for the fishery in question, (2) to set objectives and timelines to ensure delivery of the vision, (3) to evolve and develop the most appropriate management options for the fishery in question, (4) to direct the scope of community engagement and consultation. Depending on the scope of the review there may be a need for multiple WGs during Stage 2. The outcomes of WGs will be reported to the TAC.

2.3.2 Technical Advisory Committee

The Technical Advisory Committee will determine whether there is a need to pursue management intervention and make recommendations to the Authority. If delegation of powers has been approved during a previous Authority meeting, then the TAC may determine whether there is a need to undertake a first stage of consultation with the community.

2.3.3 Consultation with community

This is the first period of focused public consultation. Depending on the scope and complexity of the proposed measures the consultation may remain open for a period between four to eight weeks. During this period the Authority will seek to engage with relevant stakeholders, undertaking focused and proactive meetings on the coast in order to facilitate discussions across the community. The aim of this period is to ensure that any potential impacts on stakeholders are identified at an early stage and taken into account, as well as improving an understanding of the proposed measures across the stakeholder community.

2.3.4 Technical Advisory Committee: summary of responses

A 'Summary of Responses' document will collate the written feedback received during the consultation with the community, as well as provide an account of the less structured verbal responses received during stakeholder engagement. The Technical Advisory Committee will formally determine the most suitable management intervention following consideration of the best available evidence and community feedback and make recommendations to the Authority.

2.3.5 Authority

Based on the best available evidence and the wider legislative duties and responsibilities of the Authority, the Authority will consider the recommendations from the TAC. If management intervention is necessary the Authority will consider options for non-statutory measures or proceed to develop a draft byelaw (Stage 3).

2.4 Stage 3: Draft Byelaw

During the drafting of the byelaw the Authority will endeavor to engage with the community on an informal basis to discuss draft measures and attempt to address any unresolved issues. This engagement will be ongoing.

2.4.1 Draft Impact Assessments

An Impact Assessment (IA) will be undertaken to support the development of the byelaw, as such it will reflect the outcomes of both Stage 1 and 2 (and be drafted alongside these stages). An IA should be prepared in accordance with the best practice guidance.

The IA sets out the anticipated costs and benefits of the proposed introduction of management intervention, including the identified fisheries, nature conservation, sustainable development, environmental, social and economic implications. Where the byelaw may alter existing fishing practices particular consideration is made. The findings of the IA will indicate where the proposed management strategy offers the most appropriate form of management to support the sustainability of the fisheries in question.

2.4.2 Draft Byelaw

As directed by Section (156) of the Marine and Coastal Access Act 2009, the most suitable format and scope of a byelaw will be considered and drafted accordingly.

2.4.3 Draft Supporting Documents

Habitats Regulation Assessments

Duties under Regulation 6(3) of the Conservation of Habitats and Species Regulations (2017) require Southern IFCA, as a competent Authority, to make an appropriate assessment of any plan or project likely to have a significant effect on a European Marine Site (EMS) (either alone or in combination with other plans or projects).

Marine Conservation Zone Assessments

Southern IFCA has a duty under Section (154) of the Marine and Coastal Access Act 2009 for the protection of Marine Conservation Zones. This requires the Authority to exercise its functions in a manner to best further (or, if not possible, least hinder) the conservation objectives for MCZs. In order to ensure that the conservation objectives for the MCZ(s) is met a Part A and Part B assessment will be conducted.

Access Policies and Management Intentions Documents

Access policies and appropriate management documents will also be considered for drafting at this point.

2.4.4 Seek legal advice

Following the drafting of the byelaw, if deemed necessary, then independent legal advice is sought.

2.4.5 Byelaw Working Group(s): Consider draft documents

Members will discuss the draft byelaw and supporting documents, taking into account any feedback received from the MMO and legal representatives, as well as feedback following informal community engagement. The BWG will report to the TAC with regard to the need to adapt or amend the draft byelaw and supporting documents where necessary. Depending on the scope and complexity of the byelaw and supporting documents there may be a need for multiple BWGs during Stage 3.

2.4.6 Technical Advisory Committee

Following receipt of the report from the BWG(s), the Technical Advisory Committee will determine whether to make any amendments to the draft documents and where necessary recommend that the byelaw is to be considered for 'making' at the next Authority meeting and approve preparation of a 'notification of intention to make byelaw' package for the Authority Members.

2.5 Stage 4: Byelaw Making

2.5.1 Notification of the Intention to make Byelaw

A Notification of intention to make byelaw is to be given in writing to the Authority Members and the MMO (and Secretary of State [SoS]) at least 14 days prior to the Authority Meeting where the byelaw is to be made. The 'Intentions Package' should include a draft of the byelaw, the supporting evidence and the IA, as well as a covering letter explaining the justification, rationale and purpose of the byelaw.

2.5.2 Authority: Make Byelaw

The Authority will consider whether it is appropriate to make the byelaw. If the recommendation is passed then the Authority will recommend that formal advertisement is carried out.

2.5.3 Formal advertisement

If the Authority resolves to make the byelaw then it will be advertised for two consecutive weeks in relevant publication(s) and/or media platforms in the District. The advertisement should contain: (1) either a copy of the byelaw or summary of provisions (2) the address where the byelaw may be inspected free of charge, (3) a statement directing any person wishing to object to the byelaw to write to the IFCA and MMO not later than 28 days after the date in which the last advertisement appears. During this phase it is important to engage with stakeholders in order to ensure that accurate detail of the proposed measures is provided.

2.5.4 Executive Committee: Objections

Members of the Executive Committee will meet to consider the outcome of public consultation. The Members will examine any objections received and make recommendations to the Authority regarding (1) responses to objectors² (2) whether there is a need to make any changes to the byelaw.

2.5.5 Authority: Approve Byelaw

Based on the best available evidence and the wider legislative duties and responsibilities of the Authority, the Authority will consider the recommendations from the Executive Committee and if deemed appropriate, consider approval of the submission of the byelaw to the MMO and SoS. The Authority may also consider no further action at this stage.

² Responses to objections should be in writing and where appropriate arrangements to liaise with objectors should be made with a view to resolving the objection. Responses to objectors should explain how objections have been considered and, if appropriate, why the byelaw has not been amended as might have been wished. Objections that cannot be resolved do not preclude the confirmation of the byelaw but the IFCA must provide sufficient explanation as to why they have decided to disregard the objections.

2.6 Stage 5: Byelaw Confirmation

2.6.1 Submit Byelaw to MMO and SoS for confirmation

The IFCA may submit the final byelaw to the MMO for confirmation by the SoS once the consultation objections have been considered and/or resolved. The submission should include the following:

1. Two signed copies of the byelaw;
2. A summary of the consultation responses and IFCA's individual responses to objectors;
3. Copies of advertisements of the byelaw;
4. Copies of the minutes of the meetings at which the byelaw was made and any meetings when the byelaw was discussed;
5. Copies of any correspondence together with an examination of any objections, resulting compromise or reasons why objections have been disregarded.

The MMO will make final quality assurance checks and assess the evidence prior to recommending the byelaw for confirmation by the SoS. The MMO will liaise directly with the IFCA and/or stakeholders where there is need for clarification or any unresolved issues.

2.6.2 Await Secretary of State confirmation

The byelaw must be confirmed by the Secretary of State (SoS) in order for it to have effect. The SoS may hold a local inquiry before deciding whether to confirm a byelaw. An inquiry will only be held if there is complexity of issues and whether public scrutiny of the proposed byelaw might helpfully inform the decision.

2.6.3 Publish and implement confirmed Byelaw

Once the byelaw has been confirmed by the SoS it can be published and will come into force.

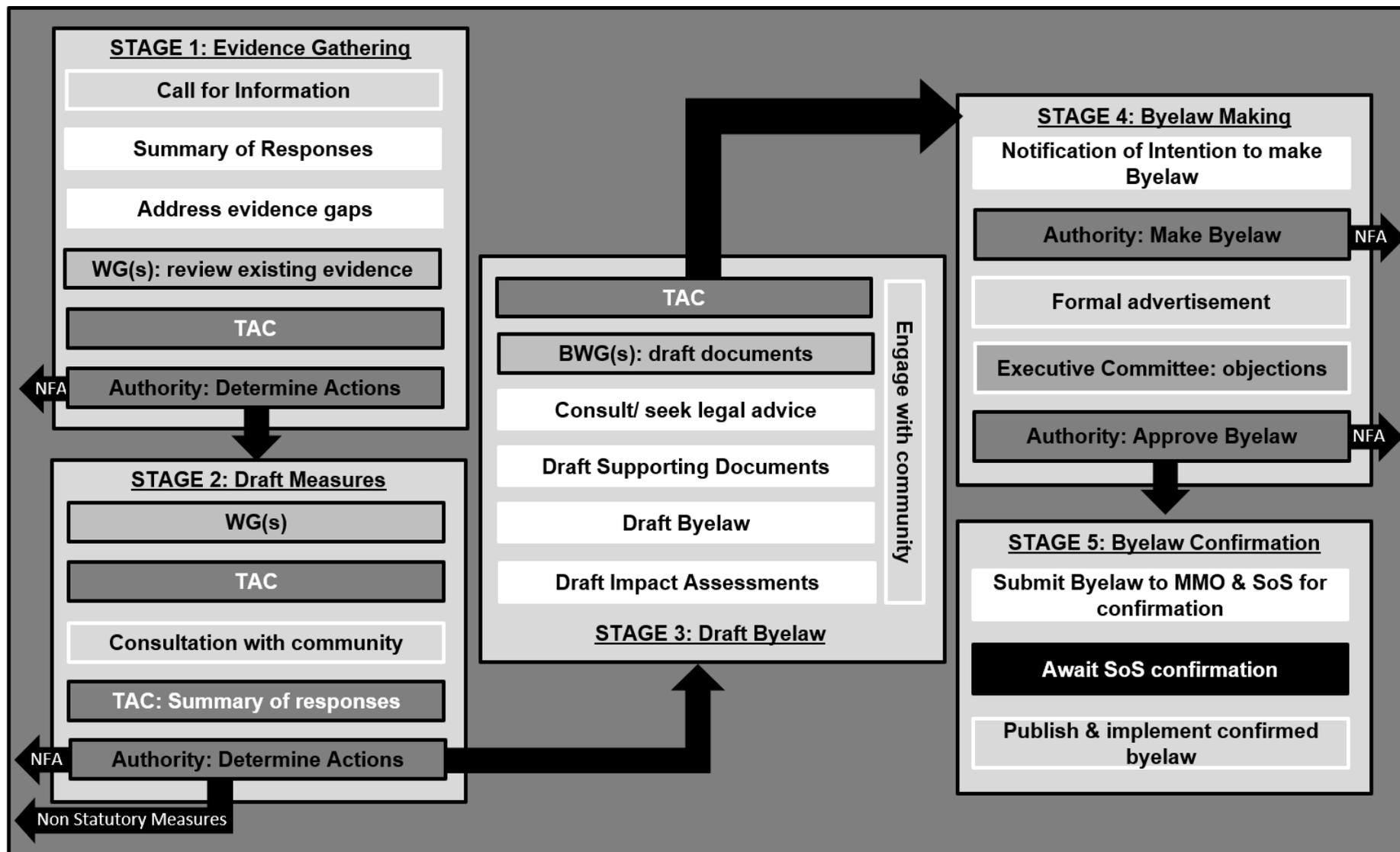


Figure 1: Southern IFCA Management Intervention Process Map (WG: Working Grp, BWG: Byelaw Working Grp, TAC: Technical Advisory Grp, SoS: Secretary of State, NFA: No Further Action)

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Date: April 2019

Updates: January 2021

Further Copies:

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