

## **Byelaws: Questions and answers**

### **Marine Management Organisation (MMO) byelaws (under Part 5, Chapter 1 of the Marine and Coastal Access Act 2009) for European marine sites (EMS) and marine conservation zones (MCZs) within 12 nautical miles.**

Unless otherwise stated, references to the protection of MCZs through byelaws should be taken to include EMS, as MMO byelaws can be made for the protection of EMS out to 12 nautical miles from the coast under regulation 38 of the Conservation of Habitats and Species Regulations 2010.

#### **1. How will the requirement for a byelaw be triggered?**

The need for management measures for MCZs is most likely to be identified through stakeholder engagement during site selection (through the regional MCZ projects) and post designation. For EMS, Natural England will advise what activities could be potentially harmful and advise where management measures should be put in place. Triggers could be from other sources as well, such as MMO coastal officers, fisherman's associations, inshore fisheries and conservation authorities (IFCAs), harbour masters, EMS officers, coastal forums and so on.

If the MMO is approached to investigate the requirement for a management measure, it will be decided whether or not we are the most appropriate regulator to take forward an investigation into the management options for the particular activity. If not, this will be directed to the more appropriate authority to take forward.

#### **2. What level of evidence is required to start the byelaw process?**

The MMO will usually begin the process of investigating potential management options for a site when there is evidence that suggests that there is a risk to the conservation objectives through damage caused by a particular activity. The level of evidence available will vary on a case-by-case basis. The MMO would look to gather enough evidence to make a decision as to whether investigation into management options is required.

However, in some instances we may put in place byelaws based on a precautionary principle (for example, where a protected feature is particularly rare and vulnerable). We will make these decisions on a case-by-case basis but with consistency between cases which are similar in nature.

#### **3. Would the gathering evidence stage include the collection of additional scientific data as well as socio-economic data?**

Decisions will be based on the best available evidence. However, the collection of additional scientific data could be included in the evidence-gathering stage. The decision on whether new evidence will be gathered will be made on a case-by-case basis.

#### **4. For what activities are MMO byelaws used to prohibit or restrict?**

The MMO can make byelaws to prohibit or restrict any activity to further the conservation objectives of a site. However, in practice, MMO byelaws will usually be the preferred option for unregulated activities. Other more appropriate forms of regulation exist for many activities, and this existing regulation would be the route through which these activities are managed in the first instance.

All consenting authorities for regulated activities should assess applications for projects in MCZs or EMS to ensure that there will not be any damage to the protected features of the site. This is already carried out for developments impacting on EMS in the form of an appropriate assessment. Upon designating a new site, existing consents should be reviewed to ensure those activities are not damaging the protected features of the site. Mitigation and conditions may be added if appropriate to ensure there is no impact.

Fishing activities including sea angling and sports fishing will be regulated primarily by IFCAs within their district from 0 to 6 nautical miles. From 6 to 12 nautical miles there are number of different options available including prohibition orders under The Sea Fish (Conservation) Act 1967, MMO byelaws and regulations through the Common Fisheries Policy. Beyond 12 nautical miles regulation is through the Common Fisheries Policy.

### **5. What can an MMO byelaw prohibit and/or restrict?**

The MMO can use byelaws to prohibit or restrict the following which is outlined in section 129 (3):

- entry into, or any movement or other activity within, the MCZ by persons or animals
- entry into, or any movement or other activity within, the MCZ by vessels or vehicles
- speed of any vessel
- anchoring of any vessel within the MCZ
- killing, taking, destruction, molestation or disturbance of animals or plants of any description in the MCZ
- the doing of anything in the MCZ which would interfere with the sea bed or damage or disturb any object in the MCZ.

Byelaws can be used at different times of year, for different areas within a protected site and for different methods or means of carrying out an activity. Byelaws can also be used to restrict activities on the seashore.

### **6. Can MMO byelaws be used to protect wrecks or other underwater structures?**

Section 129 (3) (f) of the Marine and Coastal Access Act 2009 states that the MMO can make a byelaw to prohibit or restrict any activity that would damage or disturb any object in the MCZ. The MMO could therefore restrict or protect an activity to prevent damage to a wreck. However, the byelaw must be for the purpose of furthering the conservation objectives of the site. Therefore, there would have to be a link between the wreck and its accompanying habitat which meant that its protection furthered the conservation objectives.

### **7. How will byelaws be implemented for sites that cross boundaries between the devolved administrations?**

We will work with the relevant authorities and our counterparts within these organisations to gather evidence on the best available options, develop impact assessments, and co-ordinate the implementation of management measures.

### **8. How will the MMO make cross-boundary byelaws such as across the 6 nautical mile boundary?**

The MMO will work with IFCAs to agree an efficient and effective approach to decision making and management for sites that cross the 6 nautical mile boundary. There are several options for how this could work, for example the appropriate IFCA could establish a byelaw within the 6 nautical mile boundary and the MMO establish a mirror byelaw outside of 6 nautical miles, or an MMO byelaw could be established for the whole site. This will be considered on a case-by-case basis and the most appropriate option will be considered as part of the impact assessment.

### **9. What is the difference between a permanent byelaw and an emergency byelaw?**

To place an emergency or interim byelaw on a site, the MMO has to be satisfied that the site requires urgent protection. This is based on evidence about the level of damage and risk to the

site. Decisions are made on a case-by-case basis. An emergency byelaw may be identified to be the best option when a damaging activity develops in a site that hasn't been carried out in that location previously and requires urgent action to ensure the conservation objectives can be achieved.

#### **10. How will byelaws be implemented once potential MCZs have been identified?**

Section 140 of the Marine and Coastal Access Act 2009 dictates a general offence for damaging an MCZ that can be enforced as soon as the site is designated. Therefore, section 140 of the Marine and Coastal Access Act 2009 affords immediate general protection to all of the MCZs and this can be enforced.

If sites require further management measures, Natural England, Defra and the MMO are currently working on how this will be managed and implemented. There have been a number of options put forward as to how this will work with the favoured option being that byelaws are implemented in sites on a risk based approach so that the most damaging activities are managed first. This may be the most effective method based on resources.

**This section does not apply to EMS, which are protected through other mechanisms under the relevant legislation.**

#### **11. At what point of the MCZ site designation process can the MMO make interim byelaws?**

The Marine and Coastal Access Act 2009 is not restrictive on when MMO can make interim byelaws. The MMO will consider each case on its merits and if there is a clear risk to a conservation feature that has been identified, for a possible conservation objective, then early action could be considered. This could be at the time proposals are submitted to the Secretary of State or even before. In general, the MMO will be looking to match byelaws with the timing of designation whenever appropriate. EMS may be protected from the time that they are submitted to the Commission.

#### **12. How will the MMO make decisions about socio-economic and conservation considerations when implementing a byelaw?**

We would look at this on a case-by-case basis but ensure we have consistency between similar situations. The specific impact assessment, which is developed as part of the process to develop each byelaw, will put together the best available information on both the socioeconomic impacts and the environmental impacts in order to inform the decision.

#### **13. Where will information about byelaws and MCZs be available from?**

Information about the location of MCZs and the associated byelaws or restrictions in place will be available to download from the MMO website. Byelaws are also advertised appropriately to ensure that anyone affected by the byelaw is made aware of its implementation.

#### **14. How is a byelaw worded?**

The byelaw will be worded so that it states:

- the powers under which the byelaw is made
- details of the site
- details of the activity being prohibited/restricted
- permits
- penalties.

It will also state the conservation objectives of the site. Background information about the byelaw and the reasons for its implementation may be included in an additional explanatory note.

**15. Will the impact assessments (IAs) developed by the MMO for MCZ management measures be based on the impact assessments developed by the MCZ regional project groups?**

Yes, we would hope to base our IAs on those put forward by the projects. The projects will have already gathered evidence and looked at the economic impacts of different management scenarios so this is invaluable information that we will need to use to develop our own IAs. We are also providing advice throughout the process on potential management measures in order to assist the regional projects in developing these IAs. **This relates to MCZs only.**

**16. Can the MMO make byelaws to protect features which are not listed in the conservation objectives?**

The MMO should make byelaws to further the conservation objectives of a site (as outlined in section 129 (1) of the Marine and Coastal Access Act 2009). We are able to prohibit or restrict activities impacting on non-listed features of a site as long as we have the evidence to prove that by doing so we will further the conservation objectives.

For example, a designated feature of a European marine site may be migrating brent geese which feed on eelgrass. Eelgrass is not a designated feature in its own right but the conservation objectives are to maintain sand and mudflat habitats and the brent geese population. Therefore, we can make a byelaw to protect eelgrass as it is linked to the protection of the designated features. These decisions will be based on evidence and guidance from statutory nature conservation bodies. This same approach will apply for MCZs.

**17. Are byelaws site specific or can the MMO make blanket ones?**

Byelaws will be site specific and made on a case-by-case basis. The process of developing a byelaw requires an impact assessment, extensive gathering of evidence, and stakeholder engagement which is specific to the site and activity under consideration. Note that a byelaw may not be the most appropriate option in all locations, and other management measures will be considered as part of this process for each site.

**18. Do byelaws have to follow the Government's 'one in one out' policy?**

No, the MMO (and IFCA) byelaws are not covered by the Government's 'one in one out' policy, however, the MMO will be following the approach set out in the principles of better regulation to implement statutory regulation only on an appropriate and proportionate basis. Individual byelaws are reviewed on a regular basis to ensure they are still effective, and may be revoked or replaced by more suitable measures on a case-by-case basis.

**19. Can we implement a byelaw that interferes with the right of way under the Marine and Coastal Access Act 2009?**

Our initial understanding is that we will not be able to impose a byelaw where there are existing public rights of way. However, we are seeking clarification on this.

**20. How will byelaw permits work?**

A permit authorises anything which would, apart from such a permit, be unlawful under the byelaw. The MMO may attach to a permit any condition which the MMO thinks appropriate to attach to that permit. Whether or not the opportunity to apply for a permit will be included in the byelaw will form part of the impact assessment and will be examined on a case-by-case basis. The MMO will not be charging for permits initially but there is the potential for this to change in the future.

**21. Can the MMO implement byelaws which interfere with any right of several fisheries?**

Section 129 (2) of the Marine and Coastal Access Act 2009 states that a byelaw can be made for any area in England, so there is no specific restriction regarding MMO byelaws and several fisheries, therefore these byelaws can affect any several fisheries in the area. MMO byelaws can also affect any rights enjoyed by a person under a local or special act, Royal charter, letters patent, prescription or immemorial use.

## **22. How will the MMO put in place byelaws to manage reference sites?**

Joint Nature Conservation Committee (JNCC) and Natural England's [Ecological Network Guidance](#)<sup>1</sup> states that to create an ecologically coherent network of marine protected areas each broad-scale habitat type and features of conservation interest (FOCI) should have at least one viable MCZ within each of the four regional MCZ project areas where all extraction, deposition or human-derived disturbance is removed or prevented. These have been termed 'reference areas'. Section 129 of the Marine and Coastal Access Act 2009 allows the MMO to make byelaws to achieve the conservation objectives of any MCZ within its remit and the parameters established in the Act. The MMO can therefore implement byelaws to achieve the conservation objectives of reference area MCZs.

The MMO cannot make general byelaws to cover all reference sites, the impact of prohibiting or restricting each activity will have to be investigated separately and on a site by site basis. Each byelaw will have to be specific to each activity to be restricted (although they can be drawn up on the same document). If a range of activities are to be restricted, this will mean several byelaws covering each site.

## **23. Can pollutants from outfalls/pipes be covered by a byelaw?**

An MMO byelaw can potentially regulate outfalls, pipes and their pollutants where they affect the conservation objectives of sites; however, this is more likely to be the remit of the Environment Agency as lead regulator for this activity.

## **Processes**

### **24. How long does it take to implement an MMO byelaw?**

Based on developed guidance within the MMO and policy requirements from Defra it is likely that a permanent byelaw will take around 12 months to implement.

Emergency byelaws may take around six weeks. However, this will very much depend on the individual byelaw and are guidelines only. An emergency byelaw can only be in place for 12 months and has to be replaced by a permanent byelaw or revoked after this period. Therefore, in this circumstance, the permanent byelaw process has to meet this 12-month deadline if it is to replace an emergency byelaw. However, in certain circumstances emergency protection may be extended by the making of a further byelaw for a maximum of six more months (18 months in total) if necessary.

### **25. What is the review process for byelaws once they are in place?**

The date and frequency for review of the byelaw will be decided and consulted upon during the development of the impact assessment and public consultation process. The review is therefore regularly carried out to ensure that the byelaw is working effectively, rather than only as a reactive response to ineffectiveness. Reviews could therefore also be triggered sooner if information was received that it was not effective or there was a change in the situation. The review process will cover any changes in circumstances and new evidence, the enforcement activity, whether the byelaw has been communicated effectively with stakeholders and whether any amendments may be required. The amount of time and resource put into a byelaw review should be proportionate to the byelaw.

For example, reviews will take longer and will require more resources depending on different factors such as the amount of feedback from stakeholders, whether there is a high impact on a particular sector or it is particularly contentious. The review should form the decision to keep the byelaw, amend the byelaw, replace with another byelaw or revoke completely/replace with a different management measure.

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<sup>1</sup> <http://www.naturalengland.org.uk/ourwork/marine/protectandmanage/mpa/mcz/default.aspx>

## 26. How would the MMO revoke a byelaw?

The decision to revoke a byelaw may be taken as the most appropriate option after a comprehensive review of the effectiveness and suitability of the byelaw. A byelaw has to be revoked through the making of a revocation byelaw. This would likely take a similar amount of time to draft as a normal byelaw, and it is dependent on the availability of the drafting lawyer.

## 27. What happens if an emergency MMO byelaw becomes a permanent IFCA byelaw or if a byelaw is reviewed and it is deemed that an IFCA byelaw would be more appropriate? Does the process have to start again from the beginning?

We will work closely with the IFCAs on any cases to develop joint impact assessments/public consultation so that the handover/transfer to a permanent IFCA byelaw when these come into place will be simplified.

Once IFCAs are in place it is deemed that it will be very unlikely that an MMO byelaw will be reviewed and replaced by an IFCA byelaw as all fisheries management will be developed by IFCAs in the first instance. The most appropriate measure is always identified during the evidence gathering and impact assessment stages.

## 28. Is there a right of appeal for MMO byelaws?

A person affected by the making of a byelaw may make representations to the Secretary of State who has the power to revoke a byelaw. Permanent byelaws are reviewed on a regular basis and the review period is dictated as part of the impact assessment. The MMO must keep under review the need for an emergency byelaw to remain in force before replacing it with a permanent byelaw or more appropriate option. Information on how to appeal and the review process will be published along with any byelaw.

## Enforcement

### 29. How will byelaws in MCZs be enforced on UK and foreign vessels?

Byelaws can be enforced both by the MMO and IFCAs within their marine areas and districts. The MMO will build on existing close working arrangements that exist with a number of authorities, including the IFCAs, Environment Agency, police and others. This can include undertaking joint patrols and the gathering and sharing of evidence. Enforcement is carried out by applying a risk based approach to ensure that available resources are applied most effectively. The offence of contravening an MMO nature conservation byelaw carries a maximum penalty of £5,000 (Section 139 of Marine and Coastal Access Act 2009).

This fine for contravention of a byelaw is based on the offence committed that is the act of contravening the byelaw rather than per species individual (or habitat) that is damaged. The IFCA and MMO can both take on prosecutions for contravening the general offence within their remit areas.

Byelaws for foreign non-fishing vessels can be enforced by marine enforcement officers if approved by the Commission and affected EU member states (Article 9 CFP) (see Table 1). The MMO can only make byelaws out to 12 nautical miles and other regulatory alternatives may be more appropriate where there is foreign fishing activity that needs to be managed between 6 and 12 nautical miles, such as national fishing prohibition orders or CFP regulations.

**Table 1: Enforcement of byelaws**

	<b>0 to 6 nautical miles</b>	<b>6 to 12 nautical miles</b>	<b>12 to 200 nautical miles</b>
<b>Fisheries</b> byelaws	IFCA byelaws can be enforced by IFCOs on all fishing vessels.	MMO byelaws can be enforced by MEOs on UK fishing vessels*.	No byelaw making power.

	MMO byelaws can be enforced by MEOs or IFCOs on all fishing vessels*.	MMO byelaws can be enforced by MEOs on EU fishing vessels if approved by the Commission and affected EU member states (Article 9 CFP).	
<b>Non-fisheries</b> MMO byelaws, such as anchoring by French yachts	Can be enforced by MEOs or IFCOs on all vessels*.	Can be enforced by MEOs on all vessels*.	No byelaw making power.

\* Under section 237(9) of the Marine and Coastal Access Act 2009, the powers of an MEO for the purposes of enforcing MMO byelaws or section 140 may not be exercised in relation to:

- a) a non-EU member state third country vessel;
  - b) a warship that is being used by the government of a State other than the United Kingdom;
  - c) any other vessel that is being used by such a government for any non-commercial purpose.
- unless—
- i. in the case of a non-EU member state third country vessel, other than a vessel falling within paragraph (b) or (c), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state, or
  - ii. the Commissioners for Her Majesty's Revenue and Customs have given authority to exercise those powers in accordance with the Act.

# Under section 141(6), offence does not apply to any non-EU member state third country vessel until Exclusive Economic Zone order made.

### **30. What resources does the MMO have available for additional enforcement of management measures?**

The MMO operates a risk-based approach to its enforcement responsibilities in order to ensure that it can make best use of its resources and target inspection activity at those areas identified as being subject to the highest risk of non-compliance with the regulations. The MMO draws on its experience of inspecting fishing vessel activity from land, sea and air, as well as its experience of undertaking investigations that can lead to prosecution. Further work is being undertaken to develop our risk based approach, including the use of intelligence modelling, and to factor in the enforcement of marine nature conservation provisions.

The MMO can call upon its aerial and maritime surveillance contracts/agreements to support the work of its coastal office and HQ-based marine enforcement officers. The MMO's HQ operations room oversees the tasking of its aerial surveillance and at sea assets to monitor and inspect those areas and activities identified as high risk. Currently the MMO draws upon the use of one surveillance aircraft and three Royal Navy Fishery Protection Squadron vessels. It also hosts a Fisheries Monitoring Centre for fishing vessels greater than 15 metres in length that are equipped with satellite vessel monitoring systems.

The MMO also works increasingly closely with a range of other authorities to co-operate on enforcement, including inshore fisheries and conservation authorities, the Environment Agency, the police, Vehicle and Operator Services Agency and others. While enforcement resources are always likely to be under pressure, the use of a risk-based approach, an effective intelligence system and co-operation between regulators helps to counter any difficulties.

**31. The MMO would not put a byelaw in place that was not enforceable. What do we mean by enforceable?**

Regulatory measures introduced will only be effective if they can be enforced by the regulator in the event of non-compliance occurring. Therefore, the measures need to be framed in such a way, that the regulators can apply their enforcement resources confident that they can gather robust evidence that supports potential prosecution action. In relation to byelaws, enforceable has two components. Firstly, byelaws will be clearly written so that there is no room for misinterpretation, making them fully enforceable in a legal sense. Secondly, enforcement of the byelaw will be achievable in practice taking into consideration the resources available and the logistics of the site. Essentially it is something that we are able to manage effectively. During the MMO impact assessment process for byelaws, enforcement measures will be discussed at length with the SFCs/IFCAs and the MMO coastal offices to ensure that the most appropriate measure and associated enforcement can be met.

**32. Will there be fixed penalties for specific byelaw offences?**

There is currently no system of fixed monetary penalties in place for contravening a MMO byelaw or the general offence provisions, although section 142 to 144 of the Marine and Coastal Access Act 2009 do allow the Secretary of State to make regulations to introduce such a system. The use of civil sanctions by all departments is currently undergoing a wider government review.