

**MARGATE AND LONGSANDS EUROPEAN MARINE SITE (SPECIFIED AREAS)
BOTTOM TOWED FISHERING GEAR BYELAW 2016**

Wildlife and Countryside Link consultation response

December 2016

Introduction

Wildlife and Countryside Link (Link) brings together 47 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land. This response is supported by the following members of Link:

- ClientEarth
- Environmental Investigation Agency
- Friends of the Earth England
- Institute of Fisheries Management
- Marine Conservation Society
- ORCA
- Whale and Dolphin Conservation

Link welcomes this opportunity to comment on a draft bye-law setting out fisheries management measures proposed by the Marine Management Organisation (MMO) for the 6-12nm area of the Margate and Longsands SCI.

In our view, the measures proposed by the bye-law do not go far enough to protect the integrity of this site. This is because there is a lack of certainty about the absence of adverse effects on sensitive marine habitats that will not be protected by the proposals, including in particular the biotopes SS.SSa.CFiSa (Cirralittoral fine sand) and SS.IGS.FaS.FabMag (*Fabulina fabula* and *Magelona mirabilis* with venerid bivalves in infralittoral compacted fine sand). This is because there is a lack of certainty about the impacts of bottom-towed gears on these biotopes. There has also been a failure by the MMO to consider as part of the site's assessment the impact of fishing activities on 'typical species' associated with the site. This lack of certainty means that the authority should employ a precautionary approach to management measures and protect the site from potentially damaging fishing activities.

We are particularly concerned in this case given that, in the 0-6nm area of the site, the Kent & Essex Inshore Fisheries and Conservation Authority has taken the decision to protect some parts of these more sensitive biotopes. This seeming inconsistency is hard to square with the precautionary management approach required by Article 6 of the Habitats Directive.

Given the current lack of certainty about absence of adverse effects on site integrity, full closure of the site to bottom-towed gears is the only legally compliant options. In addition, if towed gears (of any kind) are allowed into the site, they should be required to use VMS (under the byelaw). At the very least, the proposal should be extended to include a ban on bottom-towed gears in the entirety of the areas where the sensitive biotopes SS.SSa.CFiSa and SS.IGS.FaS.FabMag are present.

We also have some general comments about the methodology of the Assessment for this protected area, which we set out in full below. We look forward to receiving your feedback on the points that we have raised.



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4. ****Do you agree with the conclusions of Part A of the assessment (i.e. the gear/feature interactions taken through to part B)? (Yes/No).***

No

5. ****If you do not agree with part A, which aspects of the assessment you do not agree with: description of activities; description of designated features (eg location, extent or sensitivity); description of the impact of relevant activities on the conservation objectives of the site.***

1. Absence of future proofing

The assessment process seems to accurately identify those activities that are taking place within the site. However, certain activities have been excluded from further assessment on the basis that the relevant activity “*does not occur at the site*” (Table 6, pp.8-9, MPA Assessment). The failure to consider potential impacts that may occur in future calls into question whether the assessment and therefore the bye-law proposal, provides adequate future-proofing against the risk that these activities might in fact take place in future.

2. Failure to consider in-combination effects

The assessment process seems to accurately identify those gear-feature interactions that are, alone, most likely to have an influence on site integrity. In-combination effects do seem to have been considered at the Part B ‘appropriate assessment’ stage (see for example Table 4, p.7, MPA Assessment). However, the MPA Assessment provides no evidence that they have been considered at the Part A test for likely significant effects stage. The Habitats Directive is clear that the likely significant effects of plans and projects on a European site must be considered “*either individually or in combination with other plans or projects*”. This includes consideration of in-combination effects at screening/test for likely significant effects stage. The MMO should repeat its assessment, this time ensuring that in-combination effects are factored in at the Part A stage.

6. ***If applicable, do you agree with the conclusions of part B of the assessment? (Yes/No). NB there is no N/A option, so for sites where no part B has as yet been undertaken, this would need to be left blank.***

No

7. ****If you do not agree with part B, which aspect of the assessment do you not agree with: description of activities; description of designated features (eg location, extent or sensitivity); description of the impact of relevant activities on the conservation objectives of the site.***

1. Adverse effects in non-closed areas

We are concerned that the proposed site closures do not go far enough to protect the sensitive areas of the site. Specifically, we think that the biotopes SS.SSa.CFiSa (Cirralittoral fine sand) and SS.IGS.FaS.FabMag (*Fabulina fabula* and *Magelona mirabilis* with venerid bivalves in infralittoral compacted fine sand) should also be protected from damaging bottom-towed fishing gears.

SS.SSa.CFiSa (Cirralittoral fine sand)

Table 16 of the MPA Assessment (p.24) confirms that 12% of this biotope (7.1km²) is currently impacted by otter trawls over 15m, with 1% of the biotope being impacted by high-impact trawl doors.

The species that are present in the biotope can be broadly characterised as either opportunist species that rapidly colonise disturbed habitats and increase in abundance, or species that are larger and longer-lived and that may be more abundant in an established, mature assemblage. Species with opportunistic life strategies (such as the polychaetes *Spiophanes bombyx* and *Chaetozone setose*) are likely to recolonise disturbed areas first, while the recovery of bivalves that recruit episodically and the establishment of a representative age-structured population for other larger, longer lived organisms may require longer than two years (Foden et al., 2010; Blyth et al., 2004).

The polychaetes in this biotope are therefore likely to recover more rapidly than the characterising bivalves and the biotope classification may revert, during recovery, to a polychaete-dominated biotope. The MPA Assessment does not provide precise information about the typical species present in this biotope – presumably because this information is not known. This creates uncertainty about the absence of adverse effects and therefore the principle of precautionary management should apply. As such, this area should be closed to potentially damaging activities such as fishing with bottom-towed gears.

SS.IGS.FaS.FabMag (Fabulina fabula and Magelona mirabilis with venerid bivalves in infralittoral compacted fine sand)

Table 16 of the MPA Assessment (p.24) confirms that 22% of this biotope (17.7km²) is currently impacted by otter trawls over 15m, with 2% of the biotope being impacted by high-impact trawl doors.

The characterising species of this biotope are fragile, for instance, *Fabulina fabula* with a 'thin, brittle shell' and *Magelona mirabilis* with 'long, delicate palps'. Abrasion from beam and otter trawling can damage these species, reducing diversity and abundance. The biotope is likely to contain elements of both relatively stable sands (in particular in the troughs and slopes of the biotope), characterised by the more fragile species such as *Fabulina fabula* and *Nephtys hombergii*, and more dynamic sands, characterised by more robust species such as *Spisula elliptica* and *Nephtys cirrosa*.

As with the biotope SS.SSa.CFiSa, the more mobile, opportunistic species are better adapted for disturbance, while the less mobile, longer-lived species find it more difficult to recover when there has been disturbance. As acknowledged in the MPA Assessment, this biotope "may be sensitive to dredging when it is occurring on the more stable gravelly and muddy sand communities which will be more associated with the troughs" (Table 28, p. 64).

However, there does not appear to be any information about where these features occur within the biotope, therefore it would not be possible to protect only these areas. Where there is a lack of certainty about absence of adverse effects such as this, the potentially damaging activity should not be permitted. Given the potential for long-term, possibly permanent, adverse impacts on typical species associated with this biotope, the only legally compliant option would be to close this biotope to bottom-towed fishing.

2. Article 6 of the Habitats Directive and the precautionary principle

Fishing effort

We are concerned that the MMO does not have definitive knowledge about the location and number of vessels using bottom-towed gears operating in the site. This is partly because VMS does not record use of the site by vessels less than 12m in length, and partly due to the (in our view incorrect) assumption made about the landings data that "*Landings from all*

vessels were spatially attributed based on the patterns of fishing observed in vessels of 15m length or over. **Therefore, it was assumed that under 15m vessels show the same patterns of fishing as those 15m and over**".

Fishing effort has therefore not been mapped at the scale of resolution or accuracy that is required to effectively manage fishing in individual parts of the site. At the very least, every towed gear fishing vessel should be required under bye-law to carry VMS. However, the Habitats Directive requires a precautionary approach to management to ensure site integrity. As such, in view of this knowledge gap and in the absence of measures to ensure that the required knowledge is obtained, there should be full closure to bottom-towed gears throughout the SCI, as only this will ensure that vulnerable habitats in the site are protected.

Favourable conservation status

In addition, we do not think that the MPA Assessment properly assesses impact of potentially damaging fishing activities the 'typical species' associated with the site.

The European Court has confirmed that the scope of 'favourable conservation status' extends beyond a site's designated features to include the 'typical species' associated with the site, which must therefore also be maintained at or restored to favourable conservation status (Case C-258/11 *Sweetman*, para. 39). Article 2 of the Habitats Directive requires that 'favourable conservation status' is achieved *or recovered*, for a site's designated or classified features. Therefore, effective management measures should allow for the natural recolonisation and recovery of habitats as well as maintaining what is there now.

However, Table 10 (p.15, MPA Assessment) reveals that the indicator 'presence and abundance of typical species' has not been identified as an 'important favourable condition target for identified pressures' because "*Key species not identified therefore cannot be assessed*". The failure to consider impacts on 'typical species' is clearly inconsistent with the requirements of Article 6 HD and is a fundamental problem.

Precautionary principle

Our position is that fishing in a European Marine Site ("EMS") is a plan or project within the meaning of Article 6(3) of the Habitats Directive (see Case C-127/02 *Waddenzee*). However, Articles 6(2) and 6(3) are designed to ensure the same level of protection (Case C-258/11, *Sweetman*, paras 32-33). Therefore, whether or not it is agreed that fishing is a "plan or project" for the purposes of Article 6, it is clear that fishing with bottom towed gear can only be undertaken in the site if there is certainty that it will not have an adverse effect on the integrity of the site. This means that the site must be preserved at, or restored to, 'favourable conservation status' (see above for information on the meaning of this).

Authorities must adhere to the precautionary principle when making decisions. Therefore, 'certainty' in this context means situations "**where no reasonable scientific doubt remains as to the absence of such [adverse] effects**" (our emphasis) (Case C-127/02 *Waddenzee* - answer to question 4 put to the Court). An authority therefore cannot decide not to ban a particular activity within an EMS if there is insufficient evidence forthcoming from its assessment to exclude the possibility of harm to site integrity arising out of that measure or activity.

The European Court has confirmed that in the case of permanent damage a small loss may still amount to a loss of site integrity (Case C-258/11 *Sweetman*).

Monitoring and enforcement

As a general comment, we note that the roadmap set out in the proposals for monitoring the condition of the site is very vague. A comprehensive and collaborative monitoring regime paid for by industry would be needed, due to the expense of implementing such a regime.

Further, the assessment does not clarify how the MMO will enable the decision-making process to assess the need for 'future management'.

Investment in additional and better scientific data about feature extent and gear-feature interactions and sensitivities is also needed, in order to inform effective management measures.

We therefore question whether the assessment, and therefore the bye-law proposal, are appropriate to meeting the conservation objectives of this site and therefore the legal requirements set out by Article 6 of the Habitats Directive for the protection of the site.

3. Conclusion

There is no scientific certainty about the vulnerability of the species and habitat types in this specific site to inform appropriate management measures. Further, Natural England's Conservation Advice for the SCI states that the impact of biological disturbance from trawling on sandbanks is 'moderate'. This is a very vague assessment, but in itself is a strong indicator that closure of the entire site to these gears is appropriate.

The current lack of clear information about fishing effort, vulnerability of species and therefore impacts on the SCI, coupled with difficulties with monitoring and enforcement, suggest that full site closure is the only legally compliant option. At the very least however, the proposed areas to be closed to bottom-towed gears should be extended to include the vulnerable biotopes SS.SSa.CFiSa and SS.IGS.FaS.FabMag. In addition, if towed gears (of any kind) are allowed into the site, they should be required to use VMS (under the byelaw).

8. *Do you have further information on additional costs to the industry which are not covered in the impact assessment (IA) – If yes, please provide details?*

No

9. *If restricted from using this area, are there alternative areas or methods you would use – if yes, please provide details?*

N/A

10. *Can you suggest any other measures that would support the features within the site?*

See our answer to question 4 above.

11. *What changes do you foresee in the sites biodiversity and/or fish stocks if the proposed closure is implemented?*

A slight improvement in habitat condition, benthic productivity, epibenthic biomass. However, the closures are not large enough to have significant ecological impact relative to the scale of the entire site because of their minimal area and the fact that not all vulnerable biotopes

have been closed to damaging activities. As such, these measures cannot be certain to achieve favourable conservation status, nor to avoid adverse effects on site integrity.

References

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