

Application by Norfolk Boreas Limited for an Order Granting Development Consent for the Norfolk Boreas Offshore Wind Farm Project



5th May 2020

Deadline 10 Submission by the Eastern Inshore Fisheries and Conservation Authority

A. Confirmation that the Statement of Common Ground submitted as final by the Applicant does represent the final position from the other party

Eastern IFCA can confirm that the Statement of Common Ground submitted by the Applicant represents our final position. Please find below, however, an additional representation regarding Eastern IFCA's comments on the in-principle compensatory measures for Haisborough, Hammond and Winterton SAC (HHW SAC) set out by the Applicant.

B. Response to the Applicant's proposed HHW SAC In-Principle Compensatory Measures

1. Mitigation hierarchy

- 1.1. The following comments are raised for the situation in which the Secretary of State decides that no adverse effect on site integrity cannot be concluded and that compensatory measures are required to permit Norfolk Boreas Offshore Wind Farm to progress. We would like to refer to the mitigation hierarchy for dealing with negative impacts on biodiversity, which outline that compensatory measures should only be used where avoidance and mitigation are not possible or sufficient to conclude no adverse effect on site integrity.
- 1.2. Compensatory measures outside of the development site may offset the impact but will not prevent the negative impacts within the site. Eastern Inshore Fisheries and Conservation Authority (Eastern IFCA) would urge to first and foremost focus on avoiding, minimising and mitigating impacts within the offshore wind farm site and cable route.

2. Note on potential errors within REP7-027

- 2.1. Eastern IFCA have identified a number of areas within REP7-027 that could benefit from increased clarity and/or correction. We would appreciate if the Applicant could please provide either correction or explanation on these points, which are set out in paragraph 2.2 below.
- 2.2. Eastern IFCA have been in discussion with the Applicant regarding some errors in the numbers set out in REP7-027. In particular, Table 3.1 outlines that the maximum worst-case habitat loss for the project would be 0.3km² (including 0.02km² reef and 0.03 km² sandbanks), however Paragraph 36 then continues to state that based on Norfolk Vanguard creating 0.02km² area of habitat loss, the total habitat loss would then be 0.04km² for the two projects. When queried over these number, which do not add up, the Applicant outlined that Paragraph 36 has added in the additional total area of impact of

Norfolk Vanguard for reef but omitted in error the combined area for Annex I sandbanks, and therefore should have stated that “if constructed Norfolk Vanguard Limited would also create up to 0.02km² area of habitat loss for Annex I reef and up to 0.3km² for Annex I sandbanks, thus the total area of habitat loss within the HHW SAC across the two projects would be up to 0.04km² for Annex I reef and up to 0.6km² for Annex I sandbanks.” Based on these numbers, Eastern IFCA would like to further query the numbers used throughout the remainder of the document, which use a value of 0.02km² area of habitat loss for Annex I sandbanks (e.g. Figure 4.2/Footnote 10).

- 2.3. Section 2.2.2 of the document outlines the pressures that are already in existence in the Haisborough, Hammond and Winterton SAC (HHW SAC) and refers to high pressure from fishing.
- 2.4. Eastern IFCA would like to reiterate that this pressure is not consistent throughout the SAC, and that fishing pressure in the inshore area (within 0-6 nautical miles) is low. This has been explained in writing throughout the examination process, and is also detailed in the SAC Selection Assessment document, which explains “to the north and west of the site, the key fishing activities are less damaging, and include gill netting, long lining and potting”. A more detailed description of fishing activity within the inshore area is provided below (Section 4.3)

3. Eastern IFCA comments on the compensatory measure proposals considered but not carried forward within the draft DCO

3.1 *Please note that comments in support of proposals are given in principle and would be subject to favourable feasibility assessments.*

Proposal	Eastern IFCA comments
Establish an Annex 1 reef at a location outside the HHW SAC	<p>Eastern IFCA would in principle be supportive of appropriate proposals to introduce native mussels or oysters into areas of the North East Norfolk coast, or within another offshore wind farm area, however, would need further information to provide formal comments on any proposals. Despite the current consideration that oyster beds are not an Annex 1 habitat feature, Eastern IFCA consider that supporting the establishment of a native oyster bed could provide similar environmental benefit to <i>Sabellaria</i> reef, supporting valuable ecosystem services (e.g. water filtration, habitat provision for forage fish, invertebrates and other shellfish, and at large scales shoreline protection, wave buffering). Oyster beds are also considered a feature of conservation importance in some Marine Conservation Zones on the east coast.</p> <p>If this option were being considered to be taken forward, Eastern IFCA would require further details of the fisheries implications of any such proposal, including whether introduced beds would be fished (within appropriate parameters) and whether such a proposal would require management of towed-demersal fishing gear within the 0-6 nautical mile area.</p>
Removal of disused anthropogenic infrastructure and litter	<p>In principle, Eastern IFCA would be supportive of the removal of disused anthropogenic infrastructure and litter. However, more information would be needed to support a litter removal proposal. Considerations would need to include the extent of marine litter footprint, and the location and of any disused anthropogenic infrastructure and litter. Eastern IFCA advise that we are not aware of any specific ‘hotspots’ for lost fishing gear in the area, and that we do not know how likely it is that these occur considering the</p>

	low level of fishing activity in the inshore area. We advise discussing options with the fishing industry, Natural England and NGOs.
Fisheries management – reduction of intrusive fishing methods	<p>Eastern IFCA do not consider it equitable to penalise inshore fishery stakeholders (by introducing additional spatial closures) for environmental damage caused by the offshore renewables industry. Eastern IFCA will not support compensatory measures that increase restrictions on fishing activities, particularly where those activities have been assessed and found to be compatible with conservation objectives for the designated site.</p> <p>Fisheries are already subject to assessment under the Habitats Regulations, and measures have been put in place (or are in development) to ensure fisheries do not have an adverse effect on designated sites. Once in force, Eastern IFCA's Marine Protected Areas Byelaw 2019 will close areas within HHW SAC agreed with Natural England as requiring closure to towed-demersal fishing to protect Annex 1 reef. Further work will be undertaken by Eastern IFCA to assess the impact of fishing on the sandbanks features within 0-6nm; however, at this stage additional closures are considered neither necessary nor proportionate to risk of damage from fishing. Should evidence for additional areas of <i>Sabellaria</i> reef come to light through additional surveys, it would be standard practice under Article 9(1) of The Conservation of Habitats and Species Regulations 2017 (as a function of Part 6 of the Marine and Coastal Access Act 2009) for Eastern IFCA to introduce additional spatial restrictions to protect these from towed-demersal fishing.</p>

4. Eastern IFCA's comments on the proposal for an extension to the Haisborough Hammond and Winterton Special Area of Conservation

4.1. Existing Marine Protected Area (MPA) Network and fisheries management

4.1.1. The network of MPAs in English waters was completed with the designation of the third tranche of Marine Conservation Zones (MCZs) in 2016. These complement the Natura 2000 network of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) to form the English "Blue Belt".

4.1.2. Over 96% of the Eastern IFCA district (0-6nm coastal waters between the Humber and Harwich) has been designated as a MPA (Figure 1).

4.1.3. Fisheries regulators are responsible for assessing the impacts of licensed fishing activities on MPAs and managing these activities to support the conservation objectives of these sites. The relevant bodies are IFCAs within inshore waters (0-6nm), the Marine Management Organisation (MMO) and Defra (6-200nm).

4.1.4. HHW SAC lies partly in inshore waters but mostly beyond 6nm. Eastern IFCA has agreed to exclude towed demersal fishing from areas of the most sensitive habitat, biogenic reef: *Sabellaria* within the 0-6nm section of the site under the MPA Byelaw 2019 (Figure 2). MMO has done the same where the feature occurs in the 0-12nm section of the site. Defra has presented management proposals to prohibit towed demersal fishing from the majority of the SAC beyond 6nm, to protect *Sabellaria* reef and the other designated feature for this site, subtidal sandbanks.

4.1.5. Eastern IFCA's Byelaw 3 (applicable across the entire 0-6nm area) prohibits fishing for molluscs via any method other than hand working throughout the Eastern IFCA district without prior permission from the Authority; this protects seabed habitats from impacts from dredges. In addition, Byelaw 12 prohibits trawling within 0-3nm by vessels greater than 15.24m; this further protects seabed habitats by limiting the size (and by extension, weight) of fishing gear that can be used. Furthermore, Eastern IFCA's whelk permit byelaw limits the number of whelk pots that can be used from vessels fishing in the 0-6nm area: although designed as a stock sustainability measure, an additional outcome is a limit on the level of interaction between whelk pots and seabed habitats.

4.2. Ecological impacts of designation

4.2.1. Ecological benefits, if the SAC extension designation is agreed, could include a local increase in abundance and diversity of species within the extension area, if – in order to meet the conservation objectives of the site – anthropogenic activities are restricted. If it is assessed that there is no requirement to restrict anthropogenic activities within the extension area, then no change to the abundance or diversity of species within the extension area would be expected. Given the very low level of fishing in the extension area (see 4.3.5) it is unlikely that fisheries management would be needed, beyond protection of very small reef areas.

4.2.2. Eastern IFCA understand that the 10:1 ratio proposed for compensation is based on the experience of the Maasvlakte 2 project. However, we would highlight that the decision to take a 10:1 ratio forward was case-specific, based on calculations that found within the Voordelta European Marine Site removing the use of beam trawls could result in an increase in habitat quality of 10%. Therefore, it was considered appropriate for beam trawling to be removed from an area 10 times that of the area to be lost.

4.2.3. Eastern IFCA do not consider that this ratio can be taken directly from one project and applied to another. For the Norfolk Vanguard and Norfolk Boreas projects, further case-specific considerations and calculations are required to select an appropriate compensation ratio. The ratio chosen should be calculated based on the specific in-principle measures proposed, the required compensatory outcome, the type and intensity of ongoing activities within HHW SAC (or within any proposed extension), and the best available evidence on the conservation benefits any in-principle measures would have.

4.2.4. The Applicant has proposed a 120km² area for consideration for extension of HHW SAC to compensate for potential loss of, and or damage to, areas of designated habitat within the existing SAC. Under the Applicant's worst-case scenario that the predicted potential area affected is 0.03km² for Norfolk Boreas alone (including 0.03km² of sandbanks and 0.02km² of *Sabellaria* reef), the area being considered for extension is **4,000 times greater** than the worst-case scenario affected area. Eastern IFCA considers this proposed mitigation is not proportionate. Potential ecological benefits must be considered against potential socio-economic impacts.

4.2.5. It should be highlighted that protection has already been agreed for the largest area of *Sabellaria* reef within the area to be considered for extension under Eastern IFCA's Marine Protected Areas 2019 byelaw (Figure 2). This significantly reduces the "additionality" (the "new ecological benefit") that could be offered by this proposed compensatory measure.

4.2.6. The process of delineating the boundaries of MPAs is carefully undertaken with due consideration of a variety of factors and with a public consultation process. Eastern IFCA

would urge consideration be given to the reasoning for the original shape and border of HHW SAC before considering any extension. Engagement is discussed further below (Section 4.5).

4.3. Socioeconomic impacts of designation

4.3.1. The area to be considered for extension to HHW SAC lies entirely within 0-6nm waters. As such, the relevant fisheries regulator (in relation to MPA assessment and management) would be Eastern IFCA. If the extension is designated, Eastern IFCA would be required to scrutinise feature evidence, assess the impacts of licensed fishing on site features, identify appropriate management (if needed) to ensure fisheries do not hinder achievement of conservation objectives, evaluate the impacts to fisheries, engage with stakeholders, and undertake formal consultation and legal checks to support submission of a byelaw for Defra sign-off. If measures are agreed, further action would include monitoring of fishing activity, enforcement action for non-compliance with measures, and potentially monitoring of features to assess effectiveness of management. These are significant undertakings and Eastern IFCA would seek to recover associated costs from the Applicant (wind farm developer). Feature monitoring in the marine environment is expensive as it requires resource-intensive vessel-based surveys.

4.3.2. If designated, it is highly likely that towed-demersal fishing must be prohibited in areas where the Annex I habitat *biogenic reef: Sabellaria* is found within the extension area. This is a relatively small area of the proposed extension area, but still significantly larger than the affected area.

4.3.3. It is possible, but uncertain at this stage, that towed-demersal fishing will also need to be restricted in areas where the designated habitat Sandbanks is found within the site. This is a much larger area of the proposed extension area and would be significantly larger than the existing fishery closure areas agreed by Eastern IFCA in HHW SAC (Figure 2).

4.3.4. If any new fisheries management is required as a result of a new MPA designation, an assessment of costs to fishery stakeholders would be required. There are currently understood to be very low levels of towed demersal fishing within the proposed extension area. However, for those fishery stakeholders affected, impacts must be considered within the context of existing constraints. This could include existing fisheries management restrictions on effort, gear types and spatial activity; and other spatial constraints because of vessel range, other licensed activities (e.g. aggregate extraction, wind farm construction and operation, cable laying), and target species distribution.

4.3.5. The area being considered for an extension to the SAC currently experiences only very low levels of fishing, principally recreational sea angling (rod and line) and commercial potting for whelks and crabs. Angling does not interact with sandbank or *Sabellaria* features and low-level potting has very limited interaction with them. There is also a single fisher, who operates a 14 m beam trawler to target shrimp in the inshore area for part of the year, as well as a small number of similarly-sized vessels that use the area very infrequently (approximately <10 times a year), and at a very low level, targeting shrimp for personal consumption or to sell at small, local stalls. Demersal trawling at any intensity could damage reef feature (hence the trawling exclusion areas described above at Section 4.1.4) but at low levels is not likely to damage sandbanks. There is no dredging (fishing) within the proposed extension area – this activity would only be used to target molluscan shellfish and would require Eastern IFCA authorisation.

4.3.6. Vessel range is particularly important for these inshore fishers who typically work within a very limited range from launch sites. As outlined in Paragraph 4.4.5, many in this area are small, beach-launched vessels that can operate only within a few miles from base. Impacts of additional spatial restrictions on fishing activities are likely to be much greater for inshore fishing vessels than for larger, nomadic fishing vessels. For this reason, Eastern IFCA would suggest that, if an extension to the HHW SAC is decided to be the best option for compensation for potential damage from Norfolk Boreas' activities, the extension is located much further offshore than the current proposed area.

4.3.7. Even so, costs to offshore fishers could be significant if further spatial closures result and must be fully considered before decisions are made about this proposal. Whether inshore or offshore, costs to fisheries resulting from any wind farm compensatory measure should be met by the Applicant. Impacts of displacement of fishing effort into other areas would also need to be considered, as there could be indirect effects for these other areas.

4.3.8. Eastern IFCA would encourage consideration of East Marine Plan policies with regards to compensatory measures.

4.3.9. Policies that require consideration include Policy FISH1 and Policy GOV3. These policies outline that proposals should not prevent access to fishing grounds or prevent ongoing fishing activity, and that proposals should demonstrate that they will avoid displacement of existing activities.

4.3.10. Due consideration should also be given to Policy PS3. The impacts that extending HHW SAC would have on future opportunity for operation and expansion of ports and harbours in the region, in particular the ports of Great Yarmouth and Lowestoft, should be considered.

4.4. Timescales for designation

4.4.1. It has been suggested that the area covered by the SAC extension should be increased to compensate for being unable to designate the site extension prior to the construction of Norfolk Boreas. Eastern IFCA considers this approach is not appropriate, given that this would have disproportionate impacts on other plans and projects, including inshore fisheries. If further compensation is required to make up for a longer time frame, we would urge the use of other, more quickly implemented conservation projects with similar environmental benefits until the proportionate extension area is designated. For example, it is likely that the use of oyster restoration projects or marine litter removal could be implemented much sooner than an SAC extension and could be used alongside a more proportionate extension to compensate for the time during which the extension is not written in law.

4.4.2. Eastern IFCA would also like to clarify the realistic timeframes for the implementation for any fisheries management measures within an extended SAC. Once the SAC is extended, which is likely to take a number of years, Eastern IFCA would have a duty under the Marine and Coastal Access Act 2009 to assess the impacts of commercial fisheries on designated features in the extension area. This process, from initial assessment to regulations coming into force, typically takes at least two years at the very minimum (Figure 3).

4.5. Engagement

4.5.1. It is important that regulators including Eastern IFCA, MMO, and Defra are involved in discussions relating to wind farm compensatory measures that could affect fisheries. We do

not consider that, to date, that the Applicant has kept us sufficiently informed of proposals. As we are registered as an Interested Party for the Norfolk Boreas planning examination, we have been able to access documents relating to the proposed extension to the SAC, but we had not been informed by the Applicant of the current proposal, nor asked to provide fisheries and conservation advice, despite previous discussions regarding inshore fisheries and conservation. There is also a role for regulators and statutory conservation advisors to engage earlier in the process – if necessary, within constraints of commercial confidentiality.

4.5.2. Furthermore, Eastern IFCA considers that fishers, fishing industry representatives and other marine stakeholders should be provided an opportunity to be involved in discussions about potential compensatory measures at an early stage. We have not been aware of discussions between the applicant and fisheries stakeholders (e.g. the National Federation of Fishermen's Organisation and/or smaller local fishing associations) about the proposed extension to the HHW SAC. Although these stakeholders would be able to engage in the development of fisheries management measures required as a result of designation, we argue that they should have a say in designation itself, before planning decisions are taken. Many such stakeholders are not well equipped to engage via the formal planning process; we argue that there is a duty for applicants to demonstrate they have engaged with relevant stakeholders at all appropriate stages of project development.

4.6. National policy

4.6.1. Eastern IFCA considers there is a need for direction from Government in relation to offshore wind farm compensatory measures and potential impacts for other sectors including fisheries. The growth of the offshore renewable energy sector and of the coverage of MPAs means there is likely to be a growing number of other cases where compensatory measures require consideration. Eastern IFCA holds the view that imposing further restrictions on inshore fisheries – already becoming increasingly restricted because of MPA requirements – in order to compensate for damage to MPAs by the offshore wind sector is inequitable and fundamentally wrong.

4.6.2. It is critical to be aware that the proposals and decisions made on these projects (Norfolk Vanguard and Norfolk Boreas) will set a precedent for future offshore wind projects that are unable to reach a conclusion of no adverse effect on site integrity. While we understand that all activities and compensatory measures will be considered on a case-by-case basis, Eastern IFCA are keen to discourage setting a precedent of compensating for one commercial activity (offshore wind generation) by negatively impacting on another (the inshore fishing industry).

4.6.3. The Applicant have stated that Natural England are supportive of a proposed extension to the SAC, however the area being considered for an extension is far above and beyond the compensation required to offset the environmental impact of this project. Eastern IFCA consider that the in-principle compensatory measures set out at this stage need to be clear on how the Applicant would compensate for the damage caused by their project. If this large extension is being proposed to meet a need at a more strategic level outside the scope of this single project, then we consider this should be done in an open and transparent manner outside of the examination of this project.

4.7. Conclusions and proposals

4.7.1. Eastern IFCA consider that insufficient information has been provided to the Secretary of State to make an informed judgement about the impacts of SAC extension on marine ecology and sea users.

4.7.2. Eastern IFCA consider it inequitable to compensate for damage caused by the offshore wind industry by negatively impacting on inshore fishery stakeholders (notwithstanding the magnitude of those impacts), whether this is indirectly via an extension to HHW SAC or via direct fisheries regulation.

4.7.3. Eastern IFCA request that the Secretary of State takes into consideration the socioeconomic implications of a SAC extension on small-scale inshore fishers and directs the Applicant to present supporting information and demonstrate appropriate engagement with potentially affected stakeholders.

4.7.4. Eastern IFCA request that details of alternative areas that were considered for the proposed extension to HHW SAC are made available, alongside the information on why this site was selected and what rationale was applied for rejecting those sites. For example, were areas supporting proposed or licenced wind farm cable routes or aggregate extraction areas discounted as being suitable because of these activities? This will help understand the criteria used for selecting the area proposed to be considered for an extension, and whether some socio-economic criteria were weighted more heavily than others.

4.7.5. If an extension to HHW SAC is carried forward as a compensatory measure, Eastern IFCA would consider it far more appropriate to use a proportionate ratio calculated by the Applicant with site-specific rationale (such as the 10:1 ratio put forward in the Maasvlakte 2 project). If further compensation is required because of the slow timeframes in which an extension could be implemented, we would recommend the use of a combination of a proportionate extension and an alternative, more easily implemented compensation project (e.g. habitat restoration projects, marine litter removal, etc.) agreed in consultation with relevant bodies and Interested Parties.

5. Supporting figures

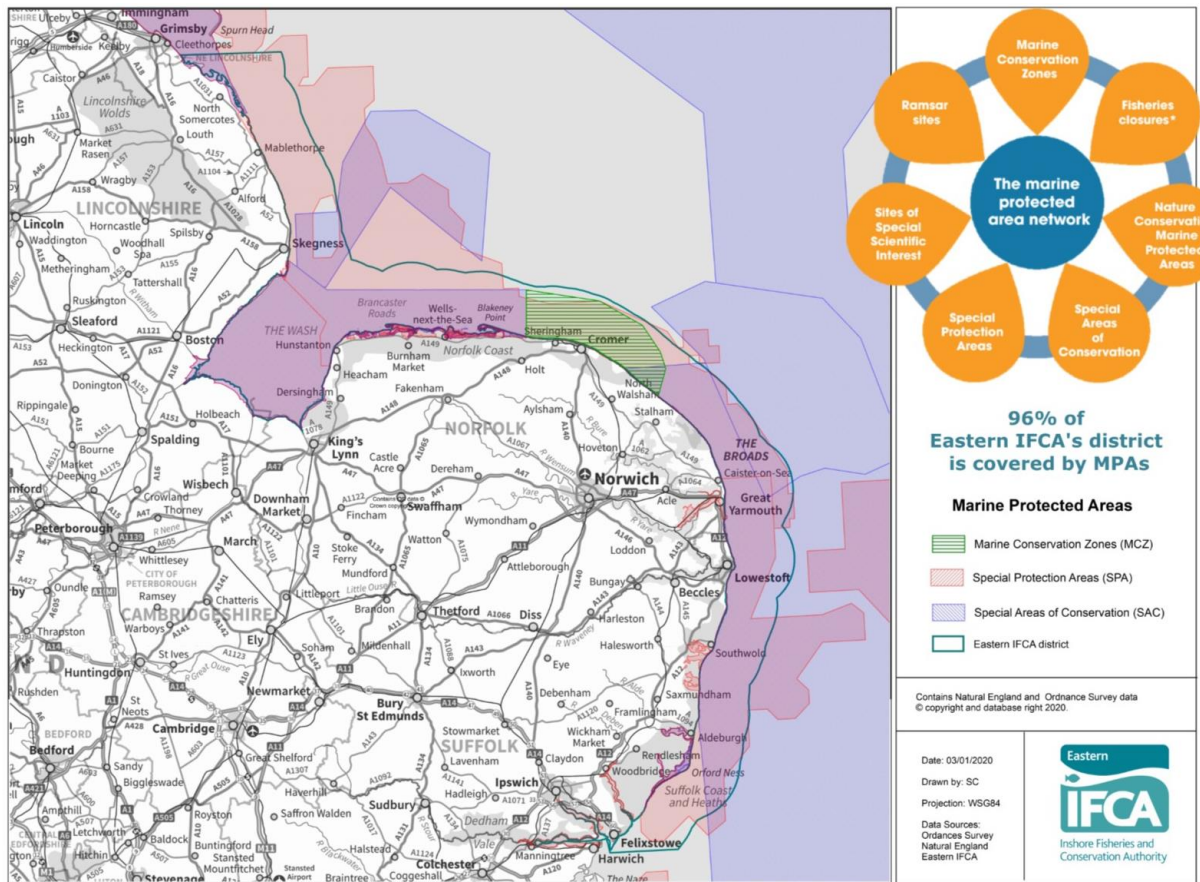


Figure 1. Marine Protected Area network within the Eastern IFCA district

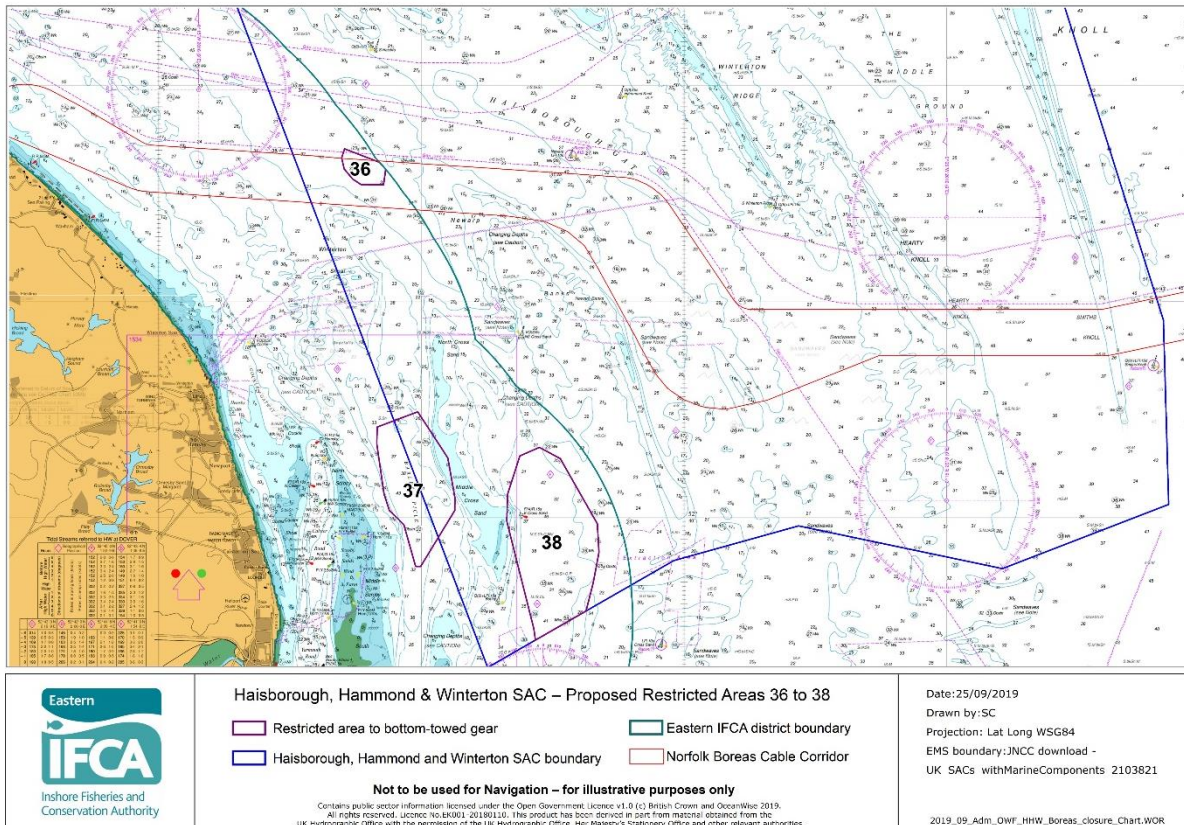


Figure 2. Agreed restricted areas to bottom-towed gear under Eastern IFCA's MPA Byelaw 2019 (awaiting Defra sign off)

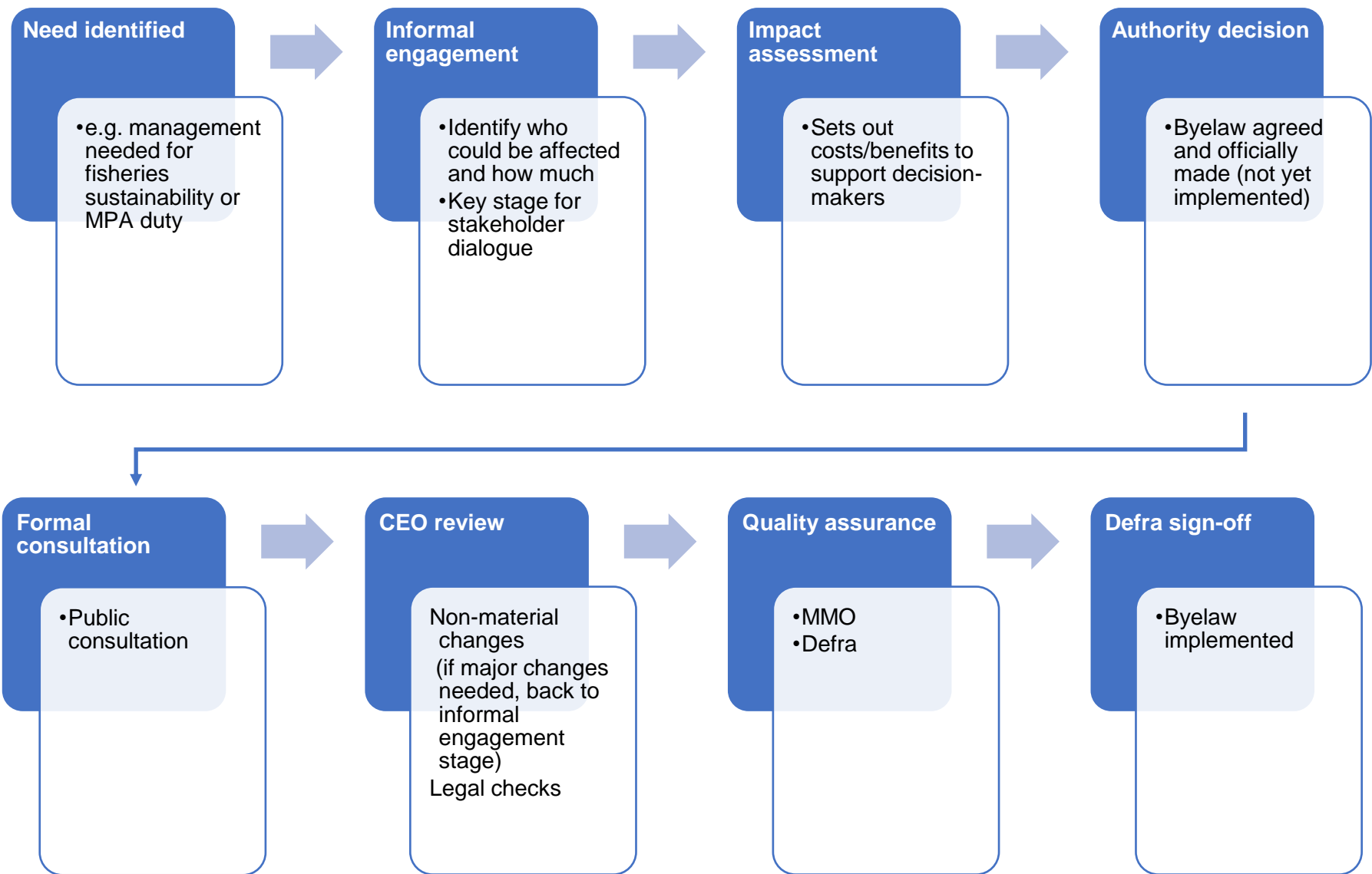


Figure 3. Eastern IFCA Byelaw Development Process

