



Marine Management Organisation

Decision document

The Margate and Long Sands European Marine Site (Specified Areas) Bottom Towed Fishing Byelaw 2017

August 2017

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Executive Summary

From October to December 2016 the Marine Management Organisation (MMO) consulted publically on the possible introduction of a byelaw to prohibit bottom towed fishing in two 'management areas' in order to protect ecologically sensitive sandbank areas in the Margate and Long Sands European Marine Site (EMS) from deterioration.

The byelaw was proposed following an assessment of the impacts of fishing on the Margate and Long Sands EMS, which was undertaken in line with the Department for Environment, Food and Rural Affairs' revised approach to the management of commercial fishing in European marine sites¹.

The purpose of this assessment was to determine the implications of fishing activities on the site, in light of the sites conservation objectives. The conservation objectives for the Margate and Long Sands EMS are to maintain the subtidal sandbanks in favourable condition.

The assessment concluded that the majority of fishing activities within the site were not adversely affecting the integrity of the site. However, introduction of measures to prohibit bottom towed fishing are required in order to ensure fishing does not cause an adverse effect in several particularly ecologically sensitive areas of the site.

In those sensitive areas inshore of 6 nautical miles (nm), appropriate management will be introduced by the Kent and Essex Inshore Fisheries and Conservation Authority (IFCA). The MMO will introduce management for those areas between 6 and 12 nm offshore.

Reponses from 17 individuals or organisations were received during the consultation period, 12 objecting to the byelaw and five supporting it.

As a result of information received during the consultation, we have identified additional evidence which has allowed us to refine the boundary of the larger of the two proposed management areas (Area A) to ensure the most appropriate areas of the site are protected.

Taking into account the assessment and responses to the public consultation, the MMO has decided to make and seek confirmation from the Secretary of State of the 'Margate and Long Sands European Marine Site (Specified Areas) Bottom Towed Fishing Byelaw 2017'

¹ link to revised approach

1. Background

In 2012, Defra introduced a revised approach to the management of commercial fisheries in EMSs to ensure that commercial fishing operations are managed in line with Article 6 of the EU Habitats Directive².

As part of this revised approach, interactions between fishing activities and EMS features were categorised as red, amber, green or blue. Table 1 shows the approach required for each category.

Table 1. The approach taken for each category of interaction

Category	Example of interaction	Management approach
Red	Trawling on reef	Measures must be introduced to ensure that the interaction cannot take place
Amber	Trawling on sandbank/ Potting on reef	Site-level assessment undertaken to determine whether management is required to conserve site features
Green	Netting on sandbank	Site-level assessment undertaken only where there are 'in-combination' effects with other plans or projects
Blue	Mid water trawl over seabed feature	The interaction is not possible therefore no assessment or management is required

MMO has the power to make byelaws to further the conservation objectives of marine conservation zones³ and European marine sites⁴ out to 12 nm from the coastline.

For byelaws affecting fishing vessel from other Member States, the provisions of Article 20 of the Common Fisheries Policy⁵ must also be followed, which include consultation with those Member States, Regional Advisory Councils and the European Commission.

2. Margate and Long Sands EMS

Margate and Long Sands EMS is situated in the Thames Estuary and is designated for two large subtidal sandbanks. Subtidal sandbanks are categorised as having an amber interaction with most bottom contacting fishing activities.

²

³ Section 129 of the Marine and Coastal Access Act 2009 (c.23)

⁴ Regulation 38 of the Conservation of Habitats and Species Regulations 2010 (2010/490)

⁵ Regulation (EU) No 1380/2013 (OJ L 354 28.12.2013 p.22)

The site extends from close to the coastline to approximately 10 nm offshore. The part of the site inshore of 6 nm sits within the Kent and Essex Inshore Fisheries and Conservation District.

In the part of the site inshore of 6 nm, only UK vessels may fish. In the part of the site between 6 and 12 nm from the coastline vessels from France and Belgium also have access to fish for certain species.

MMO have led the assessment of the whole site and are responsible for managing fishing activities in the part of the site between 6 and 12 nm from the coastline. The Kent and Essex IFCA are responsible for managing fishing in the part of the site inshore of 6 nm.

3. Assessment of the Effects of Fishing in Margate and Long Sands EMS

The MMO assessment used a range of information including landings records, vessel monitoring system (VMS) data, fisheries sightings data, self-reported patterns of fishing activity to understand patterns of fishing activity at the site.

Information about the site's sandbank features and associated ecological communities was provided by Natural England and supplemented by peer-reviewed literature and government-sponsored reports.

The assessment concluded that the majority of fishing activities within the site were not adversely affecting the integrity of the site. However, introduction of measures to prohibit bottom towed fishing were required in order to conclude no adverse effect in several particularly ecologically sensitive areas of the site.

To ensure the site is protected, an MMO byelaw has therefore been developed to prohibit the use of bottom towed fishing gear over sensitive areas in the 6 to 12 nm part of the site. A regulatory impact assessment for this byelaw has also been developed.

4. Formal Consultation

Between 14 October and 12 December 2016 the MMO publically consulted on a draft of the 'Margate and Long Sands European Marine Site (Specified Areas) Bottom Towed Fishing Byelaw 2017' and associated impact assessment.

The consultation was advertised on the gov.uk website throughout the consultation, in the following publications:

- Fishing News on 27 October and 3 November 2017;



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- the Kent on Sunday on 23 and 30 October 2017;
- the Basildon Standard/Evening Gazette on 28 October and 4 November 2017.

Information regarding the consultation was also sent directly to all interested parties of which MMO was aware including:

- fishing industry bodies;
- environmental organisations;
- French and Belgian governments and fishing industry representatives;
- the North Sea Regional Advisory Council;
- the European Commission.

5. Summary of Responses

Representations from 17 individuals or organisations were received during the formal consultation period. Five of these responders supported the byelaw, with 12 objecting.

The objections fall into two broad categories, with seven responders indicating that the byelaw is not necessary and highlighting the impacts on the fishing industry, and five responders indicating that the byelaw did not go far enough in protecting the site.

The subjects raised during the consultation fall within the following eight overarching categories:

- use of fishing activity data;
- the sensitivity of biotopes to fishing;
- comparing fishing to other marine activities;
- defining favourable condition;
- assessment of fishing in combination with other activities;
- application of the precautionary principle;
- impacts of/suggestions for proposed measures; and
- monitoring and control.

5.1. Fishing activity data

The following points were raised:

1. VMS data from non-UK vessels from 2014 was not included in the impact assessment;
2. There is insufficient understanding of the activity of fishing vessels not using VMS;
3. Assumptions that non-VMS vessel activity patterns follow those of VMS vessel are incorrect;

4. Activities not currently taking place should be considered in the assessment;
5. The assumption that a vessel speed of 0-6 knots indicates fishing is not appropriate for all vessels;
6. VMS reports could originate from vessels other than fishing vessels (dredgers, cargo vessels, tugs etc). MMO should use [automatic identification system] AIS to identify trawlers in this area;
7. The assessment does not present one overall map of fishing effort within the site.

MMO response to public representations regarding fishing activity data

The MMO has updated the impact assessment to include 2014 data from both the French and Belgian fleets.

It is noted that there is a better understanding of the activity of from vessels with VMS compared to those without. However for non-VMS vessels, sightings data and Fisherman surveys have been used to understand trends. Although this does not allow for a perfect understanding of fishing activity, patterns are understood enough to determine areas requiring protection. The MMO is using the best available evidence currently available to make a correct determination. MMO assumptions regarding landings relate only to attributing landings within International Council for the Exploration of the Sea (ICES) rectangles. As such this is likely to over-estimate non-VMS landings within site, as many non-VMS vessels are likely to operate closer to shore. Text within the assessment has been updated to clarify this point.

In order to undertake an assessment of realistic levels of fishing at this site it has been necessary to set the scope of the assessment at the likely patterns of fishing activity. These have been determined by reviewing data from the past seven years, considered alongside local expert opinion on which other activities may occur. Activity levels at this site will be monitored regularly, and significant changes in activity levels will trigger a review of the assessment.

While it is true that smaller vessels may rarely tow gear faster than 3 knots, larger vessels may fish at up to 6 knots. We therefore use 0 to 6 knots is an appropriate range to capture fishing from vessels with VMS. The requirement to operate VMS applies only to commercial fishing vessels, meaning that VMS data are very unlikely to indicate other kinds of shipping. VMS data includes the identity of the vessels from which the data originates, and these data have been analysed by MMO. However, we do not routinely release this information because it is commercially sensitive information owned by the fishers.



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We have presented fishing activity in what we believe is the most informative way. A single map of all fishing activity data combined would be misleading because of the different data sources used.

5.2. Sensitivity of biotopes to fishing

Representations were received stating that:

1. Table 16 states that ground ropes are low impact components whereas evidence shows ground ropes have similar impacts to bridles;
2. Evidence on sensitivities of component species means that additional areas should be protected;
3. SS.SSa.IMuSa.FfabMag was identified by ABPmer as the only potentially vulnerable biotope. Natural England have indicated that most of this is not vulnerable to fishing and therefore the site does not require protection;
4. SS.SSa.CMusa.AalbNuc was found by ABPmer and Ichthys Marine to be not sensitive to surface abrasion and having low vulnerability to penetration/disturbance;
5. The possibility of adverse effects in non-closed areas is not excluded. As per ecological evidence SS.SSa.CFiSa (circalittoral 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 bottom-towed fishing. Failure to protect them is contrary to Article 6 of the Habitats Directive;
6. Natural England advice to protect areas of a particular biotopes means that all of that biotopes should be protected;
7. SS.SSa.CMusa.AalbNuc was found by ABPmer and Ichthys Marine to be not sensitive to surface abrasion and having low vulnerability to penetration/disturbance; and
8. 10m vessels do very little damage to the seabed.

MMO response to public representations regarding the sensitivity of biotopes to fishing

MMO management follows advice from Natural England. Natural England has provided advice as to which sections of the Annex 1 feature must be protected. This advice is based on best available evidence including biotope maps from Bhatia, 2015, and sensitivity data from the new conservation advice package for Margate and Long Sands EMS. Management decisions have been further influenced as biotopes have different functions in different areas and the enhanced evidence base shows varying species richness in different areas.

We acknowledge that smaller vessels may have less of an impact on conservation features. However, MMO have not been able to rule out an adverse effect on site integrity from small vessels on certain parts of the site. Evidence cited in the assessment indicates that even with a single trawl pass of a 10m vessel can flatten a 3D seabed community that may have taken many years to grow to a size required to provide a functional habitat.

5.3. Fishing in relation to other marine activities

Representations were received stating that:

1. Trawling in this area has a limited impact compared to Dutch (Anglo-Dutch) electro/pulse beam trawling;
2. Area A intersects with a licensed aggregate dredging area and marine disposal site. There will be little benefit from restricting fishing if these activities are to continue;
3. Reject byelaw and all management from IFCA and MMO as fishing has limited impact compared to consented aggregate dredging;
4. Bottom towed fishing gear can't be blamed for damaging the environment when the marine equivalent of open cast mining (dredging for aggregates) through the richest spawning area in southern North Sea is deemed acceptable. This shows that, the consistency, honesty and respect from our management is not apparent; and
5. The outcome of the consultation is pre-determined.

MMO response to public representations regarding fishing in relation to other marine activities

MMO fishery management will apply to all bottom towed activity in this site. This includes pulse trawling. Only UK, French and Belgian vessels have the right to fish in this area. Additionally all Anglo-Dutch activity will have been taken into account during the assessment.

Aggregate dredging is subject to the MMO marine licensing process. Any aggregate dredging within Margate and Long Sands EMS would require a Habitats Regulations Assessment to be completed and show no adverse effect before being consented. Aggregate extraction does take place in an area close to Long Sands Head. As a result of information received during the consultation, survey data from aggregates operators has been used to refine the boundary of Area A to ensure that the most appropriate parts of the site are protected.

The disposal site for Inner Gabbard/ Roughs Tower (TH054) is within the boundary of Area A. However, this site is classed as 'disused', meaning that a characterisation

assessment (which would consider environmental factors) would need to be conducted before the site can be used again. These factors would include the interaction of the disposed material and the sensitive biotopes in the area.

All activities are assessed on their individual impacts; and the evidence provided to support marine licence determinations is available on the MMO public register. MMO is obliged under the revised approach to Article 6 of the Habitats Directive to ensure that fishing activities are managed so as to ensure no adverse effect on the integrity of the site. Consultation with the public and primary advisors seeks, in particular, evidence which can help MMO understand the impact of activities, and suggestions of how to ensure environmental protection is achieved while minimising social and economic impacts. In fact the boundary of Area A has been amended as a direct result of the consultation process.

5.4. Favourable condition

Representations were received stating that:

1. Typical species not identified therefore cannot be assessed – species must be considered, they cannot avoid because they have not been identified;
2. Effective management measures should allow for the natural re-colonisation and recovery of habitats as well as maintaining what is there now;
3. NE advice that *S. spinulosa* could colonise parts of Area A is inconsistent with the core reef approach;
4. The assumption that sites were at favourable condition status when designated is false;
5. Favourable conservation status extends condition of supporting habitat and species; and
6. Proposed management areas are not over areas defined as Annex 1 1110 sand bank therefore are not relevant to its conservation.

MMO response to public representations regarding favourable condition

The Natural England conservation advice package for this site does not identify typical species. However, we have been able to assess impacts on typical species by using the biotope maps cited in the assessment. The assessment has been updated to clarify this.

MMO proposed management is consistent with advice from Natural England in terms of which biotopes are sensitive to impacts from bottom towed fishing gear. Natural England's most recent condition assessment for this site showed all three sub-

features as 'favourable'. Therefore the relevant objective at this site is to maintain the condition of habitats and species.

We agree that favourable conservation status extends to supporting habitats and species but only insofar as they support the feature; not their general condition. The MMO management areas encompass areas of sand mason worms, which are included on the basis of the potential for them to stabilise sediments, allowing colonisation by *Sabellaria spinulosa* reefs.

In terms of the extent of the subtidal sandbank feature within the site, Natural England has updated its advice on the extent of the feature which is now considered to extend to the site boundaries.

5.5. In-combination assessment

Representations were received stating that:

1. In-combination assessment of LSE has not been undertaken and is required.

MMO response to public representations regarding the In-combination assessment

We recognise that the in-combination aspect of the assessment was not immediately clear. We have therefore updated the assessment to include a section 5 which lays out clearly the approach taken to in-combination assessment.

5.6. Precautionary principle

Representations were received stating that:

1. Precautionary principle means additional biotopes should be included.

MMO response to public representations regarding the precautionary principle

We are content that we have applied the precautionary principle appropriately. The biotopes that have been deemed as requiring protection from this activity have been identified in consultation with, and agreed by Natural England, the statutory nature conservation body for England.

5.7. Impacts of/suggestions for proposed measures

Representations were received stating that:



1. Additional spatial closures will cause economic hardship on the fishing industry;
2. Area A is important for the small scale UK fishing fleet;
3. Fishing grounds have been reduced in the Thames Estuary due to infrastructure and aggregate and navigational dredging;
4. Consideration should be given to allowing low impact gear (eg Sumwing) into the management areas;
5. Access channels should be established to ensure that the proposed closures do not cut fishing vessels off from other areas;
6. Displacement of fishing vessels from this area may have environmental impacts elsewhere; and
7. The assessment should include more information on how proposed management measures will be delivered, particularly inshore of 6nm.

MMO response to public representations regarding the Impacts of/suggestions for proposed measures

The MMO cannot, except in exceptional circumstances, limit the level of environmental protection for an EMS due to economic reasons. However, we always strive to achieve the necessary level of environmental protection while minimising the social and economic impacts.

We will consider any relevant evidence which shows that certain fishing gears such as Sumwing gear can operate without adverse effect on the site.

The management areas would not prohibit fishing vessels from transiting them to access other areas as this isn't a closure of the site as a whole; it is the prohibition of the use of bottom towed gear. Whilst the MMO concedes that this prohibition will shift fishing effort to another area, this was not a consideration when making this byelaw. This is because assessments are completed on a site by site basis. If fishing effort shifts to an adjacent Marine Protected Area (MPA) the MMO or IFCA (as appropriate) will assess the shift in levels of commercial fishing within that MPA and introduce management if required.

The assessment does not detail how the proposed management will be delivered. This is intentional as purpose of the assessment is to understand the impacts of fishing on the site and identify what management may be required to avoid deterioration of the site. However, we have updated the assessment to include a map showing the proposed areas to be managed through a Kent and Essex IFCA byelaw.

5.8. Monitoring and control

Representations were received stating that:

1. Monitoring and control information in the assessment is vague.

MMO response to public representations regarding monitoring and control

The purpose of the assessment is to understand the impacts of fishing on the site and identify what management may be required to avoid deterioration of the site. This does not include detailed explanation of monitoring and control arrangements for the proposed management measures. The assessment does, however, include an overview of the MMO monitoring and control process in annex 8.

6. Alteration to Area A

As a result of information received during the consultation, we have identified additional evidence⁶ showing areas of *Sabellaria spinulosa* reef within and extending beyond the original boundaries of Area A. We have used this information to refine the boundary of area A to ensure the most appropriate areas of the site are protected.

Figures 1 and 2 show the original and updated Area A.

All stakeholders who responded to the initial public consultation were informed about the alteration and given two weeks to provide any further comments. During this period, only one objection was received, on the basis that the boundary should be altered more in order to include a wider area.

7. Conclusion

The MMO has conducted a comprehensive assessment of the impacts of commercial fishing within Margate and Long Sands EMS, and formally consulted upon a required byelaw to protect specific biotopes of the Annex 1 feature of the site. The MMO has considered each of the points raised through consultation when making its decision, and is satisfied that all points have been addressed. Figure 3 shows the final management areas.

Having considered all of the above information and best available evidence, the MMO will now submit the byelaw to the Secretary of State for confirmation.

⁶ Area 508, 509/3 and 510/1 (Long Sand) Interim Baseline Report, March 2015. Britannia Aggregates Ltd, CEMEX UK Marine Ltd, Lafarge Tarmac Marine Ltd. Available on request.

Figure 1. Original Area A (as consulted)

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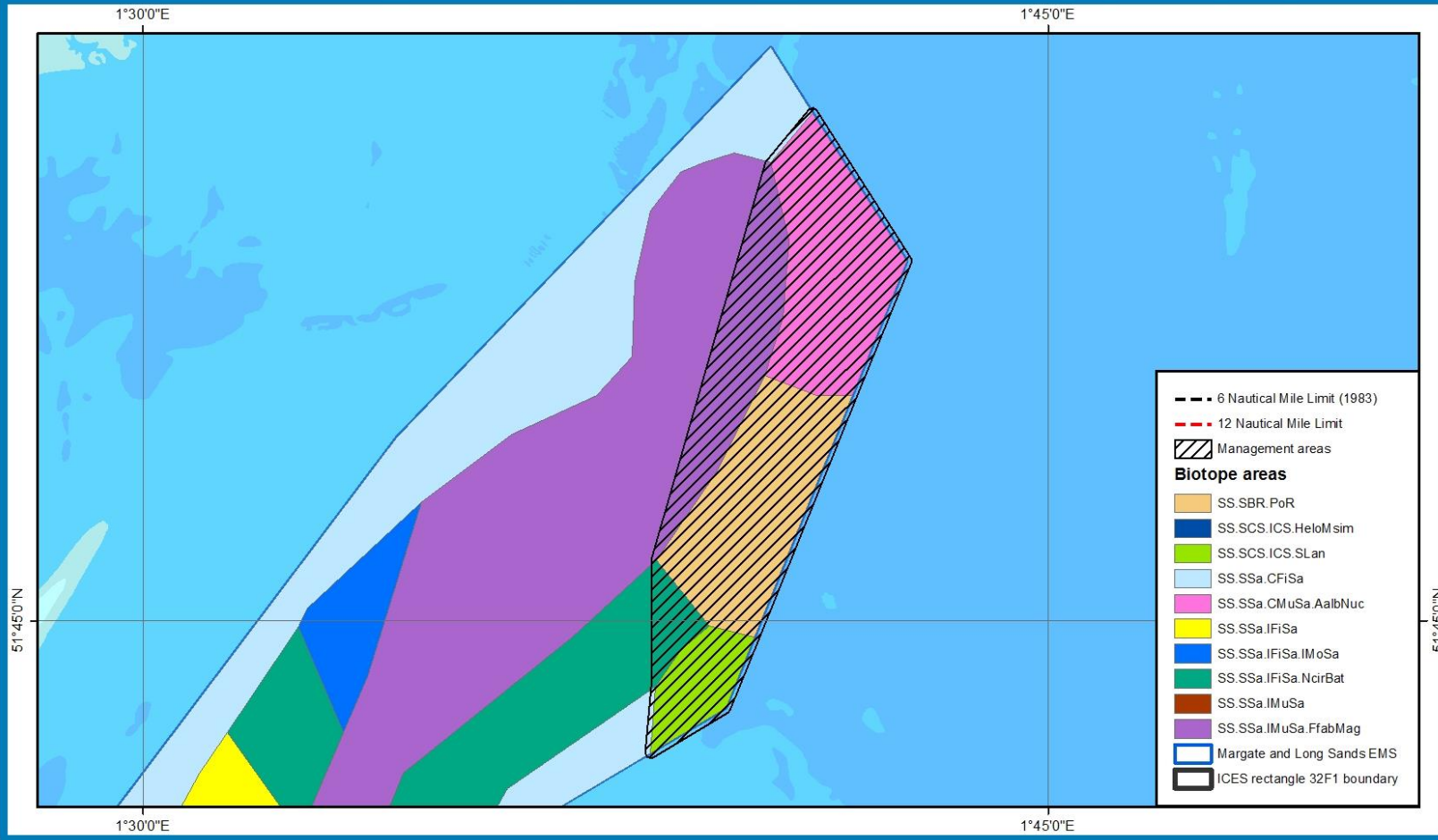


Figure 2. Updated Area A (post-consultation)

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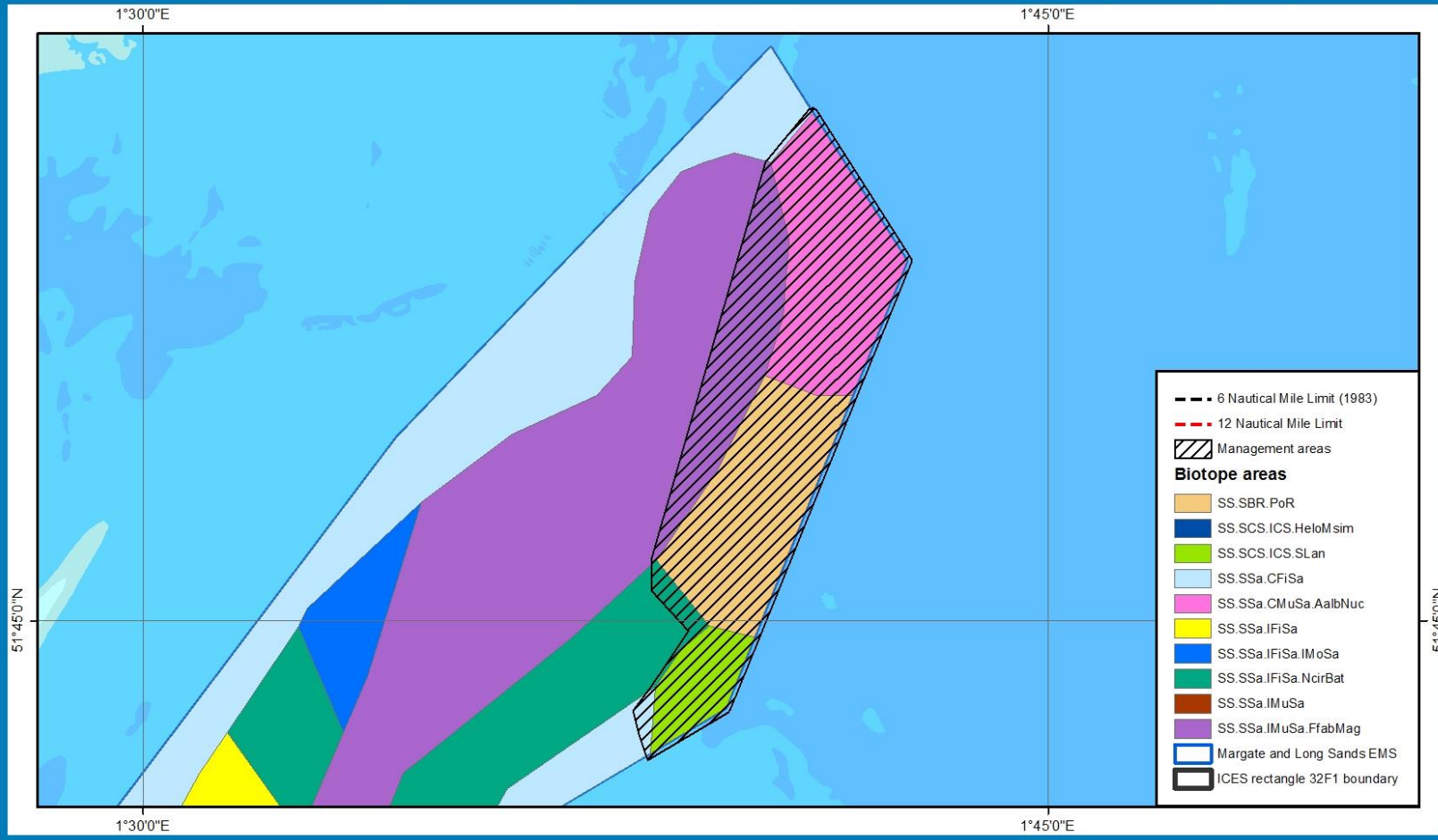


Figure 3. MMO Margate and Long Sands EMS Management Areas

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