

Reviewing and agreeing the principles for Byelaw Review Work

Background

On 11th October 2018, members discussed the principles that have been adopted, developed and applied during D&S IFCA's Byelaw Review work. The principles (bullet point list) have been documented in two recent draft reports which were presented to members. Officers were actioned to re-circulate these two draft reports to enable members to formulate amendments including potential changes to the text used to describe the principles as originally set out.

One suggested addition was regarding Marine Conservation Zones and the duties for D&S IFCA as specified in Section 154 Marine and Coastal Access Act 2009 as follows:

Section 154 – Protection of Marine Conservation Zones

- (1) The authority for an IFC district must seek to ensure that the conservation objectives of any MCZ in the district are furthered.
- (2) Nothing in section 153 (2) is to affect the performance of the duty imposed by this section.

The suggested new bullet point to add to the principles was as follows:

- **management of fishing activities in Marine Conservation Zones does not have to achieve sustainable development goals of balancing social, economic and environmental benefits; instead the priority has to be to achieve conservation objectives for the site.**

Advice has been offered that states:

I am not convinced this amounts to a 'priority' for conservation, as sub-section 2 is stated in the negative, not the positive. So, in performing its duties under s.153 the IFCA must not affect the conservation objectives of the MCZ; that does not seem the same as saying it must give priority to them. It is a lesser standard of protection for MCZ objectives.

Where fulfilling the duties under s.153 of sustainability & balance neither furthers nor detracts from the conservation objects of the MCZ then the IFCA would not need to give priority to the conservation objectives. It could elect any balance that does not affect those objectives, rather than prioritising them. I think saying that s.154(2) gives a priority is therefore overstating the effect of the sub-section (2).

The advice is to remain with the negative wording of the Act and reword the principle adopted by D&S IFCA as follows:

- **Within a MCZ the IFCA, in achieving sustainable development goals of balancing social, economic and environmental benefits, cannot do anything to adversely affect the conservation objectives of the MCZ.**

So where achieving such a balance would, or be likely to, affect the objectives the balance could not be achieved. However, if achieving the balance was not or was not likely to affect the objectives then the IFCA could go ahead.

Typically, there will be a gap in the evidence as to whether the objectives will be affected or not. The IFCA would then have to apply the Precautionary Principle and if there was more

than a low risk of affecting the objectives it would not be able to achieve the balance. That is not the same though as giving a 'priority' in all circumstances.

During the designation process for MCZs, an Impact Assessment (IA) was undertaken to assess the social and economic impact of the recommended MCZs on commercial fisheries. Management scenarios were developed for each MCZ and used to enable the assessment of the potential impacts of the designation to the commercial fishing sector. The IA was used to inform the final designation of sites.

Discussion

Members can discuss this principle and re-discuss the others (as amended) as set out below before adopting them by conducting a formal vote.

Guiding Principles

Generic Principles:

- To fully document the process – (Byelaw making and Permit Condition Review)
- To gather evidence regarding potential impacts on stakeholders by the implementation of management
- To conduct a well communicated review with wide ranging consultation
- To be open and transparent with information
- To consider alternative management approaches to legislation
- To remove laws which have become irrelevant from the statute book (Hampton Review)
- A pre-cautionary stance must be taken where required to secure compliance with the UK's international Treaty obligations
- To use emergency byelaws as a last resort
- To recognise that sustainable development is where the management of a fishing activity seeks to maximise the social, economic and environmental benefits in the medium and long term
- To balance the needs of various users and meet conservation duties
- To encourage legitimate activity and remove illegal, un-licenced and un-regulated fishing activity
- To drive behavioural change and high compliance
- To seek to achieve consistency in management across IFCA boundaries

And if byelaws are developed:

- To use the wider byelaw making powers provided by MaCCA
- To adopt whenever possible an activity-based byelaw model
- To use permit-based byelaws
- Not to limit permit numbers
- To charge a £20 fee for permits until a completed suite of permit-based byelaws are in place
- When possible, make legislation easier to understand
- To correct inaccuracies and remove identified loop holes
- Draft legislation so it assists with enforcement
- Standardising the terminology used.

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- To differentiate between commercial and recreational activities by applying appropriate management measures
- To make best use of technology
- Not to separate commercial users, dependent on the issue of a fishing licence