



A Guide to the Work of the Byelaw & Permitting Sub-Committee

- Why have a Byelaw & Permitting Sub Committee?
- What do they do?
- Why do they review the management of fishing activities?
- Why do they make new byelaws?
- How are permit conditions made?
- Why are permit conditions reviewed?
- How are permit conditions reviewed?
- How can you get involved?
- How will you be kept informed?
- How to use the D&S IFCA Website to view information?

September 2019

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1. Purpose of Guide

The purpose of this guide is to help stakeholders and members of the Authority understand some key elements of the work conducted by the Devon & Severn Inshore Fisheries & Conservation Authority's (D&S IFCA) Byelaw and Permitting Sub-Committee (B&PSC).

2. Why have a Byelaw & Permitting Sub-Committee?

Byelaw related work does require some specialised skills and background knowledge. This Authority has created the B&PSC to conduct this type of work on behalf of the Full Authority. The core work conducted by the B&PSC enables D&S IFCA to complete its functions as set out in the Marine and Coastal Access Act 2009.

A review regarding the management of different fishing activities (which has the potential to lead to the creation of byelaws), is often a lengthy and complex process. If any new permit-based byelaw is created, the same complexities can exist when permit conditions (conditions of use for fishers) need review or amendment.

3. Membership, Quorum and Powers

The B&PSC is formed by selection of Full Authority members, each offering a different set of skills or background knowledge that is utilised to complete the required work. Full Terms of Reference for the B&PSC have been produced, agreed by the Full Authority and published on the D&S IFCA website. A list of the people who make up the full Authority is also posted on the D&S IFCA website.

Membership of B&PSC

- 14 members in total
- Membership includes 2 representatives of the funding Authorities (Councillors)
- 2 Statutory Appointees (Natural England and Environment Agency)
- The Chair and Vice-Chair will be ex-officio members of the B&PSC
- Other members may be co-opted as and when this is considered to be appropriate
- Any member of D&S IFCA may attend a meeting as an observer

Quorum

- 8 members from the total membership are required at any meeting to allow voting (for decision making) to take place.

Delegated Powers

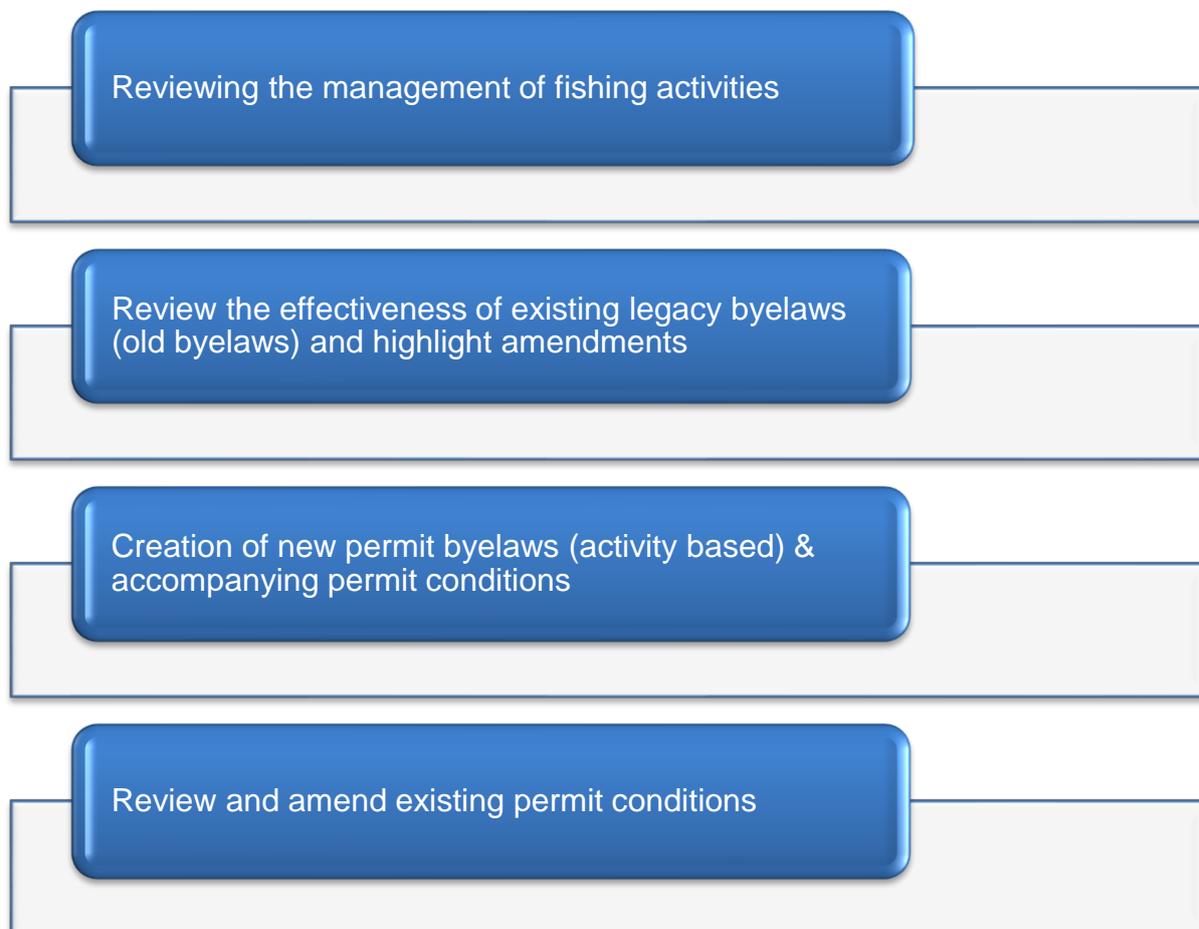
The Authority has delegated powers to the B&PSC to complete the required functions. Although officers can and will provide technical advice, they will not take decisions at any time.

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4. What is the core work and why do it?

D&S IFCA has statutory duties as specified within the Marine and Coastal Access Act 2009 (MaCAA). The Act contains several sections relevant to IFCA working; however, Section 153 (Management of Inshore Fisheries) and Section 154 (Protection of Marine Conservation Zones) are of particular significance. As a result, the core working as set out below must be achieved.

Core Work



- Officers prepare material which is used by the B&PSC for their deliberations (meetings).
- The work of the B&PSC is reported to the Full Authority at Quarterly Meetings
- ***D&S IFCA would be failing in its duty if it does not manage the exploitation of sea fisheries resources in its district.***

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5. Strategy and Principles

To recognise the duties of the D&S IFCA as specified in MaCAA, and in order to develop a strategy to review the management of fishing activity, overarching principles have been established. In formulating these principles, factors such as the Hampton Review have been considered. The principles underpin the work which may lead to the development of new byelaws. Key principles of the most relevance include the following:

- A pre-cautionary stance must be taken where required to secure compliance with the UK's international Treaty obligations.
- To avoid permit limitation/creation of a private fishery
- Remove laws which have become irrelevant from the statute book (Hampton Review);
- Consider alternative management approaches (gentlemen's agreements and codes of conduct);
- Use the wider byelaw making powers provided by MaCAA;
- To use emergency Byelaws as a last resort.

Byelaws are put in place to manage the fisheries within the District and are local measures specific to D&S IFCA's District. D&S IFCA inherited many byelaws from the predecessor organisation (Devon Sea Fisheries Committee); however, the responsibilities for the D&S IFCA have been increased and are more extensive to those of Devon Sea Fisheries Committee.

Inherited byelaws must be examined (reviewed) against the criteria within the relevant sections of the Act regarding their suitability - are they fit for purpose? Any new byelaws that are created must take the statutory duties into account. Section 156 of MaCAA provides the opportunity for D&S IFCA to create permit-based byelaws.

Since 2011, the Authority has taken a view that a traditional model of byelaw making (in most circumstances) does not provide a suitable management structure. Inherited byelaws were identified as being too rigid to fit an ever-changing situation. The B&PSC has utilised Section 156 of MaCCA and formulated a strategy for byelaw work as follows:

- ***To adopt an activity-based byelaw model;***
- ***To use permit-based byelaws.***

In formulating this strategy other principles have been adopted as follows:

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

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- 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-licensed 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
- Full cost recovery for administration is adopted for the fees charged for permits
- 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.
- 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

All the principles are important, and some become more relevant if a byelaw is created. It is important that several are further explained and better understood.

- **Consider alternative management approaches (Options for Management)**

In recognising the Hampton Review, alternatives to legislation are considered. Options for management are discussed at the early stages of byelaw development by the B&PSC. These considerations are documented. Voluntary measures are obviously a weaker form of management than legislation. The risk of non-compliance and the effects of non-compliance are key considerations.

- **A pre-cautionary stance can be taken**

D&S IFCA aims to collect and use the best available evidence during the process of reviewing the management of fishing activities, creating new byelaws and also reviewing management measures already established in existing permit-based byelaws. Best available evidence assists decision making.

Where evidence is lacking D&S IFCA will be able to apply precautionary measures in order to fulfil their main duty. Precautionary measures in this context means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependant species and non-target species and their environment.

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- **Consideration of Duties (Health and Safety)**

The duties of D&S IFCA are set out in the Marine and Coastal Access Act 2009. These duties do not extend to consideration regarding health and safety. Fishers must make their own judgement regarding their own safety when undertaking fishing activities.

- **Draft legislation so that it assists with enforcement**

Legislation must be able to be enforced. The provisions within the permits (if a permit-based byelaw is created) are drafted so the D&S IFCA can realistically enforce the measures. Historically, “loop holes” have been created by accident and these are sometimes exploited. By using permits, catch restrictions can be implemented to achieve what in effect is a deeming clause. Fishers make a choice when considering applying for a permit and in doing so will be bound by the conditions within the permit. The fisher has a choice to either accept the conditions of the permit or can choose not to have a permit and not fish in the Authority’s District.

- **Not to limit permit numbers and to issue different types of permits**

The D&S IFCA has taken the view that permits issued for fishing methods should not be limited, thereby creating a private fishery as fish is a public resource available to everyone. Control of different fishing activities will be achieved via the conditions in the permits rather than limiting the overall number. Limiting permit numbers provides difficulties in deciding who initially has access to the fishery; it can create an economic advantage for those issued with the permits, it blocks the path for new entrants wanting to enter the fishery and provides complications regarding managing waiting lists for permits.

- **The principle of full cost recovery for administration be adopted for the fees charged for permits**

The permits that are currently issued via D&S IFCA Permit Byelaws (at time of writing) are £20 for a two-year period. This fee was intended to cover administration costs only. During the 5-year review of the Mobile Fishing Permit Byelaw, members of the B&PSC re-examined the original principle for the charging of fees. Members recognised that the £20 fee as set out on the face of existing Permit Byelaws was insufficient to cover the administration burden placed on the Authority. Members agreed that a fixed fee should not appear on the face of Permit Byelaws when they are reviewed and remade. Members reviewed the administration costs and agreed that a £40 fee would become the bench mark for future permit fees when Permit Byelaws are replaced, or new ones created. The decision making of the B&PSC is documented in the minutes taken at the meetings.

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6. Creation of New Byelaws and Impact Assessments

Firstly, it is important to recognise that D&S IFCA Byelaws cannot be less restrictive than domestic and EU legislation. These forms of legislation take precedent over the Byelaws. New D&S IFCA Byelaws (and the associated Permit Conditions) can't be introduced if measures contained within them allow an activity to take place when in fact it is prohibited under national or EU legislation.

Defra have provided guidance on the process to be followed when creating a new byelaw which is followed exactly by the B&PSC.

Early stages for the work of the B&PSC involve significant planning. Considerations include reviewing relevant legacy measures, examination of principles, and development of communication initiatives.

Byelaw Technical Working Group (BTWG)

The B&PSC have established a sub-group, the Byelaw Technical Working Group (BTWG) to conduct technical aspects of drafting work on their behalf. The BTWG have their own Terms of Reference which states that this working group have no delegated decision-making powers. All work conducted by the BTWG must be reported to the B&PSC and or the Full Authority for consideration and decision making.

Process

In terms of process, there are separate phases of development. The different phases require different types of work, all of which are well documented, published (if possible) and circulated when required.

Gather Information

- The D&S IFCA seeks views of stakeholders.
- The D&S IFCA conducts research and makes use of previous research
- The D&S IFCA begins work on the Impact Assessment
- Options are considered (via meetings of the B&PSC)

Make a Byelaw

- Obtain legal advice
- Issue notice
- Present information
- Make a Byelaw (Byelaw still in draft but is suitable for consultation)

Consultation (formal)

- Advertise the Byelaw for Consultation
- Consider responses
- Respond to the responses

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Confirmation

- Finalised version of Byelaw (agreed by the B&PSC) sent to the Marine Management Organisation (MMO).
- The MMO quality assures the byelaw including determining whether the correct process has been followed. (Defra's IFCA Byelaw Making Guidance) and assessing the evidence. (A Final Impact Assessment is submitted)
- Application for confirmation of the Byelaw will be made to the Secretary of State

Every five years all Permit Byelaws are subject to a review.

Impact Assessments

The D&S IFCA must create an Impact Assessment to accompany the creation of any new byelaw. A template is used with guidance provided on how it should be completed.

The Impact Assessment has different stages of development with the first version developed for the "formal consultation" phase. A final version is developed in preparation for the "confirmation" phase.

The Impact Assessment documents the rationale for the creation of a new byelaw. Best available evidence is used to assess social and economic impact. Key monetised and non-monetised costs are explored. The Impact Assessment is made publicly available throughout the byelaw creation process with an on-line version posted on the D&S IFCA website. The formal consultation phase tests the documented evidence and additional evidence is added and considered.

This Authority has recognised that the Impact Assessment template has some limitations and potentially does not represent (document) the full extent of the considerations and decision-making undertaken in the creation of a new Byelaw. D&S IFCA produces additional information when developing a new byelaw and this is explained further in section 10 of this guide.

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7. Permit-Based Byelaws

Permitting byelaws provide the Authority with a flexible, adaptive approach to management and has become the chosen model when legislation is required. The new permitting byelaws can replace multiple legacy byelaws related to a fishing activity. Another immediate advantage of permit-based byelaws is that it provides the D&S IFCA with a known number of fishers involved in a fishing activity. The application process enables D&S IFCA to collate the details of fishers. The resulting data base allows for direct communication with all permit holders.

Permit based byelaws introduced to date include:

Mobile Fishing Permit Byelaw	Potting Permit Byelaw
Diving Permit Byelaw	Netting Permit Byelaw

The Structure of the Permit Based Byelaws

The D&S IFCA Permit Byelaws provide a platform for the issue of permits containing conditions of use. The overarching byelaw includes interpretations, prohibitions, fixed provisions and list different categories of management control as follows:

- Catch restrictions
- Gear restrictions
- Spatial restrictions
- Time restrictions

These categories are used to organise the conditions of use within the permits that are issued. The complexity of spatial management can be simplified by using annexes (charts) that are also issued with the permits.

Permit based byelaws allow separation of different users (fishers) or slightly different types of fishing activity to be managed by a single byelaw. Separation is achieved by the issue of separate categories of permits dependent on the activity being managed. For example, the Mobile Fishing Permit Byelaw manages commercial activity such as trawling and scallop dredging; however (at the time of writing) mobile fishing activity is divided between “at sea” fishing and “estuary” fishing and two types of permits are therefore issued. The other permit-based byelaws often separate commercial fishers and recreational fishers, with the permit’s conditions of use proportionate to their needs.

The Authority has taken the view that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to secure the correct balance for different fishery users who have different needs. The Authority has taken the view that recreational catch restrictions are appropriate and are proportionate measures to apply

The permitting byelaw model has introduced the flexibility needed by setting out part of the management in the permit conditions rather than in the byelaw itself. Those affected by the legislation are safeguarded by the introduction of an open and inclusive management review system within the byelaw that describes the process by which changes to permit conditions will be made.

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8. Permitting Byelaws and Review of Conditions

Once a new permit byelaw is in place, it offers some advantages as opposed to the traditional byelaw model. Internal and external research work can inform management and the mechanism in place allows for D&S IFCA to react to changes in a timelier manner. This is of importance for the D&S IFCA to recognise its environmental responsibilities. In addition, developments in new technologies can be implemented that can be an advantage to both the Authority and the fishers operating under a permit.

As with byelaw creation, a review of permit conditions does present a significant amount of work for the B&PSC and the Officers. The formulation of management proposals, conducting consultation, summary work, building and documenting evidence bases and assessing impact of potential changes to management are all required in a review of permit conditions.

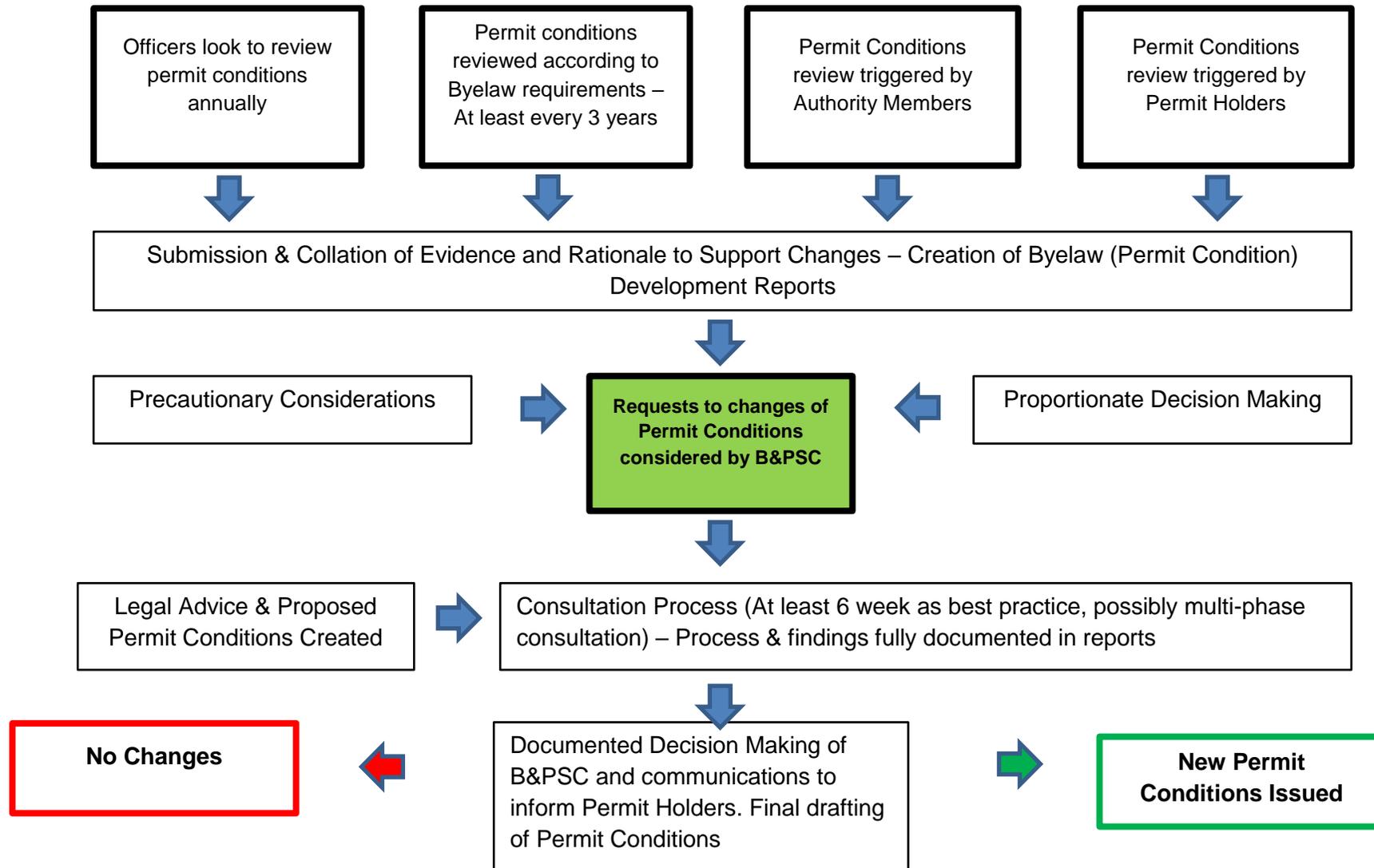
D&S IFCA has a duty to review all of the flexible conditions (per byelaw) at least every three years but can review conditions within a shorter time period as considered necessary. Any new permit byelaw (the whole byelaw) needs to be reviewed within five years.

A review can be triggered at any stage and in a variety of ways as set out in the diagram on the following page.

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Diagram 1: Simplified Permit Condition Review Procedure – Trigger Mechanisms



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9. How can a fisher/stakeholder trigger a review of permit conditions?

As documented in the permit-based byelaws and demonstrated in Diagram 1, fishers do have the opportunity to trigger a review. Any change to any permit condition is not a simple process. As with byelaw creation, a review of permit conditions does present a significant amount of work for the B&PSC and officers. The building and documenting of evidence bases, formulation of management proposals, conducting consultation, summary work and assessing impact of potential changes are all required in a review of permit conditions.

Changes to permit conditions can be submitted by stakeholders (including permit holders) and then considered by the B&PSC; however, there are several factors that must be considered;

Key Factors

- What changes are you suggesting?
- Why? - What is your rationale?
- Who will be affected and who will benefit?
- What impact will these proposals have on others?
- What supporting evidence do you have to present?
- When would you like to see changes made?

Poor Evidence

Ideas or proposals not supported by clear rationale and/or evidence is far less likely to be taken forward. Examples would include suggestions that are less restrictive than EU or domestic legislation. It is just not possible for D&S IFCA to create permit conditions that are less restrictive than EU or domestic legislation.

Another example would be a suggestion that is solely supported by a petition (list of names/signatures only). Whatever the topic of the petition, corroboration with those on any such list would be needed to even consider the matter.

Content of a Submission & Timing

Stakeholders should consider the factors above if they wish to trigger a review of permit conditions. Officers have been actioned to act as the initial filter mechanism to review the initial submission of information and, where the initial information is lacking content, encourage stakeholders to submit further information. Information will be presented to members of the Byelaw & Permitting Sub-Committee for consideration and decision making.

Stakeholders should also consider the timing of their amended permit condition proposals. Each Permit Byelaw must be reviewed every five years and at these intervals the Authority will consult with all stakeholders (includes permit holders). Permit conditions for each method must be reviewed every three years and again this will involve significant amounts of communication (consultation). A request for permit condition change outside of these periods is not impossible; however, the Authority must consider its resources and the time taken to conduct consultation work. Any potential changes to permit conditions would (as best practice) require a six-week period of consultation which would include notifying all existing permit holders.

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Stakeholders (including fishers/permit holders) should be aware that their proposals for permit condition change should not be a repeat of an item or topic recently highlighted and subjected to a consultation unless significant new evidence has been provided to justify the work needed.

10. Communication (members and other stakeholders)

Communicating the work of the B&PSC is of utmost importance. Communication (consultation) with stakeholders is vital, but so too is internal communication such as updating the full Authority with progress of the work and providing all members with a clear understanding of process followed.

Many communication initiatives have been used since 2011 for consultation work. These have included, but are not limited to the following:

- Information flyers
- Direct notification to permit holders (Email formats such as Mail Chimp) & Post)
- Mobile presentation events
- Meetings and presentations
- Multi-media (D&S IFCA website and twitter)
- Surgery Sessions (specific dates and times to meet or telephone officers)
- E-newsletters

Documenting work

Transparency with information and the rationale and outcomes of decision making is key and forms part of the D&S IFCA Annual Plans, the D&S IFCA Freedom of Information Policy and the D&S IFCA Publication Scheme (Policy). Not only are minutes taken during B&PSC meetings but these and officer papers (produced for members) are posted on the D&S IFCA website.

Byelaw Development Reports

With the endorsement of the B&PSC, a new byelaw communication (reporting) concept has been developed that will better inform both members and stakeholders of developments and process.

Members will continue to receive stand-alone papers when required, and it is possible that some information may be duplicated; however, whenever possible, they will receive or have access to Byelaw Development Reports.

A different report is created per subject. Within these reports the complete process is documented from start to finish. The different reports are built over time with new information added at different stages of development, often in the form of supplements that for example, document the findings of a single consultation or multiple consultations.

The use of supplements helps members focus on specific information at different stages of a process or workstream. The information presented (at the meetings) to B&PSC members in the supplements and the decisions that they take regarding that information will then be added to the overarching report. At the end of the process the final report will incorporate all the relevant information.

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During byelaw creation a similar approach can be taken, with members able to use the material to aid their decisions at key stages.

Although the byelaw reports will be circulated directly to members, the reports¹ will also be placed on the D&S IFCA website to inform a wider audience. Electronic versions of each report are more extensive than paper versions as imbedded material (hyperlinks), which do include environmental evidence bases, can then be utilised by readers. The reports help members assess the potential impact of their decision making and in effect act as the Impact Assessments that are required when a review of permit conditions takes place.

Officers will continue to provide verbal updates at meetings and often conduct focussed presentations; however, agenda items can be directly linked to the relevant sections of the appropriate reports and these reports will provide members with instant access to all relevant reference material.

The D&S IFCA Website

Authority members and stakeholders are encouraged to visit the D&S IFCA website.

Latest news items which may include updates on byelaw development are often displayed on the home page news scroll. Other areas of the website are also used to display relevant information.

Members Area

This is a secure area of the website. Members are provided with login password details and can access the information posted in this area. This area of the website is used to display all officer papers for both the most recent B&PSC and Full Authority meetings before they go on public display² 5 days prior to the meetings.

Meetings Page – (Home page)

Used to display selected papers for the most recent B&PSC and Authority meetings. This area of the site is accessible to the public.

Consultation Page

Used to display information and reports associated with different consultation work actioned by the B&PSC.

Resource Library

This area of the site is accessible to the public and is an interactive publications scheme. It provides access to a range of information completely free of charge and is divided into 8 different file pathways (A to H). The Resource Library demonstrates past working of the Authority and the B&PSC.

¹ With possible editing to comply with Data Protection Regulations and protect sensitive information.

² Excludes Part 2 papers and draft minutes

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Key areas of the Website Resource Library related to the work of the B&PSC include:

- A: Annual Plans which incorporate work identified for the B&PSC.
- B: Meetings – Agendas, officer papers and approved minutes dating back several years.
- E: Legislation – Current Byelaws and permit conditions for different fishing activities.
- F: Byelaw Review Work – Impact Assessments that accompany new byelaws and Byelaw Development Reports that document the process that is followed.
- G: News Items – Historical news items, often related to byelaw development work or changes in permit conditions.
- H: Environment & Research – A large collection of environmental and research assessments divided into activities and different species which form part of evidence bases used in Byelaw development or potential changes in permit conditions.

End.