

<b>Title: Devon and Severn IFCA Exemptions Byelaw 2019</b> <b>IA No: D&amp;S IFCA 005</b> <b>Lead department or agency: Devon and Severn Inshore Fisheries and Conservation Authority</b> <b>Other departments or agencies: MMO</b>	<b>Impact Assessment (IA)</b>
	<b>Date: 28<sup>th</sup> May 2019</b>
	<b>Stage: Consultation</b>
	<b>Source of intervention: Domestic</b>
	<b>Type of measure: Secondary Legislation</b>
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion: Opinion Status: <span style="color: blue;">N/A</span></b>

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2016 prices)	In scope of One-In, Three-Out?	Business Impact Target Status
			No	n/a

**What is the problem under consideration? Why is government intervention necessary?**

It is in the interest of the Authority and its stakeholders for a Byelaw to be introduced that enables the Authority to consider the issuing of authorisations for a person or persons to conduct an activity that would otherwise be in contravention of a Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) Byelaw or Permit Condition. The Emergency Application Byelaw that came into force on 9<sup>th</sup> May 2018 must be replaced within a defined time frame. A six-month extension for the Emergency Byelaw has been sought and approved by the Secretary of State to enable time to complete the process of introducing this replacement. Although the Emergency Application Byelaw satisfies elements of the policy objectives, the Authority has recognised that increased scope would be beneficial to develop new fisheries and to manage other fishing related activities. There are different scenarios where the Authority and stakeholders can benefit from the issuing of authorisations. This would include scientific work that could add to an existing evidence base or contribute to a longer-term data set, potential to explore new fisheries through pilot projects such as aquaculture, and allow for other activities such as gear recovery from a Marine Protected Area to be evaluated and monitored. The Authority has recognised that without an Exemptions Byelaw in place there could be an adverse impact on the Authority's' ability to manage inshore fisheries as the opportunity to gain a better insight or understanding of the marine environment would be more restricted.

- What are the policy objectives and the intended effects?
1. To replace the Emergency Application Byelaw
  2. To revoke the Application Byelaw introduced by Devon Sea Fisheries Committee
  3. To enable exemptions to be considered and issued that would not detract from the Authorities duties as set out within Section 153 and 154 of the Marine and Coastal Access Act 2009
  4. To clearly define the process for applicants on how an application will be determined and any exemption issued to applicants
  5. To clearly define what steps the Authority may take when considering an application
  6. To clearly define the requirements for the Authority in the case where an application is refused by the Authority

7. To be transparent regarding the applicant's responsibility to assemble the information or evidence as determined by the Authority so that the Authority can fully consider the application for an authorisation.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- 0. Do nothing.
- 1. Create an Exemptions Byelaw

All options are compared to Option 0, the preferred option is Option 1.

**Will the policy be reviewed? Yes. If applicable, set review date:** The Byelaw will be subjected to a review no later than five years after the byelaw comes into force.

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Chair of the Authority

Date: xx/xx/xx

## Summary: Analysis & Evidence Policy Option 1

### Description:

#### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV) (£))		
			Low:	High:	Best Estimate:
2016	2016	10 <sup>1</sup>			-

COSTS (£)	Total Transition (Constant Price) Years	Average Annual (excluding transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			-

#### Description and scale of key monetised costs by 'main affected groups'

This Byelaw states that the Authority may require an applicant at the applicant's expense to assemble information and evidence to support their application. This may produce a monetised cost dependent on the nature of the application; however, this cannot be accurately estimated. Each application can be different and result in differing levels of supporting information and evidence that is needed to be submitted for the Authority to assess each application on a case by case basis.

It is possible that some applications may require more extensive research than others to determine if they can be approved. This may involve consultation with other persons or organisations. Although the Authority can assist the applicant, in terms of guidance and effective communication, the applicant has the responsibility to assemble any required information to support their application themselves. It is envisaged that clear guidance and communication can potentially reduce any potential costs to the applicant associated with the application and consideration of it.

Most applications for exemptions have historically been for scientific work or for re-stocking of shellfish projects. A number of these are typically repeat applications each year. The number of applications that are expected each year would not exceed twenty-five. In 2017, twenty-four dispensations were issued, and this number fell to twenty-two the following year.

Most historic applications have been relatively simple to assess, and similar applications would therefore not incur an excessive burden in terms of the time needed by an applicant to assemble the required information.

#### Other key non-monetised costs by 'main affected groups'

Careful consideration is needed for every application for an exemption and this will be done on a case by case basis. This would include a thorough assessment, including having regard to the

<sup>1</sup> The standard timeframe for analysis is 10 years unless the situation requires a different amount of time for example the benefits will occur over a much longer period. If there is deviation from the standard 10 years this must be clearly explained in the main evidence section

South Marine Plan as set out in Section 58 of the Marine and Coastal Access Act 2009. Conditions associated with the potential exemption will be considered and set out within any written authorisation that is issued. The Byelaw states that the application shall be determined within 60 days of the receipt of the application by the Chief Officer or a Deputy Chief Officer and the Chair or a Deputy Chair of the Authority on behalf of the Authority. A non-monetised cost to the applicant may be the time that they may have to wait for their application to be determined and processed. It is possible that the exemption may not be issued at all, or if it is issued, may not provide permission for the applicant to conduct the full extent of their request.

It is envisaged that effective communication with the applicant at an early stage, if required, can highlight any immediate or significant concerns associated with their application. The Authority have the option to introduce a separate and refined application form and guidance for applicants that clarifies what information may be needed from them so that the Authority can process an application. These steps may limit the applicant's expectations regarding the issue of their own authorisation or the expected time frame for the processing of an such exemption.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>				
<b>High</b>				
<b>Best Estimate</b>	0		0	0

**Description and scale of key monetised benefits by ‘main affected groups’**

All monetised benefits cannot be estimated. Exemptions can be issued providing that they do not detract from the Authority's duties as set out in sections 153 and 154 of the Marine and Coastal Access Act. This increased scope set out within the Byelaw caters for a wider range of possible scenarios and reduces the possibility that the Byelaw will need replacement or amendment in a period of less than five years. Reducing the risk that the byelaw will need amendment or replacement could result in a cost saving to the Authority which would be associated with further development, advertising and implementation of a replacement.

**Other key non-monetised benefits by ‘main affected groups’**

- The introduction of the byelaw is a mechanism to allow controlled activities to take place that would otherwise be in contravention of one of the Authority's Byelaws. This has benefits to both the Authority and those persons or organisations conducting the activity that would require an exemption.
- The needs of all stakeholders have been recognised by D&S IFCA in the making of this byelaw. The activities undertaken with an exemption, such as scientific work, have the potential to improve the understanding of the marine environment which may result in improved decision making regarding the Authority's management of fishing activities and restrictions imposed via the other Byelaws or Permit Conditions.
- The benefits for those seeking an exemption is that the application process and decision-making process is set out within the Byelaw. The determination and decision-making process extends to more than one person. This mitigates against accusations of bias if an exemption is not granted.
- The Byelaw has been formulated to provide more scope to the exemptions that can be considered and issued. Exemptions can be issued providing that they do not detract from the Authority's duties as set out in sections 153 and 154 of the Marine and Coastal Access Act.

This increased scope caters for a wider range of possible scenarios and lessens the potential that the Byelaw will need replacement or amendment in a period of less than five years and thereby saving additional work for the Authority that can be directed into other working.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
Communicating the requirements for applicants to obtain an exemption for a potentially wide range of fishing related activities is a potential weakness as well as the resources available (staff resource) to process the applications in a timely manner and to potentially check and inspect that the exemption and written conditions are being adhered to in practice.		

**BUSINESS ASSESSMENT (Option 1)**

Direct impact on business (Equivalent Annual) £:			In scope of OI30?	Measure qualifies as
Costs	Benefits 0	Net –	No	N/A

## Evidence base

### 1. Introduction

This impact assessment is for the Exemptions Byelaw developed by Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA). This Byelaw will affect all persons or organisations that wish to undertake specific activities that would otherwise be in contravention of another D&S IFCA Byelaw or Permit Conditions within those Byelaws. The scope provided within the Byelaw via its link to Sections 153 and 154 of the Marine and Coastal Access Act 2009, enables a greater range of potential activities to be considered as potentially suitable for the granting of exemptions. The way those applications will be assessed as set out within the Byelaw enables careful consideration of a range of material factors.

### 2. Rationale for government intervention

D&S IFCA have duties specified in the Marine and Coastal Access Act 2009. To meet those duties, D&S IFCA enforces inherited byelaws or new byelaws that have been created and introduced by the Authority.

It is in the interest of the Authority and its stakeholders for an Exemptions Byelaw to be introduced that enables the Authority to consider the issuing of permissions for a person or persons to conduct an activity that would otherwise be in contravention of a Byelaw or Permit Condition within a Byelaw that the Authority has inherited or introduced.

One example would include scientific work that could add to an existing evidence base or contribute to a longer-term data set. Other examples may be the potential to explore new fisheries through pilot projects such as aquaculture, and allow for other activities such as gear recovery from a Marine Protected Area to be evaluated and monitored. The Authority currently has an Emergency Byelaw in place that satisfies some of these requirements, however the Exemptions byelaw has been formulated to broaden the scope of the potential exemptions that can be considered. The Emergency Byelaw that came into force on 9<sup>th</sup> May 2018 must be

replaced within a defined time frame. A six-month extension for the Emergency Byelaw has been sought and approved by the Secretary of State to enable time to complete the process of introducing this replacement. The Authority has recognised that without an Exemptions Byelaw in place there could be an adverse impact on the Authority's' ability to manage inshore fisheries as the opportunity to gain a better insight or understanding of the marine environment would be more restricted.

### **3. Policy objectives and intended effects**

D&S IFCA must review all its inherited byelaws. A legal weakness associated with the Application Byelaw (26<sup>th</sup> February 1998) was highlighted by the D&S IFCA prosecuting solicitor. This prompted the Authority to develop and introduce an Emergency Byelaw in the interim period.

The Authority has delegated powers to the D&S IFCA Byelaw and Permitting Sub-Committee (B&PSC) to conduct byelaw review working. The B&PSC have discussed options for a replacement of the Emergency Byelaw and its construction and scope. These discussions have been documented within the minutes of meetings and officer papers and reports presented to members. D&S IFCA are transparent with information as set out in the D&S IFCA Publication Scheme and the D&S IFCA Freedom of Information Policy.

The following bullet points set out the policy objectives and intended effects:

1. To revoke the Application Byelaw introduced by Devon Sea Fisheries Committee
2. To enable exemptions to be considered and issued that would not detract from the Authority's duties as set out within Section 153 and 154 of the Marine and Coastal Access Act 2009
3. To clearly define the process for applicants on how an application will be determined and any exemption issued to applicants
4. To clearly define what steps the Authority may take when considering an application
5. To clearly define the requirements for the Authority in the case where an application is refused by the Authority
6. To be transparent regarding the applicant's responsibility to assemble the information or evidence as determined by the Authority so that the Authority can fully consider the application for an authorisation the application.

#### Revocation

The introduction of this Exemptions Byelaw will enable the Application Byelaw (26<sup>th</sup> February 1998) to be revoked.

### **4. The options**

The option of no action was not appropriate in relation to this Byelaw. The option to replace the Emergency Byelaw was a requirement, but how to create a suitable replacement was discussed. The D&SIFCA Byelaw & Permitting Sub-Committee (B&PSC) formulated a sub-group known as the Byelaw Technical Working Group (BTWG) to explore different drafting options. The BTWG have their own Terms of Reference which includes a reporting requirement to the B&PSC. A draft was developed by the BTWG which met the expectations of the B&PSC and on 26<sup>th</sup> February

2019 it was accepted as a suitable draft to progress. Minutes are taken of all B&PSC meetings and approved minutes and officer papers for any such meeting are published on the Authority's website. On 13<sup>th</sup> June 2019 the draft Exemptions Byelaw will be presented to the B&PSC with the expectation that they approve the Exemptions Byelaw 2019 being subjected to a period of formal consultation.

## 5. Analysis of costs and benefits

D&S IFCA has a record of past dispensations that have been issued. This record has allowed the Authority to determine the complexity regarding the determination of those applications and to develop a suitable application form and guidance (where required) to assist applicants gaining any required exemption.

Most historic applications have been relatively simple to assess, and similar applications would therefore not incur a need for high levels of supporting information and evidence to be submitted as part of an application.

All applications will be assessed on a case by case basis. It is possible that some applications may require more extensive research to determine if they can be approved. This may involve consultation with other persons or organisations.

Although the Authority can assist the applicant, in terms of guidance and effective communication, the applicant has the responsibility to assemble any required information to support their application themselves. It is envisaged that clear guidance and communication can potentially reduce any potential costs to the applicant associated with the application and consideration of it as set out within this Byelaw.

### One in Three Out (OITO)

OITO is not applicable for byelaws as they are local government byelaws introducing local regulation and therefore not subject to central government processes.

**Public goods and services:** A number of goods and services provided by the marine environment such as biological diversity is 'public goods' (no-one can be excluded from benefiting from them but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.

- D&S IFCA must seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.

**Negative externalities:** Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

- D&S IFCA must seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote the recovery from, the effect of such exploitation.

**Common goods:** A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long-term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

- D&S IFCA must seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

In summary, the byelaws introduced by the Authority aim to redress these sources of market failure in the marine environment. Although this Byelaw enables exemptions to be issued that would authorise an activity that would not otherwise be possible to conduct, the activity would not be authorised if the activity detracts from the Authority's duties as set out in the Marine and Coastal Access Act 2009.

## **7. Environmental Impact**

Assessment of applications for exemptions will consider environmental impacts. The Byelaw sets out that exemptions can be issued for any activity relating to the discharge of the Authority's duties under Section 153 and 154 of the Marine and Coastal Access Act 2009. D&S IFCA have the intention of creating an application form for exemption requests which will clearly set out what the expectations are regarding submitted information such as:

- The nature of the activity
- Why it is being done
- Byelaw relevant for the exemption/derogation
- When the activity will take place
- Where it will take place
- How long will it be conducted for?
- The enclosure of other supporting information or documentation if required

Where an activity will potentially be conducted within a Marine Protected Area, the potential requirement to consult with Natural England will be highlighted to the applicant.

## **8. Other Material Considerations**

The Authority must consider all material considerations and when making a decision, such as making a Byelaw. The South Marine Plan is one such material consideration and as set out in section 58 of the Marine and Coastal Access Act, the Authority will have regard to it when making Byelaws and in the case of permit-based byelaws, the Permit Conditions that set out much of the management of a particular fishing activity. It is the view of the Authority that the Byelaws introduced are not likely to have an adverse impact on any part of the South Marine Plan and the same conclusion can be taken regarding the exemptions to D&S IFCA Byelaws that will be assessed on a case by case basis including having regard to all material considerations.