

## Non-Payment of Fines and Issuing of Permits

### Officers' Recommendation

**That the B&PSC action the Byelaw Technical Working Group (BTWG) to create a document that sets out D&S IFCA's policy on not issuing permits, where there is non-payment of fines, costs and FAPs.**

### Background

The past Budget Audit Process has identified an issue associated with outstanding payments to the Authority from D&S IFCA investigations and the awarding of fines and costs in court against both vessel owners and masters. Other IFCA's have also experienced similar difficulties. In March 2018 a paper was prepared for all Authority Members (Agenda Item 10 - Non-payment of Fines Policy); however, it was removed from the agenda as the solutions suggested to recover unpaid fines required further legal advice. Although the original aim was focused on recovering un-paid fines, the second element relates to the issuing of permits to fishers that have not paid outstanding fines.

There have also been issues with the non-payment of Financial Administrative Penalties (FAPs) that have been offered and accepted by vessel owners and masters as an alternative to prosecutions.

### The Byelaw Technical Working Group

The B&PSC has delegated powers and has established the Byelaw Technical Working Group (BTWG). The BTWG was established in 2019 and has its own [Terms of Reference](#). The BTWG consists of any member of the B&PSC as well as selected D&S IFCA Officers and D&S IFCA's prosecuting solicitor. The role of the BTWG is to conduct technical elements of byelaw related work such as drafting legal documentation to support the functions of the B&PSC.

### Construction of Permit Based Byelaws

Each of the Permitting Byelaws specify how permits can be authorised and issued. This information is set out on the face of each Permit Byelaw when they are created or re-made. Similar wording is applied in all the Permit Byelaws and adapted for different categories of fishers.

Some examples from the existing Mobile Fishing, Potting and also the Diving Permit Byelaws are shown below:

- The Authority **may** issue a document authorising a vessel to use mobile fishing gear in any part of the District other than in estuaries (a Category One Permit).
- The Authority **may** authorise the use of a pot for fishing within the District from a named relevant fishing vessel by issuing a Category One Permit to the owner of that vessel.
- The Authority **may** authorise the removal of the species listed in paragraph 2 from a fishery within the District by diving from a relevant fishing vessel by issuing a Category One Permit to the owner of that vessel.

It is important to recognise that each Byelaw states that the Authority **"may"** issue a permit for a particular fishing activity to be conducted. The Byelaws do not state that the Authority **"will"** issue a permit. This difference provides Members with the opportunity to consider the introduction of policy in regard to permit issue where outstanding fines or costs exist. Policy notices have already been developed for several aspects of the permit system. These add

clarity for stakeholders, along with demonstrating how the Authority has interpreted aspects of the Permitting Byelaws from both an enforcement and administration standpoint.

### Drafting Considerations

It is envisaged that drafting work by the BTWG can be achieved via email correspondence, with officers producing a new policy document that is consistent with the presentation used on other official Authority publications. The drafting work will recognise that D&S IFCA cannot remove a valid permit if an offence is committed, as this is a matter for a Court<sup>1</sup>.

The drafting work will recognise the following:

- **The policy and clarification statement will make all stakeholders aware that D&S IFCA will not issue new permits where outstanding fines or costs set by a court have failed to be paid to the Authority.**
- **The Policy and clarification statement will make all stakeholders aware that D&S IFCA will not issue new permits if payment schedules ordered by a court have not been met.**
- **The Policy and clarification statement will make all stakeholders aware that D&S IFCA will not issue new permits if FAPs have not been paid in full.**
- **The policy and clarification documentation can be drafted in respect of fishing vessels rather than individuals. Owners and Masters of vessels will have equal responsibility to ensure payments schedules are maintained as agreed in court.**

### Reporting & Adopting the Policy

The work of the BTWG must be reported to the B&PSC for decision making. The completed policy documentation will be presented to B&PSC Members in due course. B&PSC Members will then have the opportunity, via a formal vote, to adopt the policy documentation. The finalised policy documentation will then be published on D&S IFCA's website and will become a consideration in the administration process undertaken to issue any D&S IFCA permit.

**End.**

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<sup>1</sup> S. 164 (5) Marine and Coastal Access Act 2009