



Size of Vessels Byelaw

The Formal Review of the Byelaw

Overview & Planning Report for the Byelaw & Permitting Sub-Committee

3rd June 2021

Contents

1. Introduction & Objectives	3
1.1 Objectives:	3
1.2 Annual Plan 2021-22	3
1.3 Process & Decision Making:	3
1.4 Communications:	4
2. The Inherited Size of Vessels Byelaw	5
3. Weaknesses with the Inherited Size of Vessels Byelaw	6
3.1 Age and how the Byelaw was Developed	6
3.2 Structure	6
3.3 Examples of Changes to the Structure and Interpretations	6
3.4 Grandfather Rights	7
4. Discussion & Decision Making	7
4.1 A maximum Size of 15 metres in Overall Length	7
4.2 Determining the Length of a Sunset Clause	7
5. Actions & Timetable	8
Estimated Timetable	9
6. Additional Information	10
6.1 Documenting the Process and the use of Impact Assessments	10
6.2 Following the Process & Links to Information	10
6.3 Background Information – The Authority & the B&PSC	10

Version Control

Version	Date	Author/s	Comments
1.0	3 rd June 2021	N. Townsend	Prepared for the B&PSC Meeting to be held on 22 nd July 2021
1.1	12 th July 2021		Timetable adjusted and report re-published on D&S IFCA's website. No other changes.

1. Introduction & Objectives

This Overview and Planning Report relates to the Size of Vessels Byelaw that was inherited from Devon Sea Fisheries Committee (DSFC) which must be formally reviewed by D&S IFCA. This review will require the re-making of the Size of Vessels Byelaw that will remain as a stand-alone byelaw, rather than the restrictions being applied to the activity Permit Based Byelaws developed by the Authority do date.

This Overview and Planning Report does not contain any recommendations for decision making; however, the decision making of Members of the Byelaw and Permitting Sub-Committee (B&PSC) will potentially influence the actions and timetable for work that is highlighted within it.

The report also acts as a reference document so all readers have a better understanding of what actions will be taken later in the process and what these byelaw making requirements amount to. During the process, a range of information will be assembled and presented to B&PSC members. An estimated timetable for delivery is set out in section five.

1.1 Objectives:

- a) To recognise a specific Key Task as set out in the Annual Plan 2021-22
- b) To mark the start of the Formal Review
- c) To highlight some key weaknesses with the inherited Size of Vessels Byelaw
- d) To set out the envisaged course of action to begin the Formal Review to address the key weaknesses
- e) To establish an estimated timetable for delivery

This plan will include communications that serve different purposes and all of which can be delivered in different ways, either as direct notification or as more general communications, for example with news items posted on the website and repeated on social media.

1.2 Annual Plan 2021-22

The [Annual Plan for 2021-22](#) lists the following key task:

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To present an officer “Planning Report” to the B&PSC which identifies potential weaknesses or suggested potential changes to the Size of Vessels Byelaw. The plan will also identify areas where pre-consultation may be required as well as process related tasks needed to re-make this Byelaw.

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1.3 Process & Decision Making:

This plan includes work to be undertaken by Officers, drafting work by Officers and the Byelaw Technical Working Group (BTWG), and it will also require decision making at key stages by the Byelaw and Permitting Sub-Committee (B&PSC).

When at an advanced state the re-made Size of Vessels Byelaw will be presented to the B&PSC with an accompanying Impact Assessment. The B&PSC will then have the opportunity to “make” the Byelaw and, as part of the process, Defra will be notified, in advance, regarding the intention to “make” (in this case re-make) the Size of Vessels Byelaw. The process will

then continue as highlighted later in this report, but it will eventually be outside of the control of D&S IFCA. It is ultimately for the Secretary of State to determine if the re-made Size of Vessels Byelaw will be signed and then introduced. If confirmed in due course a final Byelaw Development Report will be assembled that documents the entire process from its beginning to its conclusion.

Byelaw Technical Working Group (BTWG)

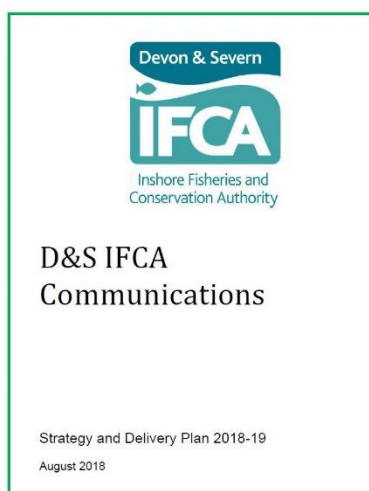
The BTWG was established by the B&PSC and consists of any Member of the B&PSC as well as selected D&S IFCA Officers and D&S IFCA's prosecuting solicitor. The role of the BTWG is to conduct technical elements of byelaw related work such as drafting legal documentation relevant to support the functions of the B&PSC. The BTWG has its own [Terms of Reference](#), which were established and agreed in 2019. The work of the BTWG must be reported to the B&PSC for decision making.

1.4 Communications:

Approval of this plan by the B&PSC enables Officers to progress work which is interlinked with [D&S IFCA's Communication Strategy](#).

Communication work will include direct notification (Mail Chimp) as well as being supported by use of the website and social media. Communication will achieve the following:

- a) To highlight that the Authority is intending to change legislation that will impact current vessel owners (for the reasons set out in this report) that operate or have the potential to operate vessels larger than 15.24 metres in overall length within the District.
- b) To make potential new entrants, wishing to fish in the District, aware that they should consider the size of vessels that they may wish to purchase and/or build with a view to operating within the District in the future.
- c) To gain the views of existing fishers regarding the restrictions that will apply within the District relating to the size of vessels that can be used.
- d) To gain the views of other stakeholders regarding the change in legislation.



If the B&PSC “make” the Size of Vessels Byelaw in due course, the re-made proposed byelaw will then be subjected to formal consultation as a package of information.

The Formal Consultation will involve differing communication work.

Defra’s Byelaw Making Advice sets out the mandatory requirements for advertising potential new Byelaws; however, D&S IFCA’s communication work will far exceed those expectations.

2. The Inherited Size of Vessels Byelaw

The Size of Vessels Byelaw was made by DSFC on 19th January 1996 and confirmed by the Minister of Agriculture, Fisheries and Food (MAFF) on 5th June 1996.

The following (blue font) is a transcript of the Byelaw:

BYELAW NO 18 – SIZE OF VESSELS

1. No vessel which exceeds 15.240 metres overall length shall be used in fishing for or taking seafood within the District except: -
 - i) In that part of the district within 3 miles from baselines vessels exceeding 15.240 metres overall length but not exceeding 18.288 metres registered length may be used as long as the vessel fished in the district prior to the byelaw coming into force and remains in the same ownership as on 9th March 1989.
 - ii) In that part of the district between 3 and 6 miles from baselines vessels exceeding 15.240 metres overall length may be used as long as the vessel fished in the district within the previous 24 months prior to the byelaw coming into force and remains in the same ownership as on the date of the byelaw coming into force.
2. No vessel which exceeds 15.240 metres overall length shall be used for fishing or taking sea fish within the district unless the vessel satisfies the criteria (i) or (ii) above and the vessel is registered with the Committee and has obtained a certificate to that effect signed by the Chief Fishery Officer of the Committee. The certificate shall be issued without payment upon application on the prescribed form and on production of the Certificate of Registry of the said vessel as recorded in Part II of the register of British Ships established under Section 8 of the Merchant Shipping Act 1995. Applications must be made within 6 months of the date of the byelaw coming into force.

DEFINITIONS

“Overall length” means the distance in a straight line between the foremost part of the bow and the aftermost part of the stern.

“Bow” includes the stem forward bulkheads and any permanent fixtures thereto.

“Stern” includes the transom and any trawl ramp bulwark and other permanent fixtures thereto but excludes the rudder and rudder post.

“Seafood” means fish of any description found in the sea including shellfish.

“The baselines” means the baselines as they existed at 25th January 1983 in accordance with the Territorial Waters Order in Council 1964 (1965 IIp. 6452A) as amended by the Territorial Waters (Amendment) Order 1979 (1979 IIp. 2866).

“ownership” means as recorded in the Fishing Boat Register held by the Registrar of Shipping and Seamen at Cardiff.

3. Weaknesses with the Inherited Size of Vessels Byelaw

3.1 Age and how the Byelaw was Developed

The current Size of Vessels Byelaw is 25 years old and was itself developed from an even earlier (earlier than 1989) Size of Vessels Byelaw originally only applying to the Devon Sea Fisheries District out to the 3-mile limit. As this is an inherited byelaw from Devon Sea Fisheries an Impact Assessment was not produced (as it was not required at that time) to document all of the objectives for the Byelaw. Even with no Impact Assessment, some of the content and objectives can be assumed as follows:

- a) The Size of Vessels Byelaw was retained to safeguard fishing opportunities for smaller inshore vessels <15.240 metres.
- b) The size 15.240 metres was a conversion from a previous size of 50 feet (imperial measurement).
- c) The inbuilt provisions (sunset clause) were inserted to allow larger vessel owners time to adjust their business models with a view to their replacement vessels being smaller in size if they were to continue fishing within the 6-mile limit.

3.2 Structure

A re-made D&S IFCA Size of Vessels Byelaw would be structured differently, and it is clear that the wording within the Byelaw would be modernised. A re-made Size of Vessels Byelaw would apply to D&S IFCA's District and the interpretations used within the re-made byelaw would be amended to harmonise with those used in newer Byelaws developed by D&S IFCA. The wording used within the Byelaw (for example Prohibitions and Interpretations) will define its scope. Officers envisage that the Size of Vessels Byelaw will only be applicable to vessels that have a fishing licence and therefore it will not be applicable for recreational fishers. It should be recognised that many recreational fishing activities are restricted in different ways such as gear limitations for Potting and Netting.

A new structure can recognise other weakness, for example the Byelaw at present does not include an exemption clause that has been recommended (in more recent byelaw making work) by the MMO Byelaw Quality Assurance team.

3.3 Examples of Changes to the Structure and Interpretations

The revised structure, what interpretations will be used and what implications they will have, will be thoroughly explained during the development of the Byelaw. New Byelaws for D&S IFCA have a title and a year and are then followed by interpretations (whatever would be required) before the prohibitions are introduced. For example:

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Devon and Severn

Inshore Fisheries and Conservation Authority

MARINE AND COASTAL ACCESS ACT 2009

Size of Vessels Byelaw 2022

The Authority for the Devon and Severn Inshore Fisheries and Conservation District in exercise of its powers under Sections 155 and 156 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

Example of Standard Interpretations

Interpretation

“the Authority” means the Devon and Severn Inshore Fisheries and Conservation Authority as defined in articles 2 and 4 of the Devon and Severn Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No. 2212);

“fishing”, includes searching for sea fisheries resources, shooting, setting, towing, hauling of fishing gear, and taking sea fisheries resources on board;

“relevant fishing vessel” means a fishing vessel:

- a) registered under Part II of The Registry of Shipping and Seamen as governed by the provisions of the Merchant Shipping Act 1995 (c.21) and the Merchant Shipping (Registration of Ships) Regulations 1993 (S.I. 1993 No. 3138) as amended from time to time, or in the Channel Islands or Isle of Man;
- b) and in respect of which there is a valid fishing licence issued under the Sea Fish (Conservation) Act 1967 (c.84);

3.4 Grandfather Rights

The main weakness is that the current “Grandfather Rights” have provided the opportunity for three large vessels (up to 25.28m) to operate within D&S IFCA’s District for longer than was expected when the Size of Vessel Byelaw was introduced in 1996. One vessel continues to actively fish and exert pressure on stocks within the District and the other two vessels represent considerable latent capacity, neither of which is appropriate in the inshore area. Although an Impact Assessment was not created to accompany the introduction of DSF Size of Vessels Byelaw, officers believe that it was not the intention to have large vessels continuing to fish (or with the option to fish) within the District 25 years after its confirmation.

4. Discussion & Decision Making

The following discussion items relate to the Officers’ recommendations set out in Agenda Item 6 of the B&PSC Papers - June 2021. Decision making of the B&PSC at the initial stage provides the basis for on-going work. Although initial decisions will guide the work, the findings of pre-consultation may also influence further discussion, and potentially different decision making, as the work is progressed.

4.1 A maximum Size of 15 metres in Overall Length

All vessels, other than one vessel (on the “Grandfather Rights” list), that are currently permitted to conduct different fishing activity are below 15 metres in overall length. It is the view of officers that a maximum size of 15 metres in overall length should form the basis for the re-made Size of Vessels Byelaw. The aim of the Size of Vessels Byelaw is to reduce pressure, effort and capacity as compared to the smaller inshore fleet.

4.2 Determining the Length of a Sunset Clause

As highlighted above, Officers believe that it was not the intention to have large vessels continuing to fish (or with the option to fish) within the District 25 years after the Size of Vessels Byelaw was confirmed. The vessels that have retained “Grandfather Rights” are outliers and a re-made Size of Vessels Byelaw can address this imbalance.

The “Grandfather Rights” were designed to allow owners of vessels greater than 15.24m time to adjust to the requirements of the Size of Vessel Byelaw when introduced in 1996. Three vessels have continued to benefit from these rights for 25 years and it is the Officers’ opinion that a definitive date is now identified to achieve the long-held intention to reduce fishing effort in the D&S IFCA’s District from large vessels, regardless of whether the applicable vessels remain in the same ownership. A recommendation for the B&PSC meeting (June 2021) is to reduce the maximum size of vessels to an overall length of 15m and it is the view of officers that a re-made Size of Vessels Byelaw should include a “Sunset Clause” that will end the on-going “Grandfather Rights”, in a given time period, regardless of whether the applicable vessels remain in the same ownership.

Setting a defined period (“Sunset Clause”) will result in the termination of the “Grandfather Rights” and this will impact vessel owners that have retained “Grandfather Rights”. This will be highlighted within the Impact assessment that accompanies the Size of Vessels Byelaw.

Officers believe that a relatively short “Sunset Clause” of two years would be appropriate to give notice to the vessel owners so they can adjust their fishing activities accordingly. Although this plan is not dependent on a definitive decision being reached at the initial stage, the setting of a suggested time period for the end of “Grandfather Rights” may generate more reaction in the pre-consultation work that will be undertaken.

5. Actions & Timetable

To complete the review of the Size of Vessels Byelaw and to get to a position where a re-made byelaw can be “made” by the B&PSC, a series of actions, including decision making by the B&PSC must be undertaken. The process has been set out below in combination with an estimated timetable.

Initial Action – Pre-Consultation.

Dependent on the decision making of the B&PSC, Officers will conduct pre-consultation regarding the size of vessels that would be authorised to operate in the District, and what length of “sunset clause” is expected to apply (the initial position of the B&PSC).

Pre-consultation will be conducted in line with D&S IFCA’s Communication Strategy and will include direct notification (mail chimp) as well as being supported by use of the website and social media. The findings will be presented to the B&PSC at the next scheduled meeting and will help B&PSC members to determine what action to take including actioning the BTWG to undertake drafting work.

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Estimated Timetable

Date	Event	Action
July 2021	B&PSC Meeting	B&PSC to consider the content of this report
July/August 2021	Officer Work	Pre-consultation regarding length of vessels and length of “sunset clause”
August 2021	Officer Work	Findings of the pre-consultation assembled into a report
September 2021	B&PSC Meeting	Report presented & discussed by the B&PSC. The BTWG can be tasked with enacting the decisions taken by the B&PSC within drafting work
October – November 2021	BTWG	Drafting of the Size of Vessels Byelaw
December 2021	B&PSC Meeting	B&PSC to receive an update from the BTWG regarding draft work – any issues can be discussed and potentially resolved
January 2022	Officer Work	Creation of an Impact assessment to be used in the formal consultation
January 2022	Notification	2 weeks’ notice that the Byelaw will be “made” by the Authority given to Defra
February 2022	B&PSC Meeting	Final draft Byelaw created by the BTWG to be presented to B&PSC and potentially “made” and subjected to a formal consultation period.
Late February/March 2022	Advertising & Formal Consultation	Formal notice placed in relevant newspapers about the intention to make the Byelaw. A Call for Information “Formal Consultation” exercise circulated (direct notification using email and post) with information/news also posted on the website and Face Book.
May 2022	B&PSC Meeting	Findings of the Formal Consultation discussed. Objections to be managed. Potentially a vote to submit the new Size of Vessels Byelaw for confirmation
May/June 2022	Officer Work	Final Byelaw (potential amendments) made along with Final Impact Assessment to accompany it.
June 2022	Officer work	D&S IFCA sends Byelaw to Defra and awaits potential confirmation of the Byelaw

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6. Additional Information

6.1 Documenting the Process and the use of Impact Assessments

A consultation Impact Assessment and a final Impact Assessment must and will be created and used during this re-make of the Size of Vessels Byelaw process. Consultation must be conducted, and the new Size of Vessels Byelaw must be advertised in due course. As with all D&S IFCA byelaw related work, the complete process will be documented. In the interests of safeguarding the reputation of the Authority, and providing full transparency to stakeholders, D&S IFCA publications go beyond the typical use of Impact Assessments and will be used to support the mandatory requirements.

6.2 Following the Process & Links to Information

D&S IFCA's website is used to publish all B&PSC reports and the minutes (when approved) from those meetings. Members of the B&PSC and stakeholders are encouraged to visit the website for a range of information relating to this review of the Size of Vessels Byelaw.

Key pages to monitor include:

- [Latest News & Information Items Page](#)
- [Engagement & Have Your Say Page](#)
- [Authority Meetings Page](#)

Areas of the website that contain other information include:

- [Section B of the Website Resource Library \(B&PSC papers and Minutes\)](#)
- [Section F of the Website Resource Library \(Byelaw Development & Impact Assessments\)](#)

6.3 Background Information – The Authority & the B&PSC

To find out more about the Authority please visit the dedicated D&S IFCA website page:

- [Who We Are & Our Core Work - Devon and Severn IFCA](#)

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. Byelaw related work and/or reviews of how D&S IFCA manages fishing activity is complex. This Authority has created the B&PSC to conduct this type of work on behalf of the Full Authority. The B&PSC has delegated powers and is the decision-making body for fisheries and conservation management.

- [Guide to the Work of the B&PSC \(September 2019\)](#)

End.