



Size of Vessels Byelaw

The Findings of the Pre-Consultation (Have Your Say) to Develop (re-make) the Byelaw

1st October 2021

Contents

Executive Summary	3
The Response Summary	3
Part 1.....	4
1. Background Information	4
Part 2.....	6
2. The Consultation Response	6
Part 3.....	9
3. The Remaining Process – To Introduce the (re-made) Size of Vessels Byelaw.....	9
Further Information & Hyperlinks Used in this Report.....	9

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1.0	1 st October 2021	N. Townsend	Prepared for the B&PSC Meeting to be held on 21 st October 2021.

Executive Summary

The review (re-making) of the Size of Vessels Byelaw is one of the Key Tasks identified in the D&S IFCA's 2021-2022 Annual Plan. This "Management of Fishing Activity" task (007) is one of several tasks to be undertaken by the B&PSC.

This report (1st October 2021) has been prepared for Members of the Devon and Severn Inshore Fisheries and Conservation Authority's (D&S IFCA's) Byelaw and Permitting Sub-Committee (B&PSC) and for all stakeholders to examine via its publication on the D&S IFCA website. This report documents summarised and anonymised information from the pre-consultation (Size of Vessels Byelaw – Have Your Say – Size Restrictions, Grandfather Rights & Sunset Clause) that ended on 24th September 2021. The report is divided into three brief sections:

Part One:

Part One of the report provides background information to explain why the consultation was conducted and how it was conducted.

Part Two:

Part Two of the report documents the responses that were received during the consultation.

Part Three:

Part Three of the report explains how the remaining process will be undertaken to introduce a re-made Size of Vessels Byelaw.

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The report includes embedded information (Hyperlinks) that give readers access to additional information. All additional information embedded in this report is also freely accessible within different sections of the [D&S IFCA Website Resource Library](#).

The Response Summary

A total of six responses were received that were a combination of individual stakeholders and organisations. One of these responses was only a request to be given more information about the pre-consultation which was then provided. All responses were received via email using the dedicated email address that was provided in the circulated information.

The organisations that responded included Devon Wildlife Trust (DWT), Wembury Advisory Group (WAG) and Western Fish Producers' Organisation. One response was received from a permit holder that declared ownership a commercial fishing vessel and the other was from a stakeholder who did not explain their interest.

No response was received from the two vessel owners that were contacted directly with letters that highlighted the opportunity to engage. It is impossible to determine how much of the background information was read by those that did respond and if it was fully understood.

The response was low; however, it is possible that a greater response will be received when the re-made Size of Vessels Byelaw is subjected to formal consultation in 2022. There is nothing within the responses received in the pre-consultation to suggest that formal consultation on the Size of Vessels Byelaw should not be undertaken on the basis that; -

- a) **15 metres in overall length is the maximum size of vessel**
- b) **All Grandfather Rights are removed and**
- c) **No Sunset Clause is included**

Part 1

1. Background Information

D&S IFCA must manage the exploitation of sea fisheries resources within its District. This is specified within the Marine & Coastal Access Act 2009. The existing Size of Vessels Byelaw was introduced by Devon Sea Fisheries in 1996 and was itself developed from an even earlier (earlier than 1989) Size of Vessels Byelaw. This Byelaw must be formally reviewed by D&S IFCA. The work required to review and introduce a re-made Size of Vessels Byelaw was included in D&S IFCA's 2021-2022 Annual Plan as a Key Task.

On 22nd July 2021 a report was presented to D&S IFCA's Byelaw and Permitting Sub-Committee that set out weaknesses associated with it.

[Size of Vessels Byelaw – The Formal Review of the Byelaw – Overview & Planning Report \(3rd June 2021\).](#)

An [Officers' paper](#) was also produced with three separate recommendations intended to shape a pre-consultation that would help inform the development of the re-made Size of Vessel Byelaw. Members of the B&PSC were informed that to develop the Byelaw there are three initial considerations, all of which were explained:

- To consider what will be the maximum size for commercial fishing vessels operating within the District (an overall length in metres).
- To consider if any existing rights (Grandfather Rights) for commercial fishing vessels above a determined size should continue to apply.
- If Grandfather Rights continue to apply, for how long should they apply (Sunset Clause).

Members discussed the content of the Report and the Officers' paper and actioned a pre-consultation (Have Your Say) process that was subsequently formulated with the inclusion of a series of questions to recognise the decision making of B&PSC Members.

1.1 The Consultation

Electronic engagement formed the basis of the Have Your Say pre-consultation, and a Mail Chimp circular was sent directly to all those on the D&S IFCA's consultation mailing list. 1500 stakeholders received the Mail Chimp circular, and 789 stakeholders opened the email.

The information was not generally circulated in hard copy format; however, letters (including attached hard copy information) were sent to two vessel owners that Officers and B&PSC Members knew would be potentially affected by potential changes. Recipients of the direct notification (via email) were encouraged to forward the information or notify others that may have an interest about the consultation. Other communication initiatives included a news item posted on the D&S IFCA's website and Facebook page.

Links:

- [Size of Vessels Byelaw – Have Your Say – Size Restrictions, Grandfather Rights & Sunset Clause \(27/08/2021\)](#)
- [Website News Item – Size of Vessels – Have Your Say \(27/08/2021\)](#)

1.1 The Questions

A questionnaire was included in the Have Your Say pre-consultation as well as background information and an explanation of each main topic.

Section 1:

About You:

1. Please provide your name
 2. Please provide your contact details
 3. Are you a Permit Holder (any permitted fishing activity) within D&S IFCA's District?
 4. Are you a commercial fishing vessel owner, master of a commercial fishing vessel or crew on a commercial fishing vessel?
 5. If other, please explain your interest in the Size of Vessels Byelaw?
-

Section 2:

Establishing a Maximum Size of Commercial Fishing Vessels

The current Size of Vessels Byelaw restricts commercial fishing vessels to those that are 15.24 metres in overall length (with exceptions). Except for two vessels, the commercial fleet in D&S IFCA's District are below 15 metres in overall length. It is the view of D&S IFCA's Byelaw and Permitting Sub-Committee that the maximum size for commercial fishing vessels to operate within the District could be reduced to 15 metres in overall length (as set out on a Certificate of Registry) without impacting on the inshore fleet. Only vessels that are above this size, would be potentially impacted.

6. Would a change in the maximum size of vessels impact you?
 7. Do you support a potential new maximum size of 15 metres in overall length?
 8. If you support this revised size of 15 metres in overall length, why?
 9. If you do not support this revised size of 15 metres in overall length, why not?
-

Section 3:

Grandfather Rights

The main weakness associated with the inherited Size of Vessels Byelaw is that the current "Grandfather Rights" (built into the Byelaw) have provided the opportunity for two vessels (up to 25.28m) to operate within D&S IFCA's District for longer than was expected when the Byelaw was introduced in 1996. Grandfather Rights enable vessels to continue fishing (or have rights of access to fish) within the District until the vessel changes ownership.

One commercial fishing vessel continues to actively fish and exert pressure on stocks within the District and the other commercial fishing vessel represents considerable latent capacity. The larger vessels are outliers and D&S IFCA's Byelaw and Permitting Sub-Committee would like your views on the potential inclusion (or not) of "Grandfather Rights" in the re-made Byelaw.

10. Do you think that existing Grandfather Rights should continue to apply, and if so, why?
11. Do you think existing Grandfather Rights should not apply, and if so, why?

Section 4:

Sunset Clause (a grace period within the Byelaw to adapt for change)

This section is linked with previous section on “Grandfather Rights”. A “Sunset Clause” is a set period to enable fishers (owners of vessels) time to adapt to new restrictions that may impact on them and their business plans.

It should be recognised that creating a new Size of Vessels Byelaw would not be complete until 2022 at the earliest and will involve more consultation. The byelaw making process, including this initial “Have Your Say” exercise therefore does provide notice that changes are being considered. D&S IFCA’s Byelaw and Permitting Sub-Committee would like your views on the potential inclusion (or not) of a “Sunset Clause” in the re-made Byelaw.

12. Do you think that a Sunset Clause should apply, and if so, why?
 13. If it should apply, for how long?
 14. Do you think that a Sunset Clause should not apply, and if so, why?
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Section 5

Other information:

15. Do you have any other views or comments regarding the Size of Vessels Byelaw?
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Part 2

2. The Consultation Response

The response was low; however, it is possible that a greater response will be received when the re-made Size of Vessels Byelaw is subjected to formal consultation in 2022. There is nothing within the responses received in the pre-consultation to suggest that formal consultation on the Size of Vessels Byelaw should not be undertaken on the basis that; -

- d) **15 metres in overall length is the maximum size of vessel**
- e) **All Grandfather Rights are removed and**
- f) **No Sunset Clause is included**

1500 stakeholders received the Mail Chimp circular, and 789 stakeholders opened the email; however, only six responses were received by the closing date of 24th September. One of these was not a response to the questions, and instead was a request for additional information which was then provided. No response was received from the two vessel owners that were contacted directly with letters (including attached hard copy information) that highlighted the opportunity to engage. It is impossible to determine how much of the background information was read by those that did respond and if it was fully understood.

Of the five responses, three were submitted by organisations.

- Devon Wildlife Trust (DWT)
- Wembury Advisory Group (WAG)
- Western Fish Producers’ Organisation (WFPO).

The three organisations that responded followed the set pattern of questions and some responses offered some reasoning for their views.

2.1 Change in Vessel Size Restriction

In summary:

- **All three organisations favoured an amended size of 15 metres in overall length.**
- **One individual stakeholder had no objection to reducing the maximum size of vessels**
- **One individual stakeholder objected to change**

The responses from individual stakeholders regarding this topic were mixed. The individual response that did not follow the set pattern of the questionnaire has been transcribed below in purple font (with minor addition). Although not objecting to a change in size, this stakeholder raised other concerns.

*"I have **no objection to reducing the size**. This size reduction u (you) have explained won't effect the fleet bar 2 boats. The 2 boats effected u (you) as mangers feel r(are) exploit in the fish stocks, I accept that, however, to use a bylaw remastered leaves u(you) open to a claim of consequential loss from the boat owners. My advice is to rework a bylaw to harm an entity, even to protect, seems bias even unjust - I would deal with it differently. Negotiations on a deal so they sell the boat - pay them buy it whatever - then they have broken the sunset clause from existing bylaw - Court cost lots, plus it lasts a long time. The fish don't have the time".*

The second individual stakeholder to respond declared himself to be a commercial vessel owner. This stakeholder explained that although a change would not impact him directly, he does not support a change in the vessel length restriction.

"I do not support a change to the bye law. If there are only two vessels currently over 15m (at 15.24m) I do not see the need for such a change. This change will set a precedent, next we'll be reducing to 12m etc".

Officer Comment:

It is a possibility that both individual stakeholders were not fully aware that the two vessels above 15 metres in overall length, that have retained access rights to fish in the District, are considerably larger than 15.24 metres in overall length (up to 25.28 metres). One of these larger vessels does not fish within the District and the vessel that does fish within the District can and does fish outside of the District.

DWT and WAG provided some rationale why they would support a maximum size of 15 metres in overall length for commercial fishing vessels operating within the District. It was the view of DWT that moving to a round metric figure is more relevant to current boat sizes. WAG commented that it seems a sensible, more easily referenced value.

2.2 Grandfather Rights & Sunset Clause

These topics are linked, as those not in favour of retaining grandfather rights for access, would also be unlikely support a period of grace (sunset clause) to enable those affected additional time to adapt for change. The circulated information highlighted that creating a new Size of Vessels Byelaw would not be complete until 2022 at the earliest and will involve more consultation. The notice period of potential change that is afforded due to the length of time it will take to develop and introduce the Size of Vessels Byelaw was recognised in the responses.

Devon Wildlife Trust (DWT)

“Devon Wildlife Trust thinks the current Grandfather Rights should **not** apply. These rights were clearly included in the original byelaw as a method of enabling fishers the time to change vessels to fit the byelaw. The ongoing use of Grandfather Rights in this situation is clearly against the spirit of that byelaw and is likely causing genuine and ongoing harm to habitats and species in the district. This is also undermining the intention of the byelaw to protect fishers with smaller vessels and manage the impacts of fishing”.

Regarding a sunset clause, the views of DWT are as follows:

*“Devon Wildlife Trust thinks a Sunset Clause should **not** apply. The timeline included in the consultation report shows it will take at least one year for the new byelaw to come into force, and that during this period formal notice will be given. This is in addition to the 25 years since the original byelaw came into force, where it was clear that the intention was to only allow smaller vessels within the district. 26 years would appear to be ample notice for this change and any further delay would only serve to further undermine the byelaw’s intention of protecting both the environment of the district but also protecting those fishers who use smaller vessels”.*

Wembury Advisory Group (WAG)

“We think the existing Grandfather Rights should **NOT** apply as they are allowing actual or potential additional and unforeseen pressure on fish stocks and additional damage to seabed habitats. We consider it vital for marine conservation that any impediment to good regulation and control of fishing pressure and habitat damage is resolved as soon as possible”.

Regarding a sunset clause, the views of WAG are as follows:

“A Sunset Clause should **NOT** apply. The process will, as you state, give reasonable notice of the intended change. Any further delay is unnecessary and would allow additional unforeseen pressure on fish stocks and damage to seabed habitats. This would be counter to proper protection of the marine environment”.

Western Fish Producers’ Organisation (WFPO)

“WFPO **do not** think that grandfather rights should continue to apply because it is fairer for the inshore vessels to not allow any of the larger offshore vessels to fish in the inshore when they are capable of fishing offshore. Grandfather rights are designed so that they do not last forever”.

Regarding a sunset clause, the views of WFPO are as follows:

“The process of creating the bylaw gives time for businesses to adapt so a sunset clause is not necessary”.

Individual Stakeholders

One stakeholder suggested that vessel owners operating vessels that have retained grandfather rights should be financially compensated if they are to lose those rights. The other individual stakeholder set out the following views:

*“If the change is made, then grandfather rights **should remain**. There is currently no movement in vessel sales, no one is able to buy or sell at present and the cost to shorten a vessel is prohibitive. This burden should not be foisted onto ordinary fishermen who are already battling to stay in business due to constant and relentless regulatory commitments.*

Regarding a sunset clause, the views of this stakeholder are as follows:

*“If you insist on this change the sunset period **should be included** (which should be) a **Minimum 3 years**. The industry is in its death throws, no new blood is joining, many older fishers are trying to retire but are unable to sell their assets. No boats are selling which means there is no money in the system to recycle into investment. The current regulatory onslaught together with the horrendous 'Brexit' deal has sealed the end”.*

Part 3

3. The Remaining Process – To Introduce the (re-made) Size of Vessels Byelaw

Developing and introducing a Byelaw does take time and a process must be followed. This process includes different elements as set out below and it will extend well into 2022.

- The B&PSC to consider the pre-consultation response
- Officers (with potential assistance of the Byelaw Technical Working Group) will produce a draft Size of Vessels Byelaw
- The B&PSC will examine the draft Size of Vessels Byelaw
- A Mandatory Impact Assessment will be created in preparation for formal consultation
- Communication work will be undertaken to highlight the formal consultation
- Defra will be notified about the intention of the B&PSC to “make” the Byelaw
- Formal Consultation will be undertaken including communication work
- Responses will be collated and documented
- The B&PSC will examine responses, possibly objections, and consider any refinement to the Byelaw
- A Final Impact Assessment will be created
- The “final” Byelaw Package will be submitted to the MMO for quality assurance
- The Byelaw may be approved by Defra
- Further communication work will be conducted
- A Final Byelaw Development Report will be produced that documents the entire process

Further Information & Hyperlinks in this Report

- [Size of Vessels Byelaw – The Formal Review of the Byelaw – Overview & Planning Report \(3rd June 2021\).](#)
- [Officers’ Paper – Agenda Item 9 from 22nd July 2021 – Review of Size of Vessels Byelaw](#)
- [Size of Vessels Byelaw – Have Your Say – Size Restrictions, Grandfather Rights & Sunset Clause \(27/08/2021\)](#)
- [Website News Item – Size of Vessels – Have Your Say \(27/08/2021\)](#)
- [Guide to the Work of the B&PSC](#)
- [D&S IFCA’s Annual Plan for 2021-2022 \(website page\)](#)

End of Report.