

Developing the Size of Fishing Vessels Byelaw

BTWG Recommendations

That the Size of Fishing Vessels Byelaw includes:

- a) a six-month period of grace (Effective Date) before the conditions of the Byelaw applies; and
- b) increased scope for Exemptions that can be issued by the Authority beyond scientific, stocking or breeding purposes (expanded to include Maintenance)

Background

In October 2021, the B&PSC determined that formal consultation 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**

To develop the Size of Fishing Vessels Byelaw (SOFV) to a stage where it can be subjected to formal consultation, the Byelaw Technical Working Group (BTWG) has met on three occasions since October 2021 to undertake the required drafting work.

Drafting by the Byelaw Technical Working Group

The drafting work to date is set out in the supporting information (Draft SOFV Byelaw V0.4).

The Byelaw Technical Working Group (BTWG) has no delegated powers for decision making. During drafting work to date, the BTWG has included elements that are reflected in their recommendations as set out above.

B&PSC Decision Making

1. Effective Date

The current draft Byelaw includes an “Effective Date” (this is effectively a “Sunset Clause”) and the BTWG recommend that this states that the provisions of this Byelaw will come into effect six months after the date the Byelaw comes into force. The rationale for this, provided by the BTWG, is as follows:

The European Convention on Human Rights was incorporated into United Kingdom law by the Human Rights Act 1998. Article 1 of the First Protocol to the Convention, which entitles persons to peaceful enjoyment of possessions, states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Where a State regulator, such as an IFCA, is potentially depriving someone in the general public interest of a 'possession', such as a right to use a fishing vessel, the Court will allow the regulator a 'margin of appreciation' i.e. extra latitude before finding there is a breach of Article 1. Thus, the Convention does not prohibit the imposition of a burden on an individual in the

general interest, simply the imposition of a disproportionate burden; in short a balancing exercise is required. However, this margin of appreciation has its limits.

Colleagues (B&PSC Members) may remember the Court of Appeal decision in the case of [R. \(on the application of Mott\) v Environment Agency \[2016\] EWCA Civ 564. The Environment Agency.](#)

The Environment Agency (EA) in the Southwest decided to significantly reduce the number of salmon that Mott was permitted to catch without paying compensation to him. This breached his property rights under Article 1 because the reduction was disproportionate without payment of compensation. An interference with a person’s “control” of their property on environmental grounds does not necessarily mean that interference can be made without compensation and the principle of “fair balance” will apply. Thus, the Regulator must show the dispossession is proportionate in all the circumstances.

Here it is believed the D&S IFCA can demonstrate proportionality and thus not have to pay compensation due to the facts that:

- *Vessels affected by this prohibition can still be used for fishing outside the District*
- *Some 25 years grace has already been afforded to such vessels*
- *A further short grace period of 6 months is being proposed to allow the owners of such vessels to modify their business practice or to dispose of the vessel*

2. Scope of Exemptions

The current draft Byelaw has an Exemptions provision that states the following:

This Byelaw does not apply to any person performing an act which would otherwise constitute an offence against this Byelaw, if that act was carried out in accordance with a written authorisation issued by the **Authority** permitting that act for maintenance, scientific, stocking or breeding purposes.

The exemptions section includes **maintenance**, and it is for the B&PSC to determine if this should be included in the Size of Vessels Byelaw.

It should be noted that this addition to the standard wording associated with exemptions for Byelaws (scientific, stocking or breeding purposes) goes beyond the advice previously offered by Defra regarding the scope of exemptions (authorisations) that can be issued by the Authority.

The rationale for its inclusion is that it would provide advantages for vessel owners wishing to undertake maintenance within the District; whilst providing the Authority with control regarding what maintenance activity is authorised within the District and where it can be undertaken.

The increased scope of exemptions would enable registered fishing vessels over 14.99 metres in overall length to undertake maintenance activity within the D&S IFCA’s District under the conditions set out in an Exemption to this Byelaw authorised by D&S IFCA.

This would in theory mean that vessels would not have to necessarily travel outside of the District to undertake maintenance work, that would otherwise be interpreted as “Fishing” due to the interpretation of fishing within the Byelaw. Controlled maintenance activity can reduce the carbon footprint of the fishing vessel undertaking the required (and authorised) maintenance.

Remaining Work

The BTWG will recognise the decision making of the B&PSC and adapt the draft Size of Fishing Vessels Byelaw accordingly. The estimated timetable for further work is as follows:

Date/Estimated Time Period	Action	Detail
March 2022	Drafting	Finalise the draft Byelaw
March 2022	Impact Assessment	Officers create the required Impact Assessment to accompany the Byelaw
Mid-April 2022	Notification	Defra are notified that the Byelaw is expected to be “made” by the B&PSC.
May 2022	B&PSC Meeting	The Byelaw is “made” in preparation for formal consultation
May 2022	Formal Consultation	The Byelaw & Impact Assessment are advertised – (Communications plan implemented)
Summer 2022+	B&PSC Meeting	Objections to Byelaw managed/consider potential changes to final version. Final Impact Assessment created.
Autumn 2022	MMO/Defra: Quality Assurance phases.	The Byelaw is quality assured and potentially signed by the Secretary of State

Other Information

[Terms of Reference for the Byelaw Technical Working Group](#)

End.