

Agenda Item 8 - To discuss the required 5 Year review of the Mobile Fishing Permit Byelaw

Background

The Mobile Fishing Permit Byelaw was made in 2013 and came into force on 1st January 2014. The Impact Assessment that accompanies the Byelaw specifies that the main Byelaw will be reviewed no later than five years after it came into force. Therefore, the review of the Mobile Fishing Permit Byelaw must begin before 1st January 2019. This is completely different to the mandatory three-year review of the flexible permit conditions that are issued to fishers.

Structure of the Mobile Fishing Permit Byelaw

The Mobile Fishing Permit Byelaw was the first D&S IFCA byelaw to utilise a permitting model and introduced a mechanism to allow separate permit conditions to be issued to fishers. To avoid sub delegation issues, every element of the overarching Mobile Fishing Permit Byelaw is effectively fixed. Elements of the Byelaw include:

- **Interpretations (definitions)**
- **Prohibitions (who needs to have a permit)**
- **Deeming Clause**
- **Permits (Application requirements/Issue/Fees)**
- **“Fixed” Permit Conditions (introduces IVMS and the potential to supply relevant fisheries data)**
- **Flexible Permit Conditions (outlines the scope of the separate flexible permit conditions)**
- **Review Procedure (outlines the requirements and process to review flexible permit conditions)**

What needs to be changed and why?

It is possible that the formatting, structure and wording of the Byelaw will be amended. The recent review of the flexible Mobile Fishing Permit Conditions (and the legal advice during re-drafting of permit conditions) has highlighted a need to amend several elements of the “source” wording such as removal of the Deeming Clause. A recent investigation and subsequent court case has also identified a need to re-examine the interpretations that were originally used.

Process

This review has the potential to be relatively complex. The Byelaw will need close scrutiny and all potential weaknesses (and suggested amendments) will need to be highlighted. As with the creation of a new byelaw, the potential changes will require wide ranging consultation. The whole process will be fully documented so any impacts of potential changes can be recognised and considered.

Expectation

It is not expected that the outcome of the Mobile Fishing Permit Byelaw Review will result in a major change in how D&S IFCA manages mobile fishing; instead the review should enhance the approach taken and enable this relatively old permit byelaw to be updated and ensure the legislation supports the management D&S IFCA has in place.

How to proceed?

Different options exist. The Sub-Committee have the opportunity to discuss the issue as a whole group and also identify elements of the Byelaw that need amendment. Alternatively, a “working group” including officers could be established with the requirement to set out the suggested changes, the reasons for those changes and report back to all the members.