

Agenda Item 9 - To discuss the already introduced Emergency Application Byelaw

What does an Application Byelaw achieve?

An Application Byelaw should provide the Authority with the opportunity to consider whether to relax any Byelaw that it has made or can enforce. A Byelaw of this type can then be used by the Authority to relax a named Byelaw and authorise activities (exploitation of sea fisheries resources) to enable the Authority to further its understanding of marine fisheries (Scientific purposes) or to support the development of fisheries in the District (in our case – Aquaculture). In practice, requests are received by D&S IFCA which are then considered and dispensations (authorisations) are then issued to allow certain activities to be undertaken providing the Authority continues to seek to ensure that it meets its duties set out in section 153 of the Marine and Coastal Access Act.

Why was the Emergency Byelaw Introduced?

An Emergency Byelaw can only be made if the need to make a “permanent” Byelaw could not reasonably be foreseen. In this case the D&S IFCA prosecuting solicitor advised the Chief Officer that the original Application Byelaw was no longer fit for purpose. The original was not detailed enough, lacked sufficient structure and the wording within it lacked clarity. In addition, as this was an old legacy measure, there was no Impact Assessment to accompany it which would have documented the rationale and intended scope of the Byelaw.

What needs to be done and why?

The Emergency Application Byelaw came into force on 9th May 2018. Section 157 of the Marine and Coastal Access Act 2009 specifies that it can remain in force for a period of twelve months unless revoked or extended. Although it is possible, with the approval of the Secretary of State to extend this period (only once) by six months, there is an expectation that D&S IFCA should create a byelaw to replace it.

The Emergency Application Byelaw currently makes it clear that consent can be gained for:

- a) scientific purposes or
- b) stocking purposes or
- c) breeding purposes

The process of creating a permanent replacement also allows for other considerations such as heritage or tradition with controlled non-commercial mobile fishing activity by sailing trawlers being a good example.

How to proceed?

It is possible that the formatting and structure of the Emergency Byelaw will be amended. There may be need to refine the current interpretations. There may be need to amend the application and consideration process or possibly develop an appeal procedure.

As with the creation of any new byelaw, D&S IFCA will follow the Byelaw Making Guidance from Defra. This will include consultation and the pre-consultation (and response) may help members develop the scope of the Application Byelaw? The development of an Impact Assessment will help to fully document the rationale for this new Byelaw and the options that will be considered throughout its development.

Members have the opportunity to discuss the development of the Application Byelaw and highlight any issues at all Sub-Committee meetings. Members may have early thoughts on what the Byelaw should deliver, how consultation should ideally be conducted and expectations over the anticipated time frame. Legal advice can and will be taken during the process.