



# A Guide to the Work of the Byelaw & Permitting Sub-Committee

- Why have a Byelaw & Permitting Sub Committee?
- What do they do?
- Why do they review the management of fishing activities?
- Why do they make new byelaws?
- How are permit conditions made?
- Why are permit conditions reviewed?
- How are permit conditions reviewed?
- How can you get involved?
- How will you be kept informed?

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# D&S IFCA Information Guide

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# D&S IFCA Information Guide

## 1. Purpose of Guide

The purpose of this guide is to help stakeholders and members of the Authority understand some key elements of the work conducted by the Devon & Severn Inshore Fisheries & Conservation Authority's (D&S IFCA) Byelaw and Permitting Sub-Committee (B&PSC).

## 2. Why have a Byelaw & Permitting Sub-Committee?

The primary function of the B&PSC is to support the delivery of this task so D&S IFCA is able to complete its functions as set out in section 153 of the Marine and Coastal Access Act 2009. A review regarding the management of different fishing activities (which has the potential to lead to the creation of byelaws), is often a lengthy and complex process. If any new permit-based byelaw is created, the same complexities can exist if and when permit conditions (conditions of use for fishers) need review or amendment.

The work does require some specialised skills and background knowledge. This Authority has created the B&PSC to conduct this type of work on behalf of the full Authority. The B&PSC is formed by a number of Full Authority members, each offering a different set of skills or background knowledge that is utilised to complete the required work. Full Terms of Reference for the B&PSC have been produced, agreed by the Full Authority and published on the D&S IFCA website. A list of the people who make up the full Authority is also posted on the D&S IFCA website.

## 3. Membership, Quorum and Powers

### Membership of B&PSC

- 14 members in total
- Membership includes 2 representatives of the funding Authorities (Councillors)
- 2 Statutory Appointees (Natural England and Environment Agency)
- The Chair and Vice-Chair will be ex-officio members of the B&PSC
- Other members may be co-opted as and when this is considered to be appropriate
- Any member of D&S IFCA may attend a meeting as an observer

### Quorum

- 8 members from the total membership are required at any meeting to allow voting to take place.

### Delegated Powers

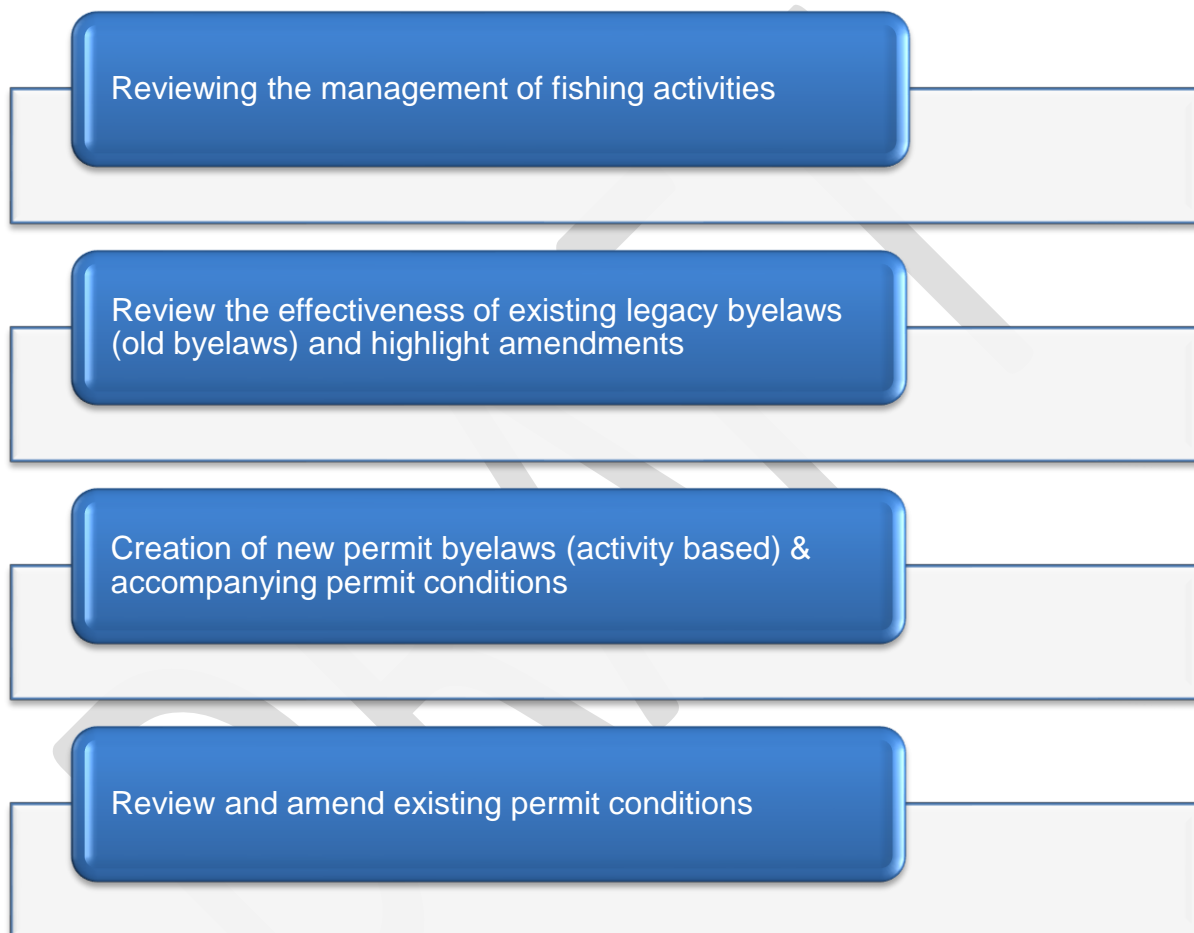
The Authority has delegated powers to the B&PSC to complete the required functions. Although officers can and will provide technical advice, they will not take decisions at any time.

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## 4. What is the core work and why do it?

D&S IFCA has statutory duties as specified within the Marine and Coastal Access Act 2009 (MaCAA). The Act contains several sections relevant to IFCA working; however, Section 153 (Management of Inshore Fisheries) and Section 154 (Protection of Marine Conservation Zones) are of particular significance. As a result, the core working as set out below must be achieved.

### Core Work



- Officers prepare material which is used by the B&PSC for their deliberations (meetings).
- The work of the B&PSC is reported to the Full Authority at Quarterly Meetings
- ***D&S IFCA would be failing in its duty if it does not manage the exploitation of sea fisheries resources in its district.***

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## 5. Strategy and Principles

To recognise the duties of the D&S IFCA as specified in MaCAA, and in order to develop a strategy to review the management of fishing activity, overarching principles have been established. In formulating these principles, factors such as the Hampton Review have been considered. The principles underpin the work which may lead to the development of new byelaws. Key principles of the most relevance include the following:

- A pre-cautionary stance must be taken where required to secure compliance with the UK's international Treaty obligations.
- To avoid permit limitation/creation of a private fishery
- Remove laws which have become irrelevant from the statute book (Hampton Review);
- Consider alternative management approaches (gentlemen's agreements and codes of conduct);
- Use the wider byelaw making powers provided by MaCAA;
- To use emergency Byelaws as a last resort.

Byelaws are put in place to manage the fisheries within the District and are local measures specific to D&S IFCA's District. D&S IFCA inherited many byelaws from the predecessor organisation (Devon Sea Fisheries Committee); however, the responsibilities for the D&S IFCA have been increased and are more extensive to those of Devon Sea Fisheries Committee.

Inherited byelaws must be examined (reviewed) against the criteria within the relevant sections of the Act in regard to, are they fit for purpose? Any new byelaws that are created must take the statutory duties into account. Section 156 of MaCAA provides the opportunity for D&S IFCA to create permit-based byelaws.

Since 2011, the Authority has taken a view that a traditional model of byelaw making (in most circumstances) does not provide a suitable management structure. Inherited byelaws were identified as being too rigid to fit an ever-changing situation. The B&PSC has utilised Section 156 of MaCCA and formulated a strategy for byelaw work as follows:

- ***To adopt an activity-based byelaw model;***
- ***To use permit-based byelaws.***

In formulating this strategy other principles have been adopted as follows:

- ***When possible, make the legislation easier to understand;***
- ***Encourage legitimate activity removing illegal, un-licensed and un-regulated fishing activity;***
- ***Recognising that sustainable development is where the management of the fishing activities seeks to maximise the social, economic and environmental benefits in the medium and long term;***
- ***New byelaws should ideally achieve behavioural change and high compliance;***
- ***Draft legislation so that it assists with enforcement;***
- ***The cost of a permit will be £20 (for administration);***
- ***To conduct wide ranging consultation;***
- ***To be open and transparent with information;***

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- *To fully document decision making.*

All of the principles are important and some become more relevant if a byelaw is created. It is important that several are further explained and better understood.

- **Consider alternative management approaches (Options for Management)**

*In recognising the Hampton Review, alternatives to legislation are considered. Options for management are discussed at the early stages of byelaw development by the B&PSC. These considerations are documented. Voluntary measures are obviously a weaker form of management than legislation. The risk of non-compliance and the effects of non-compliance are key considerations.*

- **A pre-cautionary stance can be taken**

*D&S IFCA aims to collect the best available evidence during the process of reviewing the management of fishing activities, creating new byelaws and also reviewing management measures already established in existing permit-based byelaws. Good evidence assists decision making. Where evidence is lacking, the D&S IFCA must take a pre-cautionary approach in regard to the content of a byelaw (or control measures via permits) so it meets its statutory duties and the objectives of the Byelaw.*

- **Consideration of Duties (Health and Safety)**

*The duties of D&S IFCA are set out in the Marine and Coastal Access Act 2009. These duties do not extend to consideration in regard to health and safety. Fishers must make their own judgement in regard to their own safety when undertaking fishing activities.*

- **Draft legislation so that it assists with enforcement**

*Legislation has to be able to be enforced. The provisions within the permits (if a permit-based byelaw is created) are drafted so the D&S IFCA can realistically enforce the measures. Historically, "loop holes" have been created by accident and these are sometimes exploited. By using permits, catch restrictions can be implemented to achieve what in effect is a deeming clause. Fishers make a choice when considering applying for a permit and in doing so will be bound by the conditions within the permit. The fisher has a choice to either accept the conditions of the permit or can choose not to have a permit and not fish in the Authority's district.*

- **Not to limit permit numbers and to issue different types of permits**

*The D&S IFCA has taken the view that permits issued for fishing methods should not be limited, thereby creating a private fishery as fish is a public resource available to everyone. Control of different fishing activities will be achieved via the conditions in the permits rather than limiting the overall number. Limiting permit numbers provides difficulties in deciding who initially has access to the fishery; it can create an economic advantage for those issued with the permits, it blocks the path for new entrants wanting to enter the fishery and provides complications in regards to managing waiting lists for permits.*

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- The cost of a permit will be £20 (for administration)

*The permits that are currently issued via D&S IFCA Permit Byelaws are £20 for a two-year period. This fee is for administration only and is not an attempt at full cost recovery. The Authority has suggested that once the complete suite of activity-based byelaws is active, then the burden placed on the Authority and the £20 permit fee can be reviewed.*

## 6. Creation of New Byelaws and Impact Assessments

Firstly, it is important to recognise that D&S IFCA Byelaws cannot be less restrictive than domestic and EU legislation. These forms of legislation take precedent over the Byelaws. New D&S IFCA Byelaws (and the associated Permit Conditions) can't be introduced if measures contained within them allow an activity to take place when in fact it is prohibited under national or EU legislation.

Defra have provided guidance on the process to be followed when creating a new byelaw which is followed exactly by the B&PSC.

Early stages for the work of the B&PSC involve significant planning. Considerations include reviewing relevant legacy measures, examination of principles, and development of communication initiatives.

In terms of process, there are separate phases of development. The different phases require different types of work, all of which are well documented, published and circulated when required. The full Authority participates in the process at necessary key stages.

### Gather Information

- The D&S IFCA seeks views of stakeholders.
- The D&S IFCA conducts research and makes use of previous research
- The D&S IFCA begins work on the Impact Assessment
- Options are considered (via meetings of the B&PSC)

### Make a Byelaw

- Obtain legal advice
- Issue notice
- Present information
- Make a Byelaw (Byelaw still in draft but is suitable for consultation)

### Consultation (formal)

- Advertise the Byelaw for Consultation
- Consider responses
- Respond to the responses



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## Confirmation

- Finalised version of Byelaw (agreed by Full Authority) sent to the Marine Management Organisation (MMO).
- The MMO quality assures the byelaw including determining whether the correct process has been followed. (Defra's IFCA Byelaw Making Guidance) and assessing the evidence.
- Application for confirmation of the Byelaw will be made to the Secretary of State

Every five years all Permit Byelaws are subject to a review.

## **Impact Assessment**

The D&S IFCA has to create an Impact Assessment to accompany the creation of any new byelaw. The Impact Assessment has different stages of development with the first version developed for the "formal consultation" phase. A final version is developed in preparation for the "confirmation" phase.

The Impact Assessment documents the rationale for the creation of a new byelaw. Best available evidence is used to assess social and economic impact. Key monetised and non-monetised costs are explored. The Impact Assessment is made publicly available throughout the byelaw creation process with an on-line version posted on the D&S IFCA website. The formal consultation phase tests the documented evidence and additional evidence is added and considered.

## **7. Permit-Based Byelaws**

Permitting byelaws provide the Authority with a flexible, adaptive approach to management and has become the chosen model when legislation is required. The new permitting byelaws can replace multiple legacy byelaws related to a particular activity. Another immediate advantage of permit-based byelaws is that it provides the D&S IFCA with a known number of fishers involved in a particular fishing activity. The application process captures the details of fishers. The resulting data base allows for direct communication with all permit holders.

Permit based byelaws introduced to date include:

- Mobile Fishing Permit Byelaw
- Potting Permit Byelaw
- Diving Permit Byelaw
- Netting Permit Byelaw

## **The Structure of the Permit Based Byelaws**

The D&S IFCA Permit Byelaws provide a platform for the issue of permits containing conditions of use. The overarching byelaw includes interpretations, prohibitions, fixed provisions (such as fees) and list different categories of management control as follows:

- Catch restrictions



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- Gear restrictions
- Spatial restrictions
- Time restrictions

These categories are used to organise the conditions of use within the permits that are issued. The complexity of spatial management can be simplified by the use of annexes (charts) that are also issued with the permits.

Permit based byelaws allow separation of different users (fishers) or slightly different types of fishing activity to be managed by a single byelaw. Separation is achieved by the issue of separate categories of permits dependent on the activity being managed.

For example, the Mobile Fishing Permit Byelaw manages commercial activity such as trawling and scallop dredging; however mobile fishing activity is divided between “at sea” fishing and “estuary” fishing and two types of permits are therefore issued. The other permit-based byelaws often separate commercial fishers and recreational fishers, with the permit’s conditions of use proportionate to their needs.

The Authority has taken the view that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to secure the correct balance for different fishery users who have different needs. The Authority has taken the view that recreational catch restrictions are appropriate and proportionate measures to apply

The permitting byelaw model has introduced the flexibility needed by setting out part of the management in the permit conditions rather than in the byelaw itself. Those affected by the legislation are safeguarded by the introduction of an open and inclusive management review system within the byelaw that describes the process by which changes to permit conditions will be made.

## 8. Permitting Byelaws and Review of Conditions

Once a new permit byelaw is in place, it offers some advantages as opposed to the traditional byelaw model. Internal and external research work can inform management and the mechanism in place allows for D&S IFCA to react to changes in a timelier manner. This is of particular importance for the D&S IFCA to recognise its environmental responsibilities. In addition, developments in new technologies can be implemented when systems (such as vessel monitoring systems) are considered fit for purpose.

As with byelaw creation, a review of permit conditions does present a significant amount of work for the B&PSC and Officers. The formulation of management proposals, conducting consultation, summary work, building and documenting evidence bases and assessing impact of potential changes to management are all required in a review of permit conditions.

D&S IFCA has a duty to review all of the flexible conditions (per byelaw) at least every three years but can review conditions within a shorter time period as considered necessary. Any new permit byelaw (the whole byelaw) needs to be reviewed within five years.

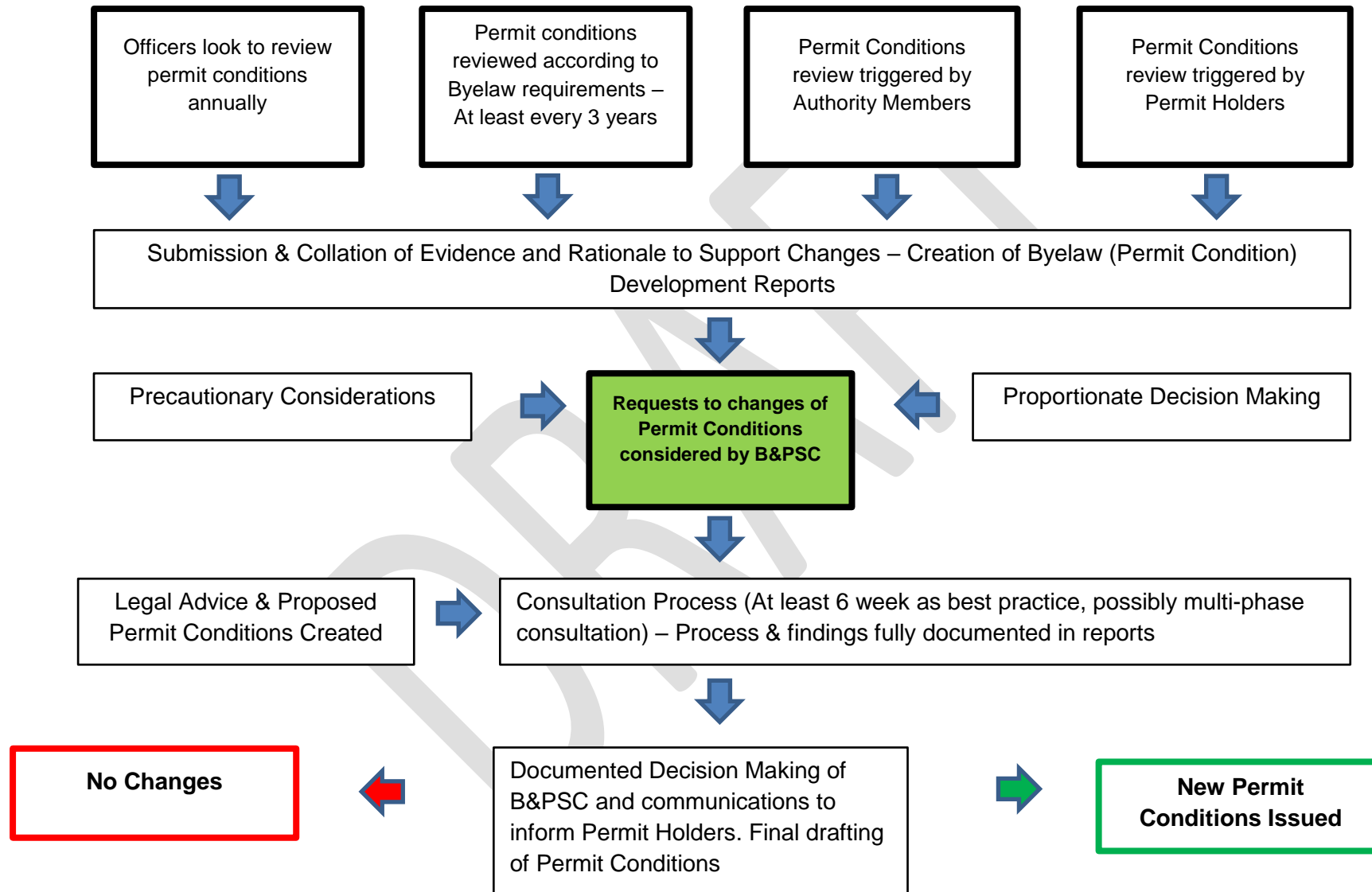
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A review can be triggered at any stage and in a variety of ways as set out in the diagram on the following page.

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Diagram 1: Permit Condition Review Procedure – Trigger Mechanisms (Simplified Process)



## 9. How can a fisher/stakeholder trigger a review of permit conditions?

As documented in the permit-based byelaws and demonstrated in Diagram 1, fishers do have the opportunity to trigger a review. Any change to any permit condition is not a simple process. As with byelaw creation, a review of permit conditions does present a significant amount of work for the B&PSC and Officers. The building and documenting of evidence bases, formulation of management proposals, conducting consultation, summary work and assessing impact of potential changes are all required in a review of permit conditions.

Changes to permit conditions can be submitted by stakeholders (including permit holders) and then considered by the B&PSC; however, there are several factors that must be considered;

- What changes are you suggesting?
- Why? - What is your rationale?
- Who will be affected?
- What impact will these proposals have on others?
- What supporting evidence do you have to present?
- When would you like to see changes made?

### **Poor Evidence**

Ideas or proposals not supported by clear rationale and/or evidence is far less likely to be considered. Examples would include suggestions that are less restrictive than EU or domestic legislation. It is just not possible for D&S IFCA to create permit conditions that are less restrictive than EU or domestic legislation.

Another example would be a suggestion that is solely supported by a petition (list of names/signatures only). Whatever the topic of the petition, corroboration with those on any such list would be needed to even consider the matter.

### **Timing**

Fishers should consider the timing of their amended permit condition proposals. Each Permit Byelaw has to be reviewed every five years and at these intervals the Authority will consult with all stakeholders (includes permit holders). Permit conditions for each method must be reviewed every three years and again this will involve significant amounts of communication (consultation). A request for permit condition change outside of these periods is not impossible; however, the Authority has to consider its resources and the time taken to conduct consultation work. Any potential changes to permit conditions would (as best practice) require a six-week period of consultation which would include notifying all existing permit holders.

Stakeholders (including fishers/permit holders) should be aware that their proposals for permit condition change should not be a repeat of an item or topic recently highlighted and subjected to a consultation unless significant new evidence has been provided to justify the work needed.

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## 10. Communication (members and other stakeholders)

Communication the work of the B&PSC is of upmost importance. Communication (consultation) with stakeholders is vital, but so too is internal communication such as updating the full Authority with progress of the work and providing all members with a clear understanding of process followed.

Many communication initiatives have been used since 2011, which have included the following:

- Information flyers
- Direct notification to permit holders
- Mobile presentation events
- Meetings and presentations
- Multi-media (D&SIFCA website and twitter)

Transparency with information and the rationale and outcomes of decision making is key and forms part of the D&S IFCA 2018-19 Annual Plan. Not only are minutes taken during B&PSC meetings but these and officer papers (produced for members) are posted on the D&S IFCA website.

With the endorsement of the B&PSC, a new byelaw communication concept has been developed that will better inform both members and also stakeholders of developments and process.

Members will continue to receive stand-alone papers when required, and it is possible that some information may be duplicated; however, whenever possible, they will receive more complete progress reports that document all aspects of either review work devoted towards managing fishing activity, byelaw creation or byelaw review work/permit condition review work. An example of a review of permit condition report is shown below:



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A different report is created per subject. Within these reports the complete process is documented from start to finish. The different reports are built over time with new information added at different stages of development, often in the form of supplements that document the findings of consultations or multiple consultations.

During byelaw creation a similar approach can be taken, with members able to use the material to aid their decisions at key stages.

Although the byelaw reports will be circulated directly to members, the reports<sup>1</sup> will also be placed on the D&SIFCA website to inform a wider audience. Electronic versions of each report are more extensive than paper versions as imbedded material (hyperlinks), which do include environmental evidence bases, can then be utilised by readers. The reports help members assess the potential impact of their decision making and in effect act as the Impact Assessments that are required when a review of permit conditions takes place.

Officers will still continue to provide verbal updates at meetings and often conduct focussed presentations; however, agenda items can now be directly linked to the relevant sections of the appropriate reports and these reports will provide members with instant access to all relevant reference material.

End of Guide

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<sup>1</sup> With possible editing to protect sensitive information