



Byelaw & Permitting Sub- Committee Meeting

Draft Minutes from 20th
October 2022

Version Control and Drafting

Date	Comments
Version 0.1 9 th November 2022	1 st Draft of minutes developed by PPO Townsend for circulation to Officer's present at the meeting for potential internal amendment and/or additions.
Version 0.2 25 th November 2022	Internal edits – circulation to B&PSC Members for initial review.
Version 0.3 19 th December 2022	Minor amendments applied to recognise initial feedback from Members. Draft minutes 0.3 published on website.

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Minutes of the Byelaw and Permitting Sub Committee Meeting
Held at Newton Abbot Racecourse on 20th October 2022

Present:

Dr Emma Bean (Chair)	Professor Mike Williams	Rachel Irish
Dr Pamela Buchan	Jon Dornom	Felicity Sylvester
Simon Toms	Wayne Thomas	Guy Baker
David Morgan	Cllr Alistair Dewhurst	Simon Thomas
Cllr Nicole Amil	Mark Day	

Present (officers): Chief Officer (CO) Mat Mander, Deputy Chief Officer (DCO) Sarah Clark and Principal Policy Officer (PPO) Neil Townsend

Public Observing: None

Action Items:

Agenda Item 1

Apologies for Absence

PPO Townsend read out the list of apologies, which included Dave Saunders and Caroline Acton. PPO Townsend reported that it was unclear if Cllr Richard Bingley (Plymouth City Council) or Jay Boyle (Natural England) would be attending the meeting.

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Agenda Item 2

Declarations of Interest

David Morgan and Jon Dornom declared an interest regarding agenda item 8 and Mike Williams declared an interest in agenda item 6. It was clarified that the interest declared by Mike Williams was not a pecuniary interest.

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Agenda Item 3

To consider and approve the draft minutes of the B&PSC meeting held on 9th June 2022.

The Chair invited those who were present at the last meeting to raise any issues associated with the accuracy of the draft minutes from the June meeting and the minutes were then examined page by page. Mike Williams suggested single word changes be applied on pages nine and ten which were noted by PPO Townsend. With no other amendments a vote was taken.

That the minutes provide a true and accurate record.

Proposed: Mike Williams

Seconded: Pamela Buchan

In favour: 9

Against: 0

Abstain: 5

Felicity Sylvester commented that the B&PSC meetings are rarely attended by members of the public and asked how the B&PSC meetings were advertised. In her view, more should be done to alert fishers that the

meetings were taking place. CO Mander explained that the B&PSC meetings (agenda and papers) are always advertised on the D&S IFCA website and Cllr Dewhirst added that this form of notice is to be expected from an organisation like D&S IFCA and there is nothing wrong with that approach. CO Mander informed Members that the use of technology to film and record the meetings is a potential consideration for the full Authority in the future and this may suit the public who may not be able to attend meetings in person. Cllr Dewhirst commented that the minutes being produced as a record of B&PSC minutes are more detailed than any other meetings he attends. Members commented that video or sound recording meetings may reduce the need for such detail in the written minutes. PPO Townsend commented that although that might be the case, the detail in written format is of benefit for many reasons, including development of Impact Assessments and Byelaw Development Reports. Wayne Thomas commented that in his view the written detail should not be lost, as the minutes provide context and depth to the discussions and decision making.

Pamela Buchan (Chair of D&S IFCA Governance Working Group - GWG), highlighted that a range of communications will be discussed by the GWG in November and that adequate notification of meetings can be one of the topics.

Agenda Item 4

Matters requiring urgent attention

The Chair consulted with CO Mander and there were no matters requiring urgent attention.

Agenda Item 5

Members of the public – questions or comments for the meeting

The Chair consulted with CO Mander and there were no independent questions or comments from members of the public to consider.

Agenda Item 6

The Mobile Fishing Permit Byelaw 2022.

Impact Assessment & Making of the Byelaw

Presentation

CO Mander highlighted that the review of the Mobile Fishing Permit Byelaw began in 2019. During that time the B&PSC had considered different information presented to them and the drafting work, as presented, recognised previous decision making of the B&PSC. CO Mander explained that to proceed with the byelaw making process, Defra's Byelaw making guidance requires the creation of an Impact Assessment (IA) to accompany the Byelaw in a formal consultation. CO Mander explained that the IA template is more suited to larger government projects which is why some parts of it, such as boxes for detailed financial information, were not populated with information. CO Mander informed Members that the narrative within the IA is focussed on explaining the content and key changes within the Byelaw as compared to the existing Byelaw, and as far as possible, to explain what the impact of these changes represent to different stakeholders. As an example, CO Mander highlighted the sections of the IA that focus on an increase in fees for a permit and the suggested increase in the fees, from £20 per two years to £40. CO Mander clarified that the IA provides a reader with rationale for change, rather than the rationale for the continuation of specific management

measures. Mike Williams highlighted that he had noted some grammatical errors and would send Officers some suggested amendments to wording in relation to heritage asset sites. The Chair highlighted that whilst Members could highlight grammatic errors to be addressed by Officers when preparing the IA (to be used in the formal consultation), it would be more beneficial if discussions focus on the substance of the IA and the associated Byelaw and the Permit Conditions.

Debate, Questions & Comments

Communication and Advertising:

Pamela Buchan asked a series of questions relating to the structure of the IA and from a communication perspective, its effectiveness at explaining areas of change to stakeholders. PPO Townsend explained that although the IA serves a purpose to inform an audience about change, it is rigid in its style and construction; however, D&S IFCA will be able to expand communications beyond the mandatory requirements, (which include the creation of an IA, and to advertise the making of the Byelaw in newspapers). PPO Townsend said that a range of communication initiatives are available and will be used to help complement the IA, Byelaw and Permit Conditions (as a package) during formal consultation. The additional communication material, and the clarity that this may provide, is likely to be more effective at raising awareness of the Authority's intention to implement the new Byelaw and the opportunity that will exist for stakeholders to submit responses that may be letters of objection or support.

Pamela Buchan and Felicity Sylvester raised some concern relating to the formality of placing "old school" types of notices in newspapers and highlighted that, in their view, a notification highlighting the "opportunity to object" is an overly negative message. CO Mander responded by saying that this is a requirement of the formal process set by Defra. Regarding negative messaging and responses, CO Mander said that the consultation responses for Byelaw making are typically from those that do not support the making of it (or elements of it or the Permit Conditions). CO Mander added that it is possible that some responses will be more positive and highlighted the use of bold italic font within the Byelaw and Permit Conditions (to clarify the use of key words) as one example that may be seen as a positive by a wider audience. PPO Townsend added that all responses will initially be collated by the MMO, and D&S IFCA will be sent a copy of those responses. CO Mander assured Members that all responses will be examined by Officers and the B&PSC will consider the outcome of the formal consultation which may or may not lead to changes to the Byelaw (and Permits) based on the evidence provided. Cllr Dewhirst commented that he found the IA difficult to fully understand, and therefore welcomed the additional communication work that may help a wider audience understand what is being proposed and how to comment.

Fees for a Permit

In terms of the content of the IA, Cllr Dewhirst raised concern about the suggested level of fees for a permit and how this had been explained in the IA with the expectation that fees will remain stable for the lifetime of the Byelaw. Whilst recognising that previous B&PSC decision making had been influential in developing the proposed fee of £40, Mike Williams agreed that in the current financial climate, greater flexibility surrounding fees may be of benefit to the Authority. PPO Townsend clarified that the wording in the Byelaw did not limit fees (as the Byelaw does not state an exact amount payable for a Permit) and CO Mander explained that the IA should ideally provide stakeholders with some certainty regarding financial impacts. Jon Dornom commented that although £40 for a single permit is not unreasonable, costs can escalate for fishers who require more than one Permit to conduct more than one fishing method. Members including David Morgan, Mark Day and Pamela Buchan agreed with Cllr Dewhirst and Mike Williams that whilst some certainty is needed for fishers, there should be an opportunity for the Authority to develop a Policy that would enable the costs of a permit to be reviewed if required during the lifetime of the Byelaw. CO Mander confirmed that the IA would be amended to set out this intention and that it was possible for one of the future B&PSC meetings to focus on a review of fees if the Byelaw is implemented. Regarding the initial fee of £40, CO Mander clarified that this amount had been calculated based on a number of factors (a cost analysis) and £40 would cover existing administration costs at this time.

Exemptions Clause

Members asked questions relating to the Exemptions Clause in the Byelaw and commented that the IA could better explain the positive impact this would have at reducing climate change. CO Mander commented that the Exemptions Clause will go beyond the typical approach of limiting authorisations (for activity that would otherwise be a breach of the Byelaw or Permit Conditions) to stocking, breeding, or scientific purposes. Although the inclusion of “maintenance” is increasing its scope, CO Mander explained that this addition has clear environmental benefits which may be accepted by Defra as good reason for the increased scope. The exemptions clause will allow controlled maintenance to be undertaken with an authorisation and, as recognised in previous discussion by the B&PSC, will to some degree limit carbon emissions as vessels will not necessarily have to travel outside of the District to undertake maintenance. Pamela Buchan added that although the link to carbon reduction is not the only driver for this potential increase in the scope of the Exemptions Clause, slightly more emphasis and a rearrangement of the text within the relevant paragraphs of the IA may help to better demonstrate the positive link with Government Policy. PPO Townsend responded and said that although there are references within the IA to the objectives (climate change) in the South and the Southwest Marine Plans, the relevant sections in the first part of the IA can be amended to make this link clearer and better explain the positives.

Sand Eels

Simon Toms highlighted a spelling error regarding the scientific name for sand eel in the Byelaw. In terms of the management of sand eel trawling activity, Simon Toms highlighted the risks associated with the potential expansion of this fishing activity within the District and how it would be managed as a Schedule in the Byelaw, rather than as an activity covered by the Permit Conditions. In addition, Simon Toms asked for some clarity on data collection relating to sand eel catches and how this would be achieved. Concern was raised regarding the awareness of fishers to adhere to Byelaw restrictions, as opposed to Permit Conditions and Simon Toms highlighted the prohibition on sand eel trawling on areas of sea grass as an example of a restriction that may not be fully recognised. PPO Townsend commented that Officers do help fishers to understand existing restrictions as well as potentially new restrictions if they come into force. Simon Toms also raised concerns that bait shops in Cornwall are now being supplied with sand eels from Devon as it was believed that sand eel levels had declined in Cornwall. DCO Clark requested further information from Simon Toms which he agreed to provide outside the meeting.

Members including Mike Williams and Wayne Thomas highlighted the importance of sand eel as a sea avian food source and questioned if the management measures (in the Byelaw) are sufficient if there are issues with a potentially emerging fishery.

CO Mander explained how Officers had recognised previous discussions of the B&PSC regarding how to manage this activity and the complications that were experienced during drafting to accommodate the management of this activity. CO Mander explained that at this time, there is no evidence to suggest that the activity is growing, and that DCO Clark had provided some data on sand eels at previous B&PSC meetings. CO Mander stated that on balance, the use of a Schedule (with listed restrictions) had become the favoured option and offered a better form of management as compared to the existing situation. PPO Townsend added that the ability to collect data from fishers is not limited to permit holders; however, there is weakness associated with determining the exact numbers of commercial and recreational fishers that may conduct the activity (subject to the provisions in the Byelaw).

CO Mander clarified that the formal consultation would offer the opportunity for responses relating to the activity of sand eel trawling and how it is proposed to manage this activity.

Category One Permits

Mark Day highlighted the restriction on engine power and dredges as set out in Section 3.1 of the Category One Permit Conditions. Mark Day explained to Members that restrictions relating to engine power have weakness and asked how Officers would enforce this restriction. CO Mander highlighted that this restriction, although reworded as compared to existing restrictions, is not an addition to the Category One Permit. Regarding enforceability and determining engine power (if there was a breach of the legislation), CO Mander explained that a vessels' Certificate of Registry would be the point of reference.

Decision Making

With no other comments or questions the Chair asked if any Member would like to propose motions for agenda item (6a) and (6b) based on the Officers' recommendations and the discussion at the meeting.

That the Impact Assessment (subject to amendments highlighted by Members) is approved for use in the formal consultation

Proposed: **Mike Williams** **Second: Pamela Buchan**

There were no amendments offered and the motion was put to the vote.

In favour: **All (14)**

That the B&PSC makes the Mobile Fishing Permit Byelaw 2022 and proceeds with formal consultation on the Byelaw and the associated Permit Conditions

Proposed: **Mike Williams** **Second: Simon Toms**

There were no amendments offered and the motion was put to the vote.

In favour: **All (14)**

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Agenda Item 7

The Size of Fishing Vessels Byelaw 2022

Impact Assessment & Making of the Byelaw

Presentation

CO Mander ran through the content of the Officers' paper. It was explained to Members that since this workstream began, one of the large fishing vessels that would have been impacted by the introduction of the Byelaw now had new owners, therefore reducing some of the impact that this Byelaw would have on that vessel, since the 'grandfather rights' on size exemption ended on change of ownership. CO Mander explained that an Impact Assessment (IA) had been prepared to accompany the Byelaw in a formal consultation. As with the IA for the Mobile Fishing Permit Byelaw, the IA is created on a template and has some blank sections (boxes) that Officers do not have the information available to them. CO Mander emphasised that the key objectives and rationale for the making of the Byelaw are explained in the IA, but in this case, the Byelaw and its function is far less complicated as compared to mobile fishing. CO Mander highlighted that the proposed size for commercial vessels (Relevant Fishing Vessels) is 14.99 metres in overall length and this size presents no impact to the current inshore fleet, as they are all below this size. CO Mander explained that the exemptions clause in this Byelaw also included a provision for maintenance; however, in this case the provision is potentially beneficial for vessels larger than 14.99 metres, many of which operate from Brixham or Plymouth.

Debate, Questions & Comments

The Chair invited comments and questions from Members. Mike Williams responded to questions relating to grandfather rights and drew on his legal experience to explain elements of human rights legislation and case law. It was explained to Members that the Byelaw has been drafted to include a delayed effective date, which was recommended for inclusion by D&S IFCA's Byelaw Technical Working Group. Members recognised the relative simplicity of the Byelaws content, and the lack of response to date in pre-consultation. PPO Townsend added that where appropriate the IA could be amended to correct minor grammatical errors that had been spotted and re-arrangement of text relating to the exemptions clause (climate change) as per comments made in agenda item 6.

Decision Making

The Chair asked if any Member would like to propose motions for agenda item (7a) and (7b) based on the Officers' recommendations and the discussion at the meeting.

That the Impact Assessment (subject to amendments highlighted by Members) is approved for use in the formal consultation

Proposed: Wayne Thomas **Second:** Simon Toms

There were no amendments offered and the motion was put to the vote.

In favour: All (14)

That the B&PSC makes the Size of Fishing Vessels Byelaw 2022 and proceeds with formal consultation on the Byelaw

Proposed: Mike Williams **Second:** Simon Toms

There were no amendments offered and the motion was put to the vote.

In favour: All (14)

Agenda Item 8

Report on the pressures and risks to the static gear fisheries in D&S IFCA's District

Presentation

As set out in the Officers' paper, CO Mander explained that a request had been made by the South Devon and Channel Shellfishermen (SD&CS) to raise this matter as an agenda item at the B&PSC meeting. CO Mander explained that the concerns raised include different elements that are complicated, but in summary related to the following:

- An expansion in effort to catch crab in EU waters, with an expected tonnage allowance for catch that is below current levels of landings.
- The risks that this may result in more vessels shifting effort into inshore areas (a Displacement Issue)
- The differences in vessel efficiency due to different build or design.
- Examples of increased competition for resources in Cornwall IFCA's District and an increase in total effort directed towards inshore shellfish

- Uncertainty regarding developments at a national level – engagement, development, and outputs of Fisheries Management Plans

CO Mander explained that now the issues had been brought to the attention of the B&PSC, conversations will develop over time on how to potentially address the issues and in what time frame. CO Mander highlighted that there was no capacity for Officers to undertake new workstreams in 2022/2023 not already set out within the Annual Plan, and therefore the Authority may be asked to consider re-prioritising work for Officers (Annual Plan tasks) based on the recommendations set by the B&PSC.

Debate, Questions & Comments

Mike Williams sought some clarity and further explanation regarding the limits set for non-quota species and how they were being set. DCO Clark provided an explanation and highlighted that the non-quota species (shellfish and finfish) tonnage allocated for UK vessels operating in EU waters are set out in a post Brexit piece of legislation, the Trade and Co-operation Agreement (TCA). Catch levels have been based on a reference period of 2012 – 2016 and, as highlighted by DCO Clark, the amount outlined in the TCA is for 12,365 tonnes which falls short of the landings of non-quota species for 2019 which was over 15,000 tonnes. However, currently the tonnage for UK vessels operating in EU waters has not been enforced. DCO Clark highlighted that the shortfall could lead to more vessels, that differ in their design and their efficiency compared to inshore 'day' boats, being displaced from EU waters, and consequently targeting their effort in UK inshore waters. Members enquired about differences in tonnage levels for UK and EU vessels and David Morgan responded by explaining that in his view, the UK had historically been poor at negotiation and that differences in the accuracy of catch declarations from UK and EU vessels had been a factor.

Members asked for more information relating to Fisheries Management Plans. DCO Clark explained the status from a national perspective, and the outcomes of meetings and engagement to date; however, it was recognised by Members that it was slow progress in terms of developing national control measures. CO Mander added that D&S IFCA was developing five Fisheries Research and Management Plans; however, at this time it was not known how these will potentially filter into national work.

DCO Clark addressed questions about the vessels operating offshore and reported that many of these vessels differ somewhat from vessels more typically used within the District. It was explained that some of these offshore vessels, although below 15 metres in length, are equipped to fish for longer periods of time without a break. Vivier (storage) tanks can hold larger catches, the vessels work in poorer weather conditions and have more modern facilities on board for crew comfort. Jon Dornom highlighted that some of the offshore vessels operate over 5000 pots and gave examples of the levels of catch taken offshore as compared to inshore. As well as large catches being taken, Jon Dornom raised his concern that if these types of vessels moved inshore then there would be gear conflict that will result from "shooting over each other". In his view, fishers more used to working inshore take more care with their catch and are far more familiar with local agreements amongst themselves, as well as having a better understanding of local regulations.

Members acknowledged the complications that exist, in particular with the uncertainty regarding when and if to take local action as an IFCA, rather than wait for events to unfold on a national scale. CO Mander highlighted the complications separating out vessels simply based on their relative capability and explained that some mobile fishing vessels have far greater capability as compared to others; however, they are entitled to fish within the District. From an inshore fisheries management perspective, CO Mander highlighted that gear and time control can be effective and used the example that all scallop dredgers fishing within the District can only operate 12 scallop dredges and operate within a 7am to 7pm time period. Rachel Irish added information about days at sea management for over 15 metre fishing vessels and explained how that operates like a "pool".

CO Mander explained that other IFCAs have implemented pot limitation and there are possibilities for D&S IFCA to be proactive to mitigate risks. Simon Thomas and Mike Williams enquired about the collection of more data (stock data/landings information and the findings of research) and DCO Clark provided a response;

however, it was recognised that there would inevitably be gaps in knowledge and difficulty collecting more data due to a lack of resources. Simon Thomas offered to help to use his scientific background to assist the IFCA with analysis and was thanked by all Members. Both Simon Thomas and Mike Williams highlighted potential action based on precaution; however, the IFCA should be clear about its justification for taking potential action. Mark Day agreed about clear justification and the grounds for action and stated that different fishers have different business models and decisions based on protectionism for any particular business model would not be appropriate.

CO Mander agreed that the issue would need further consideration and the Officers' paper for the B&PSC meeting had been prepared, at quite short notice, with that in mind. Members recognised the need to raise the workload prioritisation issue with the full Authority and suggested that Officers prepare a paper for the December meeting. Key content of the paper, as suggested by Mike Williams, should include identifying what workstream/s in the Annual Plan to potentially abandon, clear grounds for action (justification) and available and relevant supporting data on effort and stock. Pamela Buchan suggested that in addition it may be beneficial if Jon Dornom and David Morgan also conducted a presentation.

CO Mander highlighted to Members that Officers will begin planning work for the 2023-2024 Annual Plan in February 2023. With that in mind, and as the Authority meeting is not until December 2022, it may be that consideration by the Authority regarding which workstream/s from the current Annual Plan to delay or abandon, to allow prioritisation of this issue instead, may become less problematic. CO Mander emphasised that although all content of the Annual Plan is considered essential, some of the IFCA's current work is behind schedule and that this may or may not be carried forward due to time, resources, and its relative on-going importance as compared to other work. On reflection, the decision concerning this issue is more likely to determine elements of related work in the Annual Plan for 2023-24, but, as the B&PSC's role is not to set tasking for the Annual Plan, this would be the correct course of action.

Decision Making

That Officers prepare a report to the next Full Authority meeting to consider prioritising the assessment of the crab fishery in the Authority's District

Proposed: **Pamela Buchan** **Second: Mike Williams**

There were no amendments offered and the motion was put to the vote.

<i>In favour:</i>	12
<i>Against</i>	0
<i>Abstain</i>	2

Agenda Item 9

Date of the Next B&PSC Meeting.

PPO Townsend explained that the date of the next meeting would not be until early 2023 and an exact date confirmed in due course via email correspondence.

End.