



# Byelaw & Permitting Sub- Committee Meeting

Final Minutes from 17<sup>th</sup>  
August 2020

## Version Control and Drafting

Date	Comments
21 <sup>st</sup> August 2020	1 <sup>st</sup> Draft of minutes completed for circulation to officer's present at the meeting for potential internal amendment and or additions.
3 <sup>rd</sup> September 2020	Internal amendments applied and the draft minutes circulated to members for potential comments and/or amendments prior to the next meeting.
7 <sup>th</sup> and 8 <sup>th</sup> September 2020	Suggested amendments received by James Marsden and Mike Williams applied.
14 <sup>th</sup> September 2020	Suggested amendments received by Rachel Irish applied.
5 <sup>th</sup> March 2021	Minor amendments applied following a vote for accuracy by the B&PSC on 25 <sup>th</sup> February 2021.

## Key Contents:

Sand Eel Trawling: Discussions on developing permit conditions (pages 4 to 6)

Scallop Closed Season: Discussions on conducting pre-consultation (pages 7 to 8)

Wrasse: Discussions on HRA's and formal advice from Natural England (pages 8 to 10)

Minutes of the Byelaw and Permitting Sub Committee Meeting  
Held on virtually on 17<sup>th</sup> August 2020 on Zoom meeting facility

Present:

Professor Mike Williams (Chair)		
Jim Portus	Rachel Irish	James Marsden
David Morgan	Andy Wray	Richard White
Felicity Sylvester*	Jim Masters*	Cllr Hellyer
Dave Saunders		

Present (officers): ACO Mander, DCO Clark, PPO Townsend, Finance & Administration Officer  
Olga Pepper

Apologies: Jon Dornom, Jon Dornom, Simon Toms, Cllr Hawkins, Stephen Gledhill,  
Sangeeta McNair

### Introduction, announcements and apologies

The Chair welcomed members to the virtual meeting and thanked them for their attendance. The protocols for speaking in turn and voting at the meeting were discussed and agreed. It was concluded that during voting, each member would be asked to clarify how they would wish to vote and as per normal practice the total numbers of votes would be recorded in the minutes.

.....

### Agenda Item 1      **To consider and approve minutes of the Byelaw and Permitting Sub-Committee meeting held on 11<sup>th</sup> February 2020. (Circulated by email)**

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. No amendments were suggested to the draft minutes. It was noted that those that were not present at the previous meeting would abstain from the vote that followed.

***That the minutes provide a true and accurate record.***

**Proposed:**                      **Jim Portus**                      **Seconded: Cllr Hellyer**

**In favour:**                      **7**

**Abstain:**                      **2**

*(\*at this point Felicity Sylvester joined the meeting)*

.....

### Agenda Item 2      **Business Arising**

The Chair highlighted an Officer Action Item within the minutes regarding the collection of information on the development and production levels of salmon hatcheries and the reporting of the information to the B&PSC.

DCO Clark reported that although Mowi (formerly Marine Harvest) had been contacted, no response had been received to report on at the meeting. It was explained that a further attempt to gain information would be made.

*(\*at this point Jim Masters joined the meeting)*

On the topic of salmon, James Marsden highlighted some additional information to members associated with the use of chemicals in Scottish waters and published articles within both the British Wildlife Magazine and the Guardian Newspaper. In his view, the Authority should be considering whether it should continue to use

its scarce resources to partially support an industry operating with poor practices. James Marsden highlighted that anti-lice chemicals were being used at sea, and the minimal dilution will impact invertebrates and the wider ecosystem. The Chair commented that although it may be poor practice, the use of such chemicals is more restricted on land rather than the sea. James Marsden enquired if DCO Clark could make further enquiries including contacting Marine Scotland and said that he would provide contact details to DCO Clark. This was noted as a specific officer action item to combine with the previous action item:

#### **Officer Action Item 1 (Wrasse Fishery Related)**

DCO Clark	<p>a) To continue to seek additional information on the development and production levels of hatcheries and report back to the B&amp;PSC</p> <p>b) To contact the relevant authorities regarding the use of chemicals at sea and report back to the B&amp;PSC</p>
-----------	---

ACO Mander raised some concern regarding the position of the Authority in terms of potential opposition to fishing activity due to examples of perceived potential poor practices within the fishing industry. ACO Mander agreed that the collection of information can add to the collective knowledge of the B&PSC; however further discussion and clarity from members to officers will be needed, if it is envisaged that perceived poor practices are to become an influencing factor within future management related decision making. The Chair added that there may also be issues associated with Administrative Law and concluded discussions on this topic by highlighting that this will initially be a fact-finding exercise with no commitments regarding the use of the information collected.

#### **Agenda Action Items**

#### **Agenda Item 3      Proposals to Develop Mobile Fishing Permit Conditions to Manage Sand Eel Trawling.**

##### **3.1      To consider the content of the officers' report (The Development of Permit Conditions to Manage Sand Eel Trawling – 31<sup>st</sup> July 2020)**

The Chair thanked officers for preparing the report and highlighted the four separate proposals set out on page seven. Before moving to voting on the proposals, the Chair asked if members had any initial observations or discussion points, they wished to raise.

The Chair began discussions and referenced proposal number four that related to estuary closing lines and asked PPO Townsend to elaborate on the content of the report. PPO Townsend explained that the issue of estuary closing lines was relatively complicated and originated from the content of the existing Mobile Fishing Permit Byelaw and the way it was formulated with the use of prohibitions. PPO Townsend explained to members that currently the Byelaw allows for fishers using vessels below seven metres in overall length to operate sand eel trawls with no requirement to obtain a mobile fishing permit (*subject to a mesh size of 31mm and only if sand eels are the target species retained*).

Using Teign Estuary based fishers operating vessels under seven metres in overall length as an example, PPO Townsend added that these fishers can therefore legally use a sand eel trawl and cross estuary closing lines that are only relevant to fishers that are managed via a specific Byelaw (*or associated permit conditions*). The proposals as set out in the report, account for the envisaged change in management that will apply when the Mobile Fishing Permit Byelaw is re-made, and new permit conditions are created including new categories of permit conditions for the fishing activity of sand eel trawling.

The current Mobile Fishing Byelaw has clear separation between mobile fishing activity at sea and limited forms of mobile fishing activity that can be conducted within an estuary. To date, decision making regarding the implementation of new sand eel permit conditions has recognised that some fishers (not currently

regulated by any byelaw of permit conditions) using sand eel trawls have a need to cross estuary closing lines, albeit marginally, as part of their fishing activity. The need to develop specific permit conditions to manage sand eel trawling account for the fact that this activity is not suitable to be managed as an “at sea” or an “estuary only” mobile fishing activity.

When the new Mobile Fishing Permit Byelaw is re-made (with new permit conditions) these fishers will be better regulated and the areas of most sensitivity such as sea grass would be defined and afforded protection by spatial conditions as set out in the new categories of sand eel permit conditions.

Regarding proposal number four and its link to the separate Netting Permit Byelaw and Permit Conditions, PPO offered a further explanation. Fishers using sand eel seine nets within estuaries are managed via the Netting Permit Byelaw Permit Conditions (*Category Two*). These fishers are only authorised to use seine nets in a defined estuary with a maximum length of 20 metres, whereas commercial fishers using sand eel seine nets at sea (beyond estuary closing lines) have no net size restriction. When new management is introduced for sand eel trawling a situation will exist that is un-balanced between different fishing sectors. The fishers using sand eel trawls will have greater fishing access (as part of regulation), as opposed to those using sand eel seine nets within estuaries, even if this greater access is only marginal in a practicable sense.

PPO Townsend concluded his explanation and said that the implementation of sand eel permits will enable this activity to be better monitored, including how marginal the need is to cross the estuary closing lines that have been introduced for netting and already restrict fishers wishing to use seine nets within estuaries. There is scope when the netting permit conditions are reviewed in 2021 to consider any slight imbalance (access opportunity) and potentially amend the netting permit conditions (estuary closing lines) slightly, so balance between sectors is achieved.

The Chair thanked PPO for the explanation and asked once again if other members had any points to raise. James Marsden highlighted the importance of seabird colonies and as sand eels are a food source there is an ongoing need to consider this in D&S IFCA’s management. James Marsden suggested that the JNCC (Joint Nature Conservation Committee - Adviser to the Government on Nature Conservation) be contacted, along with Natural England for their views. David Saunders added that he also had a contact address for Devon Birds that he would provide to officers. Correspondence work was suggested as a potential officer action and was noted as an action.

#### **Officer Action Item 2 (Sand Eel Trawling Related)**

DCO Clark	To research which birds feed on sand eels and where this potentially occurs within the District.
-----------	--

Whilst recognising the comments of James Marsden, PPO Townsend explained that at this stage of development for the re-make of the Mobile Fishing Permit Byelaw, and the development of sand eel permit conditions, it was more advantageous to agree and set the framework for the mechanism, rather than more consideration of finer detail or information collection of this type that could delay the progress of the work.

PPO Townsend stated that if there was agreement with the proposals as set out, the Byelaw Technical Working Group could push forward with more advanced drafting work now that more of the content to be placed within the Mobile Fishing Permit Byelaw and associated permit conditions had been clarified. PPO Townsend added that the subsequent drafting work would be presented back to the B&PSC for further consideration and when the Mobile Fishing Byelaw (and associated permit conditions) are “made” by the B&PSC, the whole package will be subjected to formal consultation. There will be more time before and during the formal consultation for additional information to be collected, considered and potentially incorporated into the Byelaw/Permit Conditions in due course. The Chair summarised this by stating that the re-made Mobile Fishing Permit Byelaw and associated permit conditions, including new conditions for sand eel trawling would be an improvement on the status quo.

Andy Wray commented that, as a relatively new B&PSC member, he would like more explanation as to why a commercial fisher would not have a catch quota applied within their permit conditions and if this was an

agreed principle. ACO Mander responded and explained that to date, all D&S IFCA permits conditions have not normally included catch restrictions for commercial fishers. It was the Authority's adopted approach to leave this form of fisheries management to the Marine Management Organisation, who apply catch restrictions on a national scale to UK vessels with a Fishing License. The exception is where commercial catch restrictions, due to an absence of a shellfish catch entitlement, have been applied in permits. It is made clear to fishers that the catch restriction is in line with national requirements and it adds strength to the permits by making the restrictions enforceable for D&S IFCA Enforcement Officers. The Chair asked if there are any national catch quotas for sand eels and Rachel Irish confirmed that there are.

With no further questions, the Chair asked members to consider the four separate proposals as set out on page seven of the report and to vote on each in turn:

**Proposal 1:**

***That vessels below seven metres in overall length issued with a Category Three or Four Sand Eel Permit have no length restriction on the trawls being used.***

**Proposed:** Rachel Irish                      **Seconded:** Jim Portus  
**In favour:** All

.....

**Proposal 2:**

***That vessels of seven metres in overall length and below ten metres in overall length issued with a Category Three or Four Sand Eel Permit are restricted to the use of a sand eel trawl with a maximum length of 20 metres.***

**Proposed:** Cllr Hellyer                      **Seconded:** Jim Portus  
**In favour:** All

.....

**Proposal 3:**

***That the BTWG continue drafting work of the Mobile Fishing Permit Byelaw and all associated permit conditions to recognise the decision making of the B&PSC as documented.***

**Proposed:** Richard White                      **Seconded:** David Saunders  
**In favour:** All

.....

**Proposal 4:**

***That the estuary closing lines are examined during the three-year review of the Netting Permit Conditions.***

**Proposed:** Rachel Irish                      **Seconded:** Jim Portus  
**In favour:** All

.....

#### **Agenda Item 4 The Five-Year Review of the Mobile Fishing Permit Byelaw, the Diving Permit Byelaw and the Potting Permit Byelaw.**

##### **4.1 To consider the officers' paper and the proposal to conduct pre-consultation regarding the scallop closed season to inform the development of both the Mobile Fishing Permit Byelaw and the Diving Permit Byelaw.**

The Chair introduced the officers' paper and asked one of the officers to talk members through the content. ACO Mander highlighted recent correspondence from the commercial diving sector expressing a desire to see changes in management, including relaxation, of current permit conditions used to apply a closed fishing season for scallops. There had been similar concerns raised in the past by commercial divers and the recent interest had been intensified by the difficulties faced by this sector during the Covid-19 pandemic.

ACO Mander highlighted that although the scallop closed season restriction is also relevant to the mobile fishing sector, there are differences between these fishing sectors regarding their ability to fish in differing weather conditions and the total effort directed towards the scallop fishery. The proposal as set out provides an opportunity to seek the views of both fishing sectors regarding potential change to the existing restrictions. ACO Mander added further information and explained that the Welsh scallop fishery is closed until 31<sup>st</sup> October each year and this does result in a fishing displacement issue with more visiting vessels fishing within the D&S IFCA's District in October. If agreed by members, a consultation exercise may divide opinion but may also be of use in informing the B&PSC regarding any potential change to the existing three months closed season that applies during July, August and September.

Jim Portus commented that scallop fisheries around the UK are an on-going concern and there are several closures in place that impact the mobile fishing fleets, although possibly not the commercial diving sectors. Jim Portus explained that there are major concerns being raised by merchants and processors regarding the quality of the product and any changes that would allow inferior products to be marketed would not be of benefit. Jim Portus recognised the impact of Covid-19 on fishers but highlighted that these difficulties apply to all fishing sectors. In terms of identifying a closed fishing to align with spawning periods, there is a general feeling that spawning is becoming later in the year.

DCO Clark informed members that although there have been less studies in the D&S IFCA's District area, there are more scientific papers about scallop spawning periods, that relate to French, Welsh and Isle of Man fisheries. In addition, there has been occasions of trickle spawn which further complicates the issue. DCO Clark highlighted that Cefas may have assembled more information that may be of use for further discussion by the B&PSC and a consultation can be used to assemble a range of information in a report that can be presented back to the B&PSC in due course. In terms of resource allocation, the Chair asked what complications will exist assembling data and potentially conducting further survey work. DCO Clark responded by stating that, in the first instance, engagement with fishers will enable their views to be collated and existing papers will potentially add to the overall level of understanding from a scientific perspective. It is possible that local assessment work could become a consideration later. The Chair suggested that efforts assembling scientific data should become an action item and the recommendation as set out in the officers' paper became a proposal for voting.

##### **Officer Action Item 3 (Scallop Closed Season & Spawning Periods)**

DCO Clark	To collate available research for scallop closed seasons and spawning periods
-----------	---

***That officers prepare and conduct an "open" type of "Have Your Say" informal pre-consultation with all stakeholders regarding potential changes to the scallop closed season.***

***Proposed: Jim Portus***  
***In favour: All***

***Seconded: Cllr Hellyer***

Richard White commented that the officers' paper also contained a recommendation relating to deferring potential changes to existing permit conditions and enquired if this should be subjected to voting. The recommendation in the paper was as follows:

- ***It is recommended that;  
the process required for any changes to existing Diving or Potting Permit Conditions that may be considered necessary in the shorter term are incorporated into the review of the overarching Potting and Diving Permit Byelaws (and associated permit conditions).***

PPO Townsend explained that this recommendation related more to an explanation of the time and resources available to undertake any further reviews of existing permit conditions in the short term, rather than a need for a formal vote. PPO Townsend explained that as the Mobile Fishing Permit Byelaw is to be remade and the Potting and Diving Permit Byelaws are to be subjected to a forthcoming review beginning shortly, the recommendation related to the timing of planned work and more efficient use of officer and B&PSC time to implement any potential changes that may or may not be required to management measures. Members accepted this explanation and no vote was taken.

.....  
**Agenda Information Item**

**Agenda Item 5      To consider the officers' update on the formal advice received from Natural England regarding the re-submitted Habitat Regulations Assessments relevant to the Live Wrasse Pot Fishery.**

DCO Clark commented that the officer paper that had been circulated provided members with access to the re-submitted Habitat Regulation Assessments (HRAs) in full and the formal advice received from Natural England. DCO Clark then summarised the response from Natural England beginning by firstly stating that Natural England are confident that D&S IFCA has utilised the best available evidence and agree that there is no adverse effect on site integrity. DCO reported that generally the advice offered by Natural England was positive.

DCO Clark reported Natural England's suggestions and expectations regarding the continuation of D&S IFCA's monitoring work, including closer co-working with CIFCA and the sharing of data that can inform further reviews and updates to the HRAs. It is the view of Natural England that Plymouth Sound and Estuaries should be considered as a whole, rather than sole focus on specific areas within both IFCA Districts.

Natural England are keen that fishers comply with their obligations and DCO Clark informed members that the Authority has measures in place to resolve any difficulties. DCO Clark informed members how D&S IFCA's recent monitoring work has involved both environment and enforcement officers, with the use of the Authority's Rigid Inflatable Boat (RIB) being used to assist with survey and monitoring work as a current substitute for on-board survey work during the Covid-19 pandemic. Other summarised information regarding the monitoring of pots placed near seagrass and the fisher's awareness and reporting of shad bycatch was explained to members by DCO Clark.

James Marsden commented that whilst he was impressed by the thoroughness of officer's work, he had more fundamental concerns regarding the rationale for continuing the work and the severe drain on resources that the work causes. Ultimately, the produce was not for human consumption and there are question marks regarding the sustainability of an industry removing wild wrasse, which has not been demonstrated to be an efficient business model. James Marsden commented that fish are being removed from the ecosystem, supported by D&S IFCA's management, and at considerable expense for the Authority. It was the view of James Marsden that the Authority should consider options to reimburse itself by pursuing full cost recovery and requested that costs incurred by the Authority should be documented for those discussions.

DCO Clark confirmed that an audit of cost and officer time would be achievable; however, it was the decision of the Authority for this fishery to be managed, with the associated costs part of that management. CO Mander



commented that cost analysis has not been done for other fisheries within the District and the question of full cost recovery would be a more suitable topic of conversation for the Authority rather than the B&PSC.

Rachel Irish commented that the fishery was already in existence when D&S IFCA originally received information about it, and that as an IFCA, there were discussions at this stage concerning the risks related to the fishery and the consequential importance that D&S IFCA did manage it. Rachel Irish commented that the past minutes of B&PSC meetings would reflect the B&PSC decision making at the initial stages and that these minutes could be accessed if needed.

James Marsden explained that he would assist officers in highlighting policy issues which could be documented and presented to the Authority. Regarding the timing of this potential work and other relevant decision-making information, DCO Clark reminded members that the research findings from 2020 – 2021 are expected to be presented in February 2021 and an on-going PhD may be complete by September 2021. The Chair suggested the preliminary findings of the PhD may be available before September 2021 with the agreement of the student and regarding full cost recovery, the Chair highlighted that there may be some legal considerations. Correspondence with the PhD student was noted as an action item.

#### **Officer Action Item 4 (Wrasse Fishery)**

DCO Clark	To contact the PhD student and enquire if the preliminary findings could be shared with the B&PSC in February 2021.
-----------	---

ACO Mander informed members that the Authority could examine principles, however regarding the management of produce not for human consumption, other examples exist with examples including brown crab for whelk bait and sprats used as fishmeal. To consider wrasse in isolation in policy discussions would not be a broad enough discussion.

David Morgan commented that although brown crab is used as bait, it is not being targeted for that purpose so there is a difference. Jim Portus offered a similar response regarding sprats and highlighted that this is more of a quality issue rather than active attempts to catch the species for a purpose other than human consumption. Regarding the capture of live wrasse, Jim Portus commented that he was also concerned about the resources required to manage this fishery and was not comfortable with its description as a fishery. The Chair concluded that it would be beneficial for James Marsden and DCO Clark to discuss the issue in more detail with a view to preparing a paper that could be presented in February 2021.

Regarding closer working with CIFCA to manage the live wrasse fishery, the Chair raised a discussion of a potential agreement with CIFCA as set out in the Marine and Coastal Act 2009. Section 167 provides the power to enter into agreements (*subject to agreement with the Secretary of State*) with eligible bodies, therefore enabling D&S IFCA to take the lead role of inshore fisheries management within the whole of Plymouth Sound and to conduct all monitoring work and data collection.

DCO Clark explained that the Authority had the expectation that officers would endeavour to maintain the current level of surveys, but current staff resources would not make it possible to take on more of a commitment without financial support. In the shorter term, and to recognise the advice from Natural England, DCO Clark explained how the formation of a wrasse working group will potentially produce a closer working relationship with CIFCA and the alignment of monitoring efforts. When asked by the Chair about a timeline for establishing the working group, DCO Clark informed members that the first discussions would involve Sangeeta McNair and are planned for September 2020.

Returning to the potential Section 167 agreement, the view of the Chair was that a formal agreement would be beneficial from both an environmental and financial perspective, but recognised that it would need to be discussed by the Authority before any approach could be made firstly to CIFCA and then Defra. The Chair asked ACO Mander if this topic could be placed on the next Authority meeting agenda.

ACO Mander commented that the planned Authority meeting agendas for the next two meetings already contained multiple discussion items with minimal scope for additions. Discussions in 2021 would be more of

a possibility; however, ACO Mander highlighted that this would not be the first time this issue had been discussed by the Authority. ACO Mander informed members that the previous Chair had approached CIFCA approximately three years ago and reported back that there was no appetite from CIFCA to enter into such an agreement. James Marsden suggested that previous minutes be examined, and the issue could be discussed and considered as part of other work associated with developing a five-year strategy. The Chair suggested that there could be a review of past minutes at the first Authority meeting in 2021.

*(at this point Jim Masters had to leave the meeting)*

ACO Mander commented that the Section 167 agreement may produce some political and reputational issues. One option in any potential discussions would be for D&S IFCA to relinquish part of its District with approximately £34K being paid from Plymouth Council to CIFCA, rather than to D&S IFCA. The Chair confirmed that he recognised the complications that could exist and felt it was appropriate to end the discussions on the matter until 2021.

.....

**Agenda Item 6          Any other business.**

There was no other business, other than a collective show of appreciation to Richard White, who was resigning his membership of the Authority and the B&PSC. The Chair and other members thanked Richard White for his long service and contribution to Authority work, in particular his efforts for the B&PSC. A proposal was formulated for a vote as follows:

***That all members of the B&PSC and officers recognise the contribution of Richard White and thank him for his contribution to the work of the B&PSC.***

***Proposed:    James Marsden***  
***In favour:    All***

***Seconded: Cllr Hellyer***

.....

**Agenda Item 7          Date of next meeting.**

The Chair enquired if a date for the next B&PSC meeting had been selected. PPO Townsend explained that preferably the date remains un-planned at this time. Whilst B&PSC meetings are conducted virtually, it is easier for officers to assess what information can be prepared that can be discussed in a shorter meeting, rather than a whole day meeting. The increased flexibility of virtual meetings, having no venue to organise and the preferred time slot of 1600 hours to 1800 hours also lends itself to establishing a preferred date for the next meeting via email correspondence. This statement was supported by members.

**End.**