



Byelaw & Permitting Sub- Committee Meeting

Final Minutes from 22nd
July 2021

Version Control and Drafting

Date	Comments
Version 0.1 30 th July 2021	1 st Draft of minutes completed for circulation to officer's present at the meeting for potential internal amendment and/or additions.
Version 0.2 11 th August 2021	Internal amendments applied. Draft Minutes circulated to Members.
Version 0.3 6 th September 2021	Minor amendments to recognise feedback from Members.
Final Version 22 nd October 2021	Two minor amendments applied (pages 9 & 10) as highlighted by B&PSC Members at the meeting held on 21 st October 2021.

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Minutes of the Byelaw and Permitting Sub Committee Meeting
Held at Exeter Racecourse EX6 7XS on 22nd July 2021

Present:

Professor Mike Williams (Existing Chair)		
Rachel Irish	David Morgan	Jon Dornom
Felicity Sylvester	Jim Masters*	Dave Saunders

Present (officers):

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

Public Observing:

None

Notes:

** Jim Masters had to leave the meeting at approximately 1500 hrs.

Welcome

The Chair (Professor Mike Williams) welcomed Members to the Byelaw and Permitting Sub-Committee (B&PSC) meeting and thanked them for their attendance. It was recognised that this was the first B&PSC meeting since the ability to hold virtual meetings had been removed by the UK Government. Although there were several Members who had given apologies, it was noted that updated Terms of Reference for the B&PSC now required six Members to be present in order for the meeting to be quorate.

Following this, the Chair handed over proceedings to CO Mander as the first agenda item was to elect the Chair of the B&PSC for the next twelve months.

Action Items:

Agenda Item 1

Election of the Chair of the B&PSC

CO Mander explained that nominations for the role of the B&PSC Chair must be made verbally by those Members present at the meeting. Rachel Irish stated that her preference would be to continue with Mike Williams in the role. CO Mander explained that the adopted Terms of Reference (TOR) for the B&PSC precluded Mike Williams from continuing in this position as he had been elected as the Chair of the Authority on 16th July 2021. Mike Williams said that he wished to nominate a new Member of the B&PSC Dr Emma Bean. As Dr Emma Bean was absent from the meeting, Mike Williams informed Members about both her background and skill sets. It was explained to Members that Dr Emma Bean had a PhD (impact on the public right to fish), was a qualified solicitor in commercial law and was now lecturing at Bristol University. Mike Williams explained that Dr Emma Bean had indicated to him that she would accept the role if approved by Members. Jim Masters said that he would second this nomination and a vote followed. With no other nominations received, the motion to make Dr Emma Bean the next chair of the B&P SC was put to the vote.

Decision Making:

That Dr Emma Bean is elected to be the Chair of the B&PSC

Proposed:	Mike Williams	Seconded: Jim Masters
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In favour:	All (7)
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Agenda Item 2

Election of the Vice Chair of the B&PSC

As the new Chair of the B&PSC was absent, CO Mander continued to present proceedings, the next being the election of a Vice Chair of the B&PSC. It was explained that the process was the same as electing the Chair of the B&PSC and Members should provide verbal nominations. To assist other members with their consideration Prof. Mike Williams said that he would be prepared to stand if other members wished to consider him for the role. A debate began with the Members supportive of Mike Williams undertaking this role. Mike Williams departed the room. After further discussion, Members were unanimous that Mike Williams would be the best choice and his experience and knowledge would be of benefit to the new Chair of the B&PSC. Mike Williams was invited back into the room and, when informed of the Members' preferred option, said that he would accept the role if it was agreed via a vote that followed:

That Professor Mike Williams is elected to be the Vice Chair of the B&PSC

Proposed: **David Morgan** **Seconded: Felicity Sylvester**

In favour: **All (6)**

All present at the meeting thanked Mike Williams for his past contributions as Chair of the B&PSC and for accepting the role of Vice Chair. CO Mander explained that as the Chair (Dr Emma Bean) was absent, Mike Williams (new Vice Chair) would now Chair the remaining parts of the meeting.

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Agenda Item 3

Apologies for Absence

The Vice Chair asked PPO Townsend to read out the list of apologies which included some new B&PSC Members who were appointed at the recent Authority AGM. Apologies were noted as follows:

Dr Emma Bean, Cllr Kelly, Cllr Dewhirst, Wayne Thomas, James Marsden, Dr Pamela Buchan, Andy Wray, Simon Toms and Sangeeta McNair.

DCO Clark explained to Members that Sangeeta McNair (Statutory Representative for Natural England) had changed her job role to be the Principal Marine Advisor on the national Natural England team and at this time it was not clear who her replacement would be. Members thanked Sangeeta McNair for her contribution to the B&PSC and requested that her replacement be announced at the next Authority meeting in September.

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Agenda Item 4

Declarations of Interest

There were no declarations of interest announced.

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(Intentionally blank)

Agenda Item 5

To consider and approve the draft minutes of the B&PSC meeting held on 25th February 2021.

The Vice Chair invited those who were present at the last meeting to raise any issues associated with the accuracy of the draft minutes from the February meeting and the minutes were then examined page by page. The Vice Chair highlighted a grammatical error on page 5 which was noted by PPO Townsend. No other amendments were raised by the Members.

That the minutes (subject to the amendment) provide a true and accurate record.

Proposed: Dave Saunders

Seconded: David Morgan

In favour: All (7)

CO Mander highlighted that recent training on D&S IFCA's Standing Orders had suggested that minutes of formal Authority meetings need not be as detailed as those provided in recent times; however, the detail provided is often of benefit to record topic-based decision making. Members briefly discussed the format and style of the B&PSC minutes and agreed that they were of a high standard with no change needed. PPO Townsend informed Members that the minutes are produced in draft form and are not published until they have been approved for accuracy at the following meeting. Although this was common practice, it was PPO Townsend's understanding that the Standing Orders would allow publication whilst they are still in draft form (clearly marked draft) if approved by Members and that a change in policy may be beneficial for differing reasons. The Vice Chair said that he recalled past discussions on the publication of minutes at Authority meetings and suggested that publication of draft minutes for all formal Authority meetings would provide greater transparency. The Vice Chair and B&PSC Members suggested that it be raised as an Agenda Item at a full Authority meeting.

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Agenda Item 6

Matters requiring urgent attention

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

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Agenda Item 7

Members of the public – questions or comments for the meeting

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

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Agenda Item 8

Proposals to Amend the Potting Permit Conditions to Manage the Live Wrasse Pot Fishery.

The Vice Chair explained that this Agenda Item was divided into two sections and included both an Officers' paper with a recommendation and a supporting report that had documented the responses received in the formal consultation.

Presentation – The Formal Consultation Report

DCO Clark accepted the invitation to provide Members with an overview of the Officers' report and was assisted, on the aspects of the paper relating to consultation responses, by PPO Townsend. It was explained how the B&PSC had discussed a large quantity of information relating to the Live Wrasse Pot Fishery at the February B&PSC Meeting.

- *Review of the Live Wrasse Fishery in Devon and Severn IFCA's District 2017–2020*
- *Summary for Byelaw & Permitting Sub-Committee: Annual Review of the Live Wrasse Fishery in Devon and Severn IFCA's District, 2017 – 2020*

Based on that information the B&PSC had actioned a formal consultation based on potential changes to the existing Potting Permit Conditions. PPO Townsend explained how the consultation report had been used to document all of the responses received and to address the concerns raised in some of those responses. As the consultation report (and past B&PSC papers and reports) was in the public domain, this particular report acts as an "open" response to all stakeholders and therefore was intended to be thorough and detailed. PPO Townsend explained that the consultation response was mixed in terms of detail and included technical types of responses provided by a salmon farm, Devon Wildlife Trust and Wembury Advisory Group. DCO Clark explained how D&S IFCA's Environment Officers had analysed the more detailed technical responses to address the points raised in those responses and compare information to previously documented and published research work. Based on the analysis completed by the Environment Officers, the Officers' recommendation in the covering paper is to amend the Potting Permit Conditions as suggested by the B&PSC and as set out in the formal consultation. PPO Townsend added that not only did the consultation report include the responses, but it also documented how the exercise was undertaken using direct communication whilst being supported by the use of D&S IFCA's website and additional use of D&S IFCA's social media platforms.

Debate, Questions & Comments

Members thanked Officers for the presentation and in particular SEO Dr James Stewart and EO Lauren Henly for their contribution to the Formal Consultation Report. Jon Dornom and Dave Saunders focussed the beginning of the debate on the future of the Live Wrasse Pot Fishery and what may be the eventual outcome for it. Jon Dornom commented that the signs are that the fishery, in terms of activity, is diminishing and there may be the potential to ensure that it does not return to past levels by planning accordingly. Dave Saunders commented that the removal of Live Wrasse is clearly not popular with many stakeholders, especially those stakeholders with an interest in recreational angling and that the costs of managing the fishery were disproportionate with the resources available to D&S IFCA. CO Mander responded by stating that the B&PSC had decided to manage the Live Wrasse Fishery, and although it did involve time and resource to manage it, a prohibition based on those grounds would be difficult to justify. The flexible permit mechanism has enabled D&S IFCA to adapt its management based on evidence accumulated via monitoring and data collection. David Morgan highlighted that the Live Wrasse fishery is highly regulated via the Potting Permit Conditions and if the fishery declines (in terms of numbers participating), the Permit Conditions can still remain which would limit any opportunity for it to expand beyond what is already a very limited opportunity. David Morgan also added that the Live Wrasse Fishery is being monitored closely by D&S IFCA's Officers and the B&PSC via the reports being produced and presented each year. This regular review cycle therefore provides the B&PSC with the opportunity to review management and act accordingly. Members asked DCO Clark further questions on potential supply and transport issues that may also lead to the fishery reaching a natural cessation. DCO Clark described the current fishery for 2021, indicating that the number of boats involved had diminished compared to previous years. DCO Clark was joined by Rachel Irish and together they informed Members about increasing logistical issues that have been reported by the small number of fishers engaged

in the Live Wrasse Fishery being conducted in both D&S IFCA's District and also in CIFCA's District. Jim Masters asked some technical questions relating to the proposed slot size for ballan wrasse and DCO Clark was able to highlight the evidence as presented on page 17 of the consultation report. Jim Masters also asked questions on the age and size of sexual maturity of male and female ballan wrasse which DCO Clark answered. PPO Townsend commented that whilst Members may wish to debate further the scientific evidence available to them, the previous discussions of the B&PSC had determined that D&S IFCA consults on a specific change at this time to the Potting Permit Conditions which had formed the basis of the consultation and the Officers' recommendation for decision making at this B&PSC meeting. The Vice Chair summarised the discussions and members agreed that the scientific evidence and further analysis by Officers examining the consultation responses pointed towards a change in the Potting Permit Conditions as recommended. The recommendation on the Officers' paper was read out to form the basis of a motion.

Decision Making

That the Potting Permit Conditions are amended to incorporate a ballan wrasse Conservation Reference Size range of 18–26 cm.

Proposed: Jon Dornom Seconded: Rachel Irish

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

In favour: All (7)

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Agenda Item 9

The Review of the Size of Vessels Byelaw.

The Vice Chair explained that this Agenda Item was divided into two sections and included an Officers' paper with recommendations and a supporting report that set out the rationale for an intended course of action including pre-consultation.

Presentation:

CO Mander explained that D&S IFCA had to review all of its legacy byelaws and the review of the Size of Vessels Byelaw formed part of the 2021-22 Annual Plan. The supporting report had been produced to set out, in the view of Officers, what weaknesses in the current byelaw could be addressed as it is re-made and what steps could be taken to progress the work throughout 2021 and into 2022. CO Mander explained that to keep the exercise as simple as possible, a remade byelaw would be a stand-alone byelaw with restrictions not mixed into other permit-based byelaws already being used to manage different fishing activity. The key elements to underpin the development of this byelaw relate to agreeing in principle a maximum size for vessels that can operate within the District and potentially more complicated content relating to existing access rights and an established time period to end those rights.

CO Mander informed Members that recent checks have established that there are two vessels above 15.24 metres that have rights (Grandfather Rights) to operate in parts of the District because their ownership has not changed since the Size of Vessel Byelaw was remade in 1996. The remaining fishing fleet within D&S IFCA's District are below 15 metres in overall length and therefore the larger vessels are outliers. The remaking of the Size of Vessels Byelaw provides the opportunity to readdress this imbalance and the process to be undertaken will provide notice to the vessel owners that their existing rights to fish within the District could be terminated in a given time period (a Sunset Clause). CO Mander explained that the process, including the rationale for potential change would be documented in an Impact Assessment and that consultation (including pre-consultation) is part of the process as set out in Defra's Byelaw Making Guidance. From an Officer's perspective, it was envisaged that B&PSC's decision making at this stage could action the work (the start of the Byelaw Review) and potentially set some initial parameters to form the basis of the initial consultation (scoping exercise) to gain feedback on the proposed size of vessels and the other relevant factors that would feed into the drafting work.

Debate, Questions & Comments

Felicity Sylvester asked for some clarity regarding the large vessels (over 15.24m) that could still operate in parts of the District and remarked that the review would create a lot of work for Officers and the B&PSC for the potential removal of so few vessels. The Vice Chair commented that although there is scope when Officers could begin the review, the review of the Byelaw must take place as D&S IFCA has a duty to undertake this task. CO Mander provided some detail regarding the vessels in question and reported that only one of these larger vessels continues to operate within the District and does so primarily on the south coast.

In response to Felicity Sylvester's concern that potential removal of access would impact on the fishers or owners that have retained these access rights, Rachel Irish explained the makeup of the fishing fleet based on the South Coast of Devon. Rachel Irish commented that the "active" vessel in question is indeed an outlier and, in the view of many, has an unfair advantage as compared to the remainder of the large vessel fleet, that are unable to fish within 12nm. Rachel Irish reassured Felicity Sylvester that removal of access rights would certainly not render the larger vessels useless, as they are designed to operate offshore in the same manner as comparable vessels of this size that have no other option due to regulation. Jon Dornom commented that although vessels with continuing access rights (Grandfather Rights) have retained this privilege as the ownership on paper had not changed, it was his view that this situation had been exploited to some degree. Jon Dornom was joined by Rachel Irish and shared the opinion that after 25 years of benefiting from having grandfather rights the review of the Byelaw provided the opportunity to readdress the imbalance and would likely be supported by the inshore fishing fleet.

Focussing on the potential setting of a 15-metre maximum size, Jim Masters enquired about restrictions in other IFCA Districts. In addition, Members questioned if a size is actually an effective management tool when balanced against vessel design and technological improvements in recent years. CO Mander explained that vessel size restrictions within inshore areas do vary around the coast with both CIFCA and SIFCA having differing maximum length restrictions. Rachel Irish added that different engine sizes (power/performance) is also an issue; however, the MMO are looking to address complications associated with this including undertaking increased levels of engine testing to compare the findings to the information documented on fishing licences. Although CO Mander accepted the argument put forward from Members including Jon Dornom that the capabilities and efficiency of similar size vessels will vary a lot, establishing and maintaining a size restriction is only one form of management available and still has merit as a control measure. CO Mander added that the other activity-based permit byelaws that D&S IFCA has introduced a better management tool for more focussed restrictions that can recognise other factors other than vessel size.

David Morgan focussed his comments on the consultation requirements. He explained that if fishers were asked for suggestions, in a completely open, wide ranging consultation regarding vessel size, the responses would probably be very varied. In his experience fishers may well suggest different sizes for different areas, for example 7 metres within one mile and 10 metres inside 3 miles and so on. In his view this would lead to an overly complicated situation, for what is intended to be more of a tidying up exercise to modernise the Size of Vessels Byelaw and potentially provide it with a fresh set of additional provisions (a grace period/Sunset Clause). In the view of David Morgan, setting a 15-metre limit, in principle, would be a good starting point as it would clearly not impact many. CO Mander agreed that this was the favoured course of action identified by Officers in the supporting report and as explained in the report, the consultation would provide notice to the industry that potential changes are now in the pipeline. The Vice Chair highlighted the first two recommendations on the Officers' papers and concluded that Members may now wish to consider decision making. Members formulated motions based around the first two recommendations as follows:

Decision Making

That the B&PSC agrees to the commencement of the Formal Review and the subsequent process to re-make the Size of Vessels Byelaw.

Proposed: Rachel Irish Seconded: David Morgan

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

In favour: **All (7)**

That a maximum length of 15 metres in overall length forms the basis for the development of the re-made Size of Vessels Byelaw and to form the basis for pre-consultation.

Proposed: **Jon Dornom** **Seconded: Dave Saunders**

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

In favour: **All (7)**

Determining Other Aspects for the Basis of Pre-Consultation

Both Jim Masters and Rachel Irish said that they would support the third recommendation in the Officers' paper. David Morgan said that he was not completely comfortable with the Officers' recommendation, as written, as it was suggestive that the B&PSC would establish the length of a "Sunset Clause" where fishers with large vessels could continue to access waters in the District for even longer using their "Grandfather Rights". It was David Morgan's view that considering the byelaw making process can take a long time, adequate notice to those that would be impacted by potential change would be achieved during that process, and it would be his chosen option not to include a grace period (Sunset Clause) in the finalised byelaw. For this reason, David Morgan felt that it would be wrong for the B&PSC to offer a suggested way forward to form the basis of questions in the pre-consultation. As an alternative, David Morgan suggested that the pre-consultation be more "open" to gain the views of stakeholders without a pre-determined position from the B&PSC on the inclusion of a "Sunset Clause" for "Grandfather Rights" to continue for a set period of time. David Morgan offered the following as the motion:

That the pre-consultation should seek the views of all stakeholders on whether or not to include a "Sunset Clause" in the re-made Size of Vessels Byelaw

Proposed: **David Morgan** **Seconded: Jim Masters**

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

In favour: **All (7)**

Agenda Item 10

Policy Regarding the Non-payment of Fines and Issuing of Permits.

Presentation:

The Vice Chair asked Members to refer to the Officers' paper that included a recommendation. To provide additional context the Vice Chair reminded Members about the functions and responsibility of the Byelaw Technical Working Group (BTWG) to assist the B&PSC in drafting legal documents and byelaw associated policy for the approval of the B&PSC.

CO Mander highlighted the difficulties that exist regarding the non-payment of fines or costs set by a court, in that the outstanding amounts are difficult to chase up by the courts. The creation of a Policy would be in keeping with the provisions in the D&S IFCA Permit Byelaws as each states that the Authority may issue a permit, rather than it must issue a permit. CO Mander explained that the introduction of a policy would recognise the key bullet points as set out in the Officers' paper and after drafting it would be presented back to the B&PSC for their approval.

Debate, Questions & Comments

Jim Masters said he was supportive of the approach, but questioned consistency applied from different regulators in their investigation processes and decision making leading to the different disposal options. CO Mander explained that different enforcement actions are available to D&S IFCA and that D&S IFCA's

prosecuting solicitor applies both an evidential and public interest test. That said, CO Mander conceded that there are inconsistencies with how other regulators approach issues of non-compliance.

David Morgan enquired about the procedure that is open to courts and fishers if fines and costs are not paid. The Vice Chair provided a response and from a fisher's perspective, the Vice Chair said that there are options for a court to consider including the use of bailiffs or reconsideration regarding time to spread payments. The Vice Chair Informed Members that court time is in short supply and that these types of scenarios often take a lot of time to resolve. Felicity Sylvester raised her concern that if a permit was not issued due to non-payment, it would remove the opportunity for those that have offended to earn the money to make their payments. CO Mander responded and explained that if a court has set a payment schedule, affordability would have been a factor at that time and the individual has the opportunity to go back to court to review the situation. From D&S IFCA's perspective, a policy of potentially not issuing permits sends a strong message to those that may possibly offend. CO Mander pointed out that the majority of fishers do abide by the legislation and the introduction of this policy would reassure those fishers that they are not at a disadvantage as compared to those that may offend coupled with avoidance of their responsibility to make payments that they owe.

Members asked further questions regarding D&S IFCA legal powers. The Vice Chair explained that MaCAA includes a provision for a court to suspend or remove a valid permit and DCO Clark commented that this Policy would instead be relevant to the renewal of permits, rather than those that are currently valid. The Vice Chair read out the Officers' proposal and David Morgan said that he would support the wording as a motion for a vote. Jon Dornom agreed, and the Vice Chair put it to the vote.

Decision Making

That the B&PSC action the Byelaw Technical Working Group to create a document that sets out D&S IFCA's Policy on not issuing permits, where there is non-payment of fines, costs and FAPs.

Proposed: David Morgan Seconded: Jon Dornom

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

In favour: All (7)

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Information Items:

Agenda Item 11

The Five-Year Review of the Mobile Fishing Permit Byelaw.

Presentation:

CO Mander introduced this Agenda Item and explained that the report was intended to demonstrate the different aspects of the work required to progress the review. CO Mander informed the Members that the workstream had become protracted due to a need to manage the activity of sand eel trawling and to recognise other factors, some of which were unknown quantities. Although there would be no decision making needed at this B&PSC meeting, CO Mander highlighted that as different information is presented to the B&PSC at key stages, further decision making would be needed to progress the work.

Debate, Questions & Comments

Felicity Sylvester opened the questioning and sought some clarity on the range of methods that fall under the term "Mobile Fishing". CO Mander was able to respond by explaining the methods covered in the interpretation of "Mobile Fishing" as set out in the current Byelaw.

Jon Dornom referred to page 7 of the Officers' report and questioned the inclusion of a trawl length restriction of 20 metres for recreational fishers. Both Jon Dornom and David Morgan explained that a length of trawl as a restriction did not make any sense, and without a definition of what was meant by 20 metres trawl length would be pointless. Jon Dornom explained that a measurement restriction would only act as a restriction if it was related to more technical elements of the gear construction and suggested that a length of footrope would be a more appropriate permit condition for recreational sand eel trawling.

PPO Townsend explained that the 20-metre figure had been obtained from previous B&PSC discussion and decision making. PPO Townsend informed Members that the technical elements would need to be addressed in drafting work with assistance from the BTWG and that possibly the interpretations used within the relevant recreational permit would clarify the issue. PPO Townsend explained that the "Progress and Revised Planning Report" was primarily to inform Members of what information had already been assembled as part of the workstream and what work would need to be undertaken and considered as the review develops. As drafting work reaches a more advanced stage, PPO Townsend explained that more of the technical elements of the potential permit would be clarified, and all Members would have the opportunity to scrutinise the drafting work.

With no other questions or comments from the Members regarding the next phases of work, or the estimated timetable for delivery, the Vice Chair ended the discussion.

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Agenda Item 12

Date of Next B&PSC Meeting.

The Vice Chair enquired if a date and venue had been organised. PPO Townsend explained that he would evaluate what work could be achieved in a given time period so enough information could be assembled to present to the B&PSC at the next meeting. Although an exact date could not be provided at this time, PPO Townsend informed Members that the next B&PSC meeting would probably take place at the end of September or early October with all Members provided with clarification soon.

End.