

203 AT A SPECIAL MEETING OF THE TECHNICAL, SCIENCE AND BYELAW SUB-COMMITTEE held at 1 Preston Street, Carnforth on 16th December 2014

PRESENT – MEMBERS

R. Graham	(Chairman)	MMO appointee
Dr E. Baxter		MMO appointee (Marine Environment)
Dr J. A. Clark		MMO appointee (Marine Science)
Mr T. Jones		MMO appointee (Commercial/Aquaculture)
Mr C. Lumb		NE (Officer)
Councillor A. J. Markley		Cumbria County Council
Mr D. Howarth		MMO (Officer)

OFFICERS

Dr S. M. Atkins	Ms M. Knott
Mrs I. V. Andrews	Ms A. Leadbeater
Mr A. Deary	Mr J. Moulton
Mr I. Dixon	

BY INVITATION

Dr S. Utting	Menai Strait FOMA
Mr J. Wilson	Menai Strait FOMA
Mr J. Wiggins	Kent & Essex IFCA
Mr R. Pritchard	Natural Resources Wales

APOLOGIES FOR ABSENCE

Councillor K. Brown	Lancashire County Council
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204 CHAIRMAN'S ANNOUNCEMENTS (Agenda Item 1)

1. The Chairman announced apologies and welcomed those attending by invitation.
2. Agenda Item 3. Section 158 of the Marine and Coastal Access Act 2009 had been tabled.
3. The Chairman reminded Members that any pecuniary or non-pecuniary interest in Agenda Item 3 should be declared in order that members are aware of that involvement.
4. EXCLUSION OF THE PUBLIC

RESOLVED

The public be excluded from the meeting for discussion of Agenda Item 3 in accordance with NWIFCA Standing Order 8.3(d).

205 DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTEREST IN AGENDA ITEMS (Agenda Item 2)

Agenda Item 3. IFCA Byelaw making powers and the powers available as Grantees of a Several or Regulating Order. Mr T. Jones.

The Chairman reminded members of the tabled document outlining Section 158 of the Marine and Coastal Access Act (MACAA) 2009 relating to supplementary provision of byelaws. He emphasised the importance of the meeting and said there are a number of invited guest speakers who will be asked to give their experience in managing Fishery Orders which it is hoped will help inform members in their deliberations and ultimate decision on whether the North Western IFCA pursues the question of a Morecambe Bay Hybrid Fishery Order or gives priority to the alternative of using Byelaw 3. The original approach for a Hybrid Fishery Order had been well received and supported. Wide consultation took place on the proposals and an application and draft management plan was prepared and submitted to Defra and has now been with them for some time. The proposal for a Hybrid Fishery Order is restrictive in that it relates solely to Morecambe Bay and the Duddon Estuary and other shellfisheries outside Morecambe Bay would be excluded. The byelaw approach would be district-wide and is thought to be more manageable. The paramount questions with Fishery Orders are those of affordability and, if granted, how they could be funded with the present resources of the Authority.

The Chief Executive provided some background on Fishery Orders to inform those members who are not familiar with them. In response to a question from Mr Wilson for clarification that Byelaw 3 and Fishery Orders are not mutually exclusive, Dr Atkins confirmed that is correct but they are difficult to combine and could create problems. If it is decided to proceed with a Regulating Order Byelaw 3 will need to be radically changed. The byelaw currently in place is working well but it does need development and amendment and it is felt that time should not be spent on that while deliberating the question of a Fishery Order. It would be difficult to manage shellfisheries within the District or put management plans in place for each of the shellfisheries until a decision is made whether to do this under the auspices of a Fishery Order or to do it under byelaw. MACAA gives IFCA's greater byelaw powers in controlling numbers, in respect of charging and being able to recover costs. Fishery Orders legislation dates back to the 1880s. It was modernised in the 1967 Shellfish Act and minor changes were introduced in the MACAA including giving byelaws precedence over Fishery Orders. It was brought in to allow development of fishery businesses and particularly aquaculture. In 2008 Crown Estate made a decision not to consent to any more Fishery Orders but MACAA changes the role of Crown Estate and means their consent is no longer required. NWIFCA has a number of designated areas within the District and the powers given to IFCA's under the MACAA effectively mean that the Authority's byelaws will take precedence over any fishery rights even if they exist. The CE has made that point to Boughton Estate in their claim for fishery rights and it is understood from the legislation that even if they can prove those rights the Authority's byelaws will still apply. Section 158 of MACAA is very important because it sets out the intention of changing the basis of Fishery Orders and limiting their powers to some extent. Another question that needs to be addressed is that of Several Orders within the District which is still part of the process. Fishery Orders legislation was brought in to allow development of fishery business and particularly aquaculture in the case of Several Orders so that businesses could establish themselves and have protected rights over an area of sea bed in order to develop their fisheries. MACAA is based on environmental and socio economic considerations, none of which were mentioned in the 1967 Shellfish Act. Paragraph 4 of the Chief Executive's report points out that Several and Regulating Orders may arguably now be obsolete as they fail to properly account for the environmental management obligations of the NWIFCA. Specifically they fail to incorporate the obligations of the Habitats Directive leaving a lack of clarity over how these should be built into a Fishery Order regime which may be enacted for up to 60 years. It is not proposed to abandon the concept of a Several Order as this seems to be the only way of setting aside an area specifically for aquaculture. Some IFCA's have developed flexible byelaws where they have powers to change regulations without the need for approval by the Secretary of State. Regulations can be changed under Several and Regulating Orders but any changes have to be approved by the Secretary of State. A Several Order can be granted for up to

60 years in theory but this has not yet been tested. Byelaws have no specified time limits. Regulating Orders are time-consuming and involve a lot of resource to put it in place and it is now felt that a Regulating Order is not essential to manage the shellfisheries within the District. Two meetings to discuss the proposed Fishery Order were held which did not solve the intractable problems in how to decide who gets licences, how to decide how many licences there will be and how much they will cost.

The Chairman then asked Mr Wiggins to inform members of his experience of managing a Regulating Order for the cockle fishery in the Kent & Essex IFCA District.

Mr Wiggins said that Kent & Essex IFCA has a Regulating Order covering the central part of the Thames Estuary but there is part of the District that is not part of the Regulating Order. Kent & Essex has been considering applying for a second Order to cover that area but has now decided to progress a flexible permit byelaw system. The existing Regulating Order was applied for in 1994 and following a Public Inquiry it was granted in the same year for a period of 30 years. The area outside the RO has been managed under byelaw and the Authority has considered a RO for that area also. This year the measures from the RO have been transferred into the wording of a draft flexible permit byelaw. Other measures including biodiversity measures were also included in the wording as it was felt to be the best and quickest way forward. The draft is presently with Defra for consultation with regard to the wording and K&EIFCA feels the experience of translating the RO into a byelaw has been successfully done. One issue with the RO is that when the fishery was started 12 licences were issued under the RO to those vessels able to demonstrate a track record. Two further licences were subsequently issued on a temporary basis with the intention they would be withdrawn when stocks declined. Following a judicial review which ruled the current criteria of first in last out was not justified the Authority decided to continue with 14 licences.

Mr Wiggins said K&EIFCA is also working with the oyster industry on a project within the MCZ to restore the native oyster population which has declined quite considerably. K&EIFCA is looking at management of the fishery and has considered a RO but now feels that the new powers available under a flexible permit byelaw will be the best option. Priority is being given to those investing in the fishery in order that there will be people who can benefit from the production and harvesting of native oysters in the future if it is successful. In response to a question as to whether that would be done under a Several fishery, Mr Wiggins said there are a number of private Several fisheries within the area that are managed separately. Mr Wilson asked for clarification on the comment made about priority being given to those making the investment in the project. Mr Wiggins said that is what the industry would like to see. The Authority is in discussion with MMO on whether the wording of the byelaw is acceptable and to try to include some mechanism to achieve that measure.

A question was raised as to whether the industry takes part in surveys or if that is solely the province of the K&EIFCA. Mr Wiggins said industry was on board during the survey and there was no reason they could not take part. An area is closed for the harvesting of native oysters, which is a separate small fishery.

Mr Wiggins said K&EIFCA also has a flexible byelaw regime for the whelk fishery which was introduced some 1½ years ago. Data was collected, surveys were carried out and consultation took place with permit holders, Cefas and NE. A number of technical measures were introduced under byelaw which also sets out the procedure by which those technical measures can be altered, areas closed or changes made to minimum size. The Authority is able to make decisions on any changes to the technical measures without reference to the Secretary of State. With Regulating Orders, any changes to regulations and restrictions have to be referred back to Defra for the Secretary of State to approve. It is understood that Defra are reviewing their procedures for amending regulations and restrictions and also the question of licence conditions and there are a number of

unanswered questions as to how changes could be made and how complex it would be under a Regulating Order.

Under the Cockle Fishery Order the Authority has to apply to the Secretary of State to vary the licence fee which at present is just under £5,000 per annum. This produces revenue of £70,000 which covers management of the fishery. Over the years K&EIFCA has moved over to full cost recovery.

Ms Knott asked if there have been any years when stock has been too low to open the Fishery and if so whether the Authority has considered the action it would take in those years. Mr Wiggins said the fishery has never been closed. There is an entitlement written in to the Order for licensees to renew their licence if they held one within the previous 24 months. If licence holders followed that criteria they could miss a year and would not have to apply for a licence but he felt they would not want to lose their entitlement and would continue to pay the licence fee. There is no waiting list for licences which were issued to companies as the track records in the first instance were with companies that were unlikely to drop out of the fishery.

Mr Wilson asked about compliance with the Habitats Regulations and whether the process of assessment has to be completed each time a licence is issued, whether K&EIFCA has a well established process it can undertake to comply with the obligations, whether there is a material change in activity and whether Mr Wiggins felt having a Regulating Order has had any impact on sustainability of the fishery. In response Mr Wiggins said for many years K&E has been carrying out appropriate assessments for the cockle fishery and there is a vast databank of data since 1997 on population dynamics. It has been accepted by NE that Appropriate Assessments being undertaken annually are sufficient to meet those requirements. The reason more licences have not been issued is because it is not known if any changes are likely to be made on how the legislation is applied. It was felt that without the Order there would have been a large increase in the number of vessels working in the fishery and without some control the fishery would not have been as sustainable as it is now.

Ms Knott said that under MACAA the powers that IFCA's now have under byelaw are sufficient to be able to bring in those same measures that they previously had under a RO and it is a much quicker process. Mr Wiggins said under the RO the number of vessels is tightly limited. K&EIFCA does not have any byelaws that restrict numbers although he is aware that IFCA do have experience of that. The situation is different in the Thames and if there was no limit on licences there would be many more people making a living from the fishery and the Authority would have to either reduce it to a very short season or have to impose other restrictions such as daily quotas. It could be achieved but it would be difficult to manage with more boats and the environmental impact might be greater.

Dr Sue Utting was then asked to provide background to the Menai Strait Fishery Order Management Association.

Dr Utting informed members that after the duties of the former NWNWSFC for management of inshore fisheries in Wales was taken in-house by the Welsh Government, the Menai Strait Fishery Order Management Association was set up to provide management and sustainability of the current mussel fishery in the Menai Strait. The MSFOMA would like to see continued access to seed in Morecambe Bay for its members for their long term future as it feels the sustainability of mussel fisheries in the future, not only in the Menai Strait but in other areas, will be important in bringing socio economic gains. The Menai Strait is split into two areas Menai (East) where a Hybrid Order is still in force and will expire in 2022. The industry in the Menai Strait has worked closely with the local university and other scientific groups to look at sustainability of stock in the area, and also off Caernarfon Bar where seed has been accessed in the past, and in looking at the importance of the area in terms of the bird population. The Menai Strait fishery is the first to receive MSC accreditation. It works to strict management conditions and it is felt it is

meeting all its environmental obligations. The MSFOMA is currently in discussion with Welsh Government about reinstating the Menai (West) Order which lapsed in 2008. The MSFOMA feels that Fishery Orders give the flexibility to manage the environmental aspects under MACAA. It can still be done under the Shellfish Act and that argument has formed the basis of the representation to Welsh Government.

Mr Wilson said the Association was set up to mirror the former SFC in that representation comprises industry, statutory conservation bodies, science, local authorities and government. The meetings are directed by long term objectives and also short term needs and the industry pays for that in their entirety. The cultivation industry in particular sees the absolute benefit of having an arms-length body there to manage its activities and the Association is something it feels a part of. Study and practice elsewhere in the world describes the benefits of having a more co-management approach and how that increases effectiveness. Over time other fishing opportunities have changed and people look at economic revival activity as the long term basis to it and want to be part of that revival. Fishermen need to buy-in for the long term and that is what produces a sustainable fishery. Restriction of access and long term buy-in are important parts of a RO. Mr Wilson said he is unclear under a restrictive byelaw scheme how that investment can be maintained in the future if people who have not contributed to the fishery can also take advantage and enjoy it when the fishery is doing well. He thought that point needed to be clarified. The MSFOMA has found that Fishery Orders bring a lot of sustainability to the whole procedure. They provide long term rationale, management of the fishery for the fishermen involved and allow for external understanding of the process which is much more detailed and knowledgeable than exists for fisheries that might only be restrictive on an annual basis.

The Chairman said the NWIFCA recognises the contribution made by the Menai Strait mussel industry in terms of surveying stock and assisting the science officers. He asked Mr Wilson if he was suggesting the way forward should be by Fishery Order. Mr Wilson said he would personally like to see a long term transparent rationale basis to that management.

The Chairman said the proposed Mussel Management Group is something the NWIFCA is keen to develop which would involve the various interests within the District in the decision making process. Dr Atkins said the NWIFCA is trying to achieve sustainability and a long term management solution under byelaw. Mr Wilson had talked of the incentive of the RO and he could see the incentive aspect in a SO which gave proprietorial rights to an area which can be invested in. Dr Atkins felt Byelaw 3 permit holders also have a very strong incentive to comply with the regulations and keep their permit running year on year even in times of no cockles. The Chairman said the idea of a Mussel Management Group is something the NWIFCA would wish to develop and to involve more stakeholders as part of the decision making process with a make-up similar to the Menai Strait Association.

Mr Lumb pointed out one of the things NWIFCA had to do for the proposed RO was to produce a management plan which set out the vision of how that fishery would be managed, that long term vision that Mr Wilson was talking about. Ms Knott said that measures within the draft management plan would be implemented under byelaw and the MMG and possible Cockle Management Group would ensure those measures are totally relevant. IFCA's vision is for management of shellfisheries by district-wide byelaw rather than just for the Morecambe Bay and Duddon. It would be able to enact management plans for all fisheries within the District including all environmental concerns. If it is possible to achieve that under byelaw it would seem to be the way forward.

207 ADJOURNMENT OF MEETING

The Chairman proposed an adjournment until 1320 hours and this was agreed.

The Chairman then asked Mr Rick Pritchard of Natural Resources Wales to outline NRW's experience with the Regulating Order in the Dee Estuary

Mr Pritchard began by providing some background to the Regulating Order. The Order was introduced to eliminate the boom and bust fishery prior to 2007 and also in the wake of the Morecambe Bay cockle tragedy. A Public Inquiry was held in 2007 and during that process objections were heard and noted. A management plan submitted to the Inquiry in draft form was amended to take into account as many of those views as possible and that plan subsequently became the working document for the day to day running of the fishery. The plan was very detailed in terms of restrictions and regulations, conditions of licence and reference to the Habitats Directives. The area is a very sensitive one and the main aim was to ensure firstly there was sufficient food for the birds and then the 53 licensees have the balance of what is left of the stock after the allowance for the birds. The licence conditions and restrictions were written in 2007 and it is a lengthy process to make any changes. The RO is a cross border fishery and NRW needs to liaise with Defra and WG. The licensees are consulted on the licence conditions to ensure NRW has good support for them and they understand the reasons for the changes. The fishery is almost a cost neutral fishery and the plan has a formula written in which enables the fee to be varied year on year. NRW is trying to achieve that level where costs are being covered and it is not drawing too much funding from grant aid.

Ms Knott asked if NRW has considered whether to charge in years when there is no stock. Mr Pritchard said written in the plan is provision that if it is known there is not going to be enough stock in any given year to open they will charge for the first year and if it goes into a second year the licence holders will receive a pro rata rebate on any subsequent licence due. In the past it has never got to the point of going two consecutive seasons without opening.

Councillor Markley pointed out that K&EIFCA and Menai Strait are predominantly dredge fisheries and NRW is a hand gathering fishery. NWIFCA has both. He was disappointed there were no representatives of the hand gathering fraternity present and only dredge fishermen. A big issue to be considered and decision made is how to regulate the fishery, who would get first opportunity and should this be local fishermen. Mr Pritchard said firstly when issuing licences it could not be done by postcode but on an evidence base which meant the best person got the job rather the fact he was living on the doorstep. Secondly a provision is written into the management plan where temporary licences can be introduced in those years where stock levels rise to a point where the 53 licensees could not cope physically with the amount of cockle stock. Temporary licences are introduced to make sure the beds do not die off through overcrowding.

Ms Knott said with regard to the MBFO proposal NWIFCA needs to get down to the actual detail of management and governance and how that works under IFCA as to what we can and cannot do. She asked Mr Pritchard if NRW has a dedicated team for the Order or if they have other work as well. Mr Pritchard said his sole job is to use the management plan to run the fishery on a daily basis.

Dr Clark said the NWIFCA has been very reactionary in the way it manages fisheries rather than proactive. The present draft management plan is in a form that could be used for the future. She felt NWIFCA needs to implement a management plan and to get back the confidence of the fishing industry. A sustainable fishery and sustainable fishing incomes will come after that but until the IFCA stops reacting to all the emergencies, crises and arguments it will never get anywhere. Mr Pritchard said part of the major confidence boost came from the Public Inquiry when fishermen themselves registered their objections to certain things on the draft management plan. It may be naïve to say they were all resolved but the vast majority of their objections were taken into consideration in the subsequent re-

write of the management plan. Any points they were not particularly happy with were addressed and therefore they bought more readily into a RO because the Public Inquiry gave them an option to air those points. If any of the points ever arise again NRW is able to refer back to the report and it was brought up at the Public Inquiry and resolved but if not brought up at that time they had no grounds for complaint now.

Councillor Markley asked why seed mussels could not be transplanted into Morecambe Bay. He was looking for a positive answer to that to be able to respond to questions raised with him. Ms Knott said trials have been carried out over many years and there is still a proposal for the Walney Channel. The Bay does not seem suitable for that activity but there are still companies interested in taking that forward and developing those fisheries and those are the areas that would come under a Several Order. Councillor Markley said he would like clarification that the byelaw when written should include the proviso that because of the complexity of the Bay trialling would continue but that NWIFCA would also allow seed mussel to be taken out of the Bay. Ms Knott did not agree that was necessary. Mr Wilson felt it was not just about mussels but of having the experimental flexibility that Mr Wiggins had talked about.

Ms Knott said in 2011/12 the NWIFCA had gone through a long process of consultation around the management plan. A number of changes had been made to the plan following discussions with the fishing fraternity and it was felt at that point there was a lot of confidence for the proposals. That has now to be revisited and Ms Knott envisages looking at the management plan, establishing working groups, working with stakeholders and carrying out more consultation to make sure there are no major issues to be addressed before proposals are finalised.

The Chairman reminded members that the aim of the report circulated by the Chief Executive for the 31st October meeting was to compare the pros and cons of byelaws against Fishery Orders for management of shellfisheries in Morecambe Bay. The recommendation was that further development of Byelaw 3 should be given a higher priority than continuing with the RO. Guest speakers with expert knowledge in Fishery Orders for both cockles and mussels have given members practical and real life information as to how these have worked. It would seem that a review of Byelaw 3 would be more expeditious, less costly and could do the same job as a RO. The alternative would be to go down the road of a RO. To manage shellfisheries in a proactive way with all stakeholders the proposed management groups for cockles and mussels might seem to be the way forward and would give stakeholders an opportunity for first hand input into the decision making processes. Members were asked if they wished to change the original decision for a Hybrid Order for Morecambe Bay and make a recommendation to put forward to the next IFCA meeting in March 2015. Mr Lumb said the Authority should be making a decision on whether to progress this matter by byelaw or Regulating Order or byelaw and Several Order. In discussion with national colleagues their view is there is strong steer from IFCA that byelaws are the relevant mechanism for delivering this and the resource in Defra for addressing a Regulating Order is diminishing all the time.

Mr Jones felt the aim of the paper and recommendations do not balance and the recommendations are too blunt. The Authority has not yet identified in its District what might be regulated by a RO and what might be managed by byelaw. There may be a need to broaden the recommendations out and to look at both means of managing the fisheries within the District. All options that are being demonstrated as being available under byelaw are equally available and equally address conservation issues under RO.

Ms Knott pointed out firstly members should be considering Byelaw 2 as well as Byelaw 3 as there is no mention of the seed mussel dredge fishery in Byelaw 3. That was an omission at the point it was made and regulation of that fishery should come under Byelaw 2. Secondly there has been a long delay with a response from Defra following submission of the application for a Hybrid Order and she did not have confidence that it would be actioned quickly. Thirdly Ms Knott asked if members come to a resolution today whether

there is a mechanism for taking it to the full IFCA before the March meeting. Ms Knott said officers needed guidance on the route the Authority wished to take on this so that progress can be made as soon as possible in the New Year in establishing a MMG. The Chief Executive said any decision taken today is likely to be ratified by the Authority in March and members could be informed of the decision by email if necessary.

Dr Clark felt there is no reason why the Authority could not start to put together and implement management plans for both cockles and mussels and members could make a resolution to move progression of Byelaw 3 without ruling out a RO. If government changed the nature of Fishery Orders that made them more attractive that option can be considered again in the future. The Chairman reminded members again of the recommendation in the report to continue with the development of Byelaw 3 as a more expeditious way of dealing with the issues at hand and allow the Authority to work on a management plan with the MMG for mussels and cockles quickly. It would also allow the Authority to deal with the separate question of SO and the question of a RO would still be left on the agenda for further consideration.

Ms Knott made the point that NWIFCA has an application for a Hybrid Order lodged with Defra. The Authority will need to decide what is to happen with that to be able to submit another application if it is talking about having a SO and byelaw as the application will need to be withdrawn and re-written for the SO. Mr Wilson said a whole new application would need to be submitted. He questioned the viability of going down the SO route and felt it should be either a Hybrid Order or restricted byelaws and there was no halfway house option. As one of the companies with a long term expression of interest in one of the areas, the IFCA's ability to recoup costs from that company would make the whole process prohibitive and he felt it would be much easier for it to make its own application. He asked Officers what had changed their thinking from having a very strong steer from the Authority for a Hybrid Order to a very strong steer away from it. The Chairman said firstly the cost of appointing an officer to operate the Fishery Order which could mean two additional staff in the North West at a significant cost, secondly the RO is restrictive in the sense that it refers solely to Morecambe Bay whereas the alternatives of the byelaws can and do cover the whole District.

The Chairman said management of Morecambe Bay provides an opportunity which may not have been there in the past for people with an active interest to meet together and manage it. His view in the forthcoming year the Byelaw 3 management structure would likely allow that whereas if the management structure was not in place, waiting for the Morecambe Bay Hybrid Order to be granted by Defra might put the Authority back in the same position it was in last October. Mr Lumb said there has been a very considerable investment in the management plan. It needs revision but there is every opportunity with the MMG and CMG to get a management plan and management principles in place in advance of the fisheries next year. That would take the best and most practical and critical elements of the work already done and get it moving ahead expeditiously.

Councillor Markley suggested an amendment to the recommendation agreeing to give higher priority to a flexible permit byelaw scheme which would enable the science team to move forward on that and for the RO to continue at a later date which would leave the option open to do that. Ms Knott again pointed out that any resolution should refer to both Byelaws 3 and Byelaw 2 otherwise the whole dredge fishery would be omitted. The review of development of Byelaw 2 still has to be progressed or the Authority will still be using a back door approach to managing seed mussel and dredging. Ms Knott felt a decision was needed on the issue of SO. If it is agreed not to progress either the RO or SO she would ask Defra to withdraw the application for the time being but it may be revisited in the future.

Dr Clark pointed out that recommendation says that further development of Byelaw 3 should be given higher priority than continuing with an RO for Morecambe Bay and suggested Defra needed to make a pronouncement on that point as it is fundamental to the IFCA's decision. Councillor Markley agreed the Authority did need clarification on that.

Mr Lumb said the IFCA and Science Team needed clear direction on the way forward. Members have learned from Mr Wiggins experience in terms of K&E flexible byelaws and suggested the recommendation should be to progress this issue through byelaws and then to withdraw for the moment the RO. That does not preclude it from being re-submitted if it is found in the future the byelaw option is not feasible. Ms Knott reiterated the point that the application is not for RO but for a Hybrid Order which is RO and SO.

Mr Jones said he felt not enough time had been given to discuss the matter. There is no proven way in which adapted byelaws have been tested and the wording of para 3 is a broad interpretation of what the Authority's powers are. He asked Mr Wiggins firstly whether K&E has yet brought any prosecutions or tested its byelaws, and secondly by what mechanism the byelaws are enforced and how effectively can they be enforced in comparison to a RO or SO. Mr Wiggins said a number of elements of the flexible byelaws are still with Defra for confirmation of whether they are acceptable and they are still developing the finer details of the byelaws. He suggested NWIFCA should develop their byelaw, get confirmation from MMO on what terms and conditions would be acceptable and then compare those with the Hybrid Order. Enforcement of the byelaws has been strengthened under MACAA and his understanding of the situation is that byelaws are probably stronger than enforcement capability under RO but he could not give a definitive answer to that until they have been tested in court.

In respect of the point made by Mr Jones about the provability of flexible Byelaws Ms Knott said the Authority has had the proven value of Byelaw 3. There are areas of that byelaw that need review and improvement but as a district-wide byelaw it is effective. For the seed mussel dredge fishery a separate byelaw is needed. Ms Knott said she has confidence that the management measures within the management plan can be rolled out into those byelaws.

Mr Moulton asked about flexibility, where the limit of flexibility in flexible byelaws came in and where does the word flexible define certain aspects of the byelaws in its limits. Councillor Markley said that question has been asked at AIFCA meetings regularly and each time it comes back to the fact that IFCA are the ones in charge of it so it is how flexible it wants to be.

The Chairman said he felt that members would be in favour of the review of the byelaws provided the option is still there to revisit the question of RO if necessary and asked if they agreed and recognised that the byelaw option does offer some immediate solutions to the problems being faced by the Authority.

The Chief Executive suggested members vote on the recommendation as it is. Officers will start to review and develop Byelaw 3 and the RO will be left in abeyance until a time it is considered to be required. Defra can be informed of the Authority's intentions with regard to the application.

Mr Jones proposed an amendment to the recommendation that further development of Byelaw 3 should be progressed and the present Hybrid Order application presently with Defra should be left as is. The possibility of progressing a new RO should be available to the Authority at a future date. Mr Wilson said from his perspective, while he agreed in principle with Mr Jones' suggestion, speaking personally and all industry he felt that was the least best solution.

With respect to the question of Several Orders, the Chief Executive pointed out it is the RO aspect that is being debated which is felt can be best done under byelaw and which would encompass all cockle and mussel fisheries within the District. The Authority can reconsider Several Orders as an option to be revisited at a later date. Ms Knott asked Mr Wilson whether, if the IFCA does not progress the SO aspect at the moment, his company would consider making its own application to develop the areas. Mr Wilson said his concerns with SO is that the IFCA is likely to confront the same situations and find itself in the same

situation in two or three years' time. His company has been seeking a Several Order for 23 years and has relented on three occasions in the past. Dr Atkins said an aquaculture area can be done through a Several Order on its own and does not need to be linked to a Hybrid or Regulating Order.

Mr Jones felt the wording of the recommendation needed to be tighter than his proposal. Mr Lumb agreed and suggested the recommendation should make it clear that progressing management of shellfisheries should be by byelaws and then a separate decision taken as to whether to leave the RO in place so that it can be reinstated in future if it is decided to progress that route. He further suggested IFCA needed to review and identify which byelaws need changing and at the same time IFCA officers should be given a mandate to develop the management plan for the intertidal and subtidal fisheries with priority in Morecambe Bay which will give an opportunity when looking at the revisions of the byelaws to check if they will actually deliver the management measures and principles. Mr Lumb proposed that future management of shellfisheries in Morecambe Bay and the NW District should be progressed under byelaws. The proposal was seconded by Councillor Markley.

Following a vote of 4 in favour and 1 abstention the motion was carried.

Mr Jones had declared an interest and was not eligible to vote.

The Chairman brought the discussion to a close and thanked the guest speakers for their contribution.

RESOLVED

1. The report be received.
2. Future management of shellfisheries in Morecambe Bay and NW District be progressed under byelaw.

There being no further business the Chairman thanked members for attending and declared the meeting closed at 1315 hours.