

NWIFCA: A BYELAW STRATEGY

OCTOBER 2021

Background

1. This draft strategy has been prepared by a group of NWIFCA TSB sub-committee Members and NWIFCA Officers in response to a resolution made at the meeting of this sub-committee in August 2021.
2. When the NWIFCA was established in April 2010 it inherited a suite of byelaws for the fisheries in its District from its predecessor organisations:-
 - a. National Rivers Authority byelaws – for the Dee Estuary (7 byelaws)
 - b. North West Sea Fisheries Committee – for the District between Hilbre Island and Haverigg Point (currently 17 byelaws)
 - c. Cumbria Sea Fisheries Committee – for the District between Haverigg Point and River Sark (currently 16 byelaws)
 - d. Environment Agency – for areas upstream of the old NWSFC & CSFC Districts (1 byelaw)
3. The NWIFCA currently has 6 of its own byelaws which apply to the entire District.
4. The geographic extent of each byelaw is determined by the boundaries of the Authority that made it. The NRA byelaws for the Dee, NWSFC and CSFC Districts, and the EA byelaw are contiguous; the byelaws made by NWIFCA cover its entire District.
5. The fisheries in the NWIFCA District are currently subject to a suite of 47 byelaws originating from 5 different organisations, and which form a patchwork of local regulations that are overlaid by some District-wide regulations. Many of the byelaws address similar or identical issues in different ways. The result is a complex, confusing and piecemeal set of legacy byelaws.
6. The purpose of this document is to set out a strategy for creating a single suite of NWIFCA byelaws. It builds on the discussions between TSB Members and IFCA officers in December 2019, May 2020, August and October 2021 of this issue and considers:-
 - a. Aims and Objectives for this strategy;
 - b. How to prioritise progress; and
 - c. Timescales for the review.
7. This Strategy is intended to set out a framework for action. Its implementation will also require a formally agreed “Operational Plan” (see initial proposal at Annex A), and also an appropriate system of checks and balances (“Quality Assurance”) to ensure that the resulting new byelaws progress smoothly and effectively through the administrative processes without duplicating existing regulations or creating new loopholes or gaps.
8. Any and all advice on how to develop and refine the Authority’s strategy (or alternatives to the approach proposed here) would be very welcome.

Aims & Objectives

The overall aim of the byelaw strategy is:-

For the NWIFCA to have a single suite of bylaws for the fisheries in its District that meet the statutory requirements for the management of inshore fisheries within a period of 5 years.

The objectives for the byelaw strategy are:-

1. To identify priorities for action, based on feedback from fishers, IFCOs, NWIFCA Members and stakeholders in the District.
2. To set out a timescale for completing the byelaw review.
3. To keep the process under review and update it on an annual basis or as required with changing priorities.

Timescales

A timescale of 5 years is proposed. It is accepted that it is hard to predict a timescale for completing a review of this nature: it is a complex exercise that will span a wide range of issues and will require the IFCA to work in partnership with several other organisations. At the same time, fisheries in the IFCA District are dynamic and evolving. New issues will crop up that have never been seen before which will disrupt our best laid plans.

Nonetheless, it is also the case that unless a strategy is driven by a timescale it will not make progress or tackle the challenges that it was intended to address.

The 5-year timescale should therefore not be seen as a deadline – but rather as a challenge. Setting this goal will serve to organise and measure the best of the Authority's energies and skills, and will provide a focus and sense of purpose to this important aspect of our work that is likely to have benefits for the Authority, sea fisheries resources, the marine environment, and those that fish within the District.

Priorities

A simple, transparent, and adaptable approach to determining priorities is needed to allow for a strategy that enjoys support from IFCA staff, Members, and those engaged in fishing within the District.

It is appropriate for IFCA Officers in the enforcement and science teams to agree and propose priorities for this review strategy and to present these for approval and endorsement by Members. This will ensure that the priorities are based on the experience of expert staff, and also avoid the risk that the byelaw process is influenced by the pecuniary or prejudicial interests of Members.

It is proposed that a “scoring” system is used to determine priorities. Under this system, each byelaw could be scored on a scale of 1-3 against a series of criteria by the relevant senior IFCA staff (CEO, HoE, SS). These scores could be presented and discussed annually by a meeting of the TSB to ensure that the priorities are transparent, remain current and respond to changes within the District.

Some criteria that could be used in this scoring are proposed below (this list is presented for discussion).

1. Practical issues
 - a. Urgency (i.e. whether or not the new byelaw is necessary as a matter of urgency in order to address a particular issue);
 - b. Enforcement improvement anticipated (i.e. the extent to which a new byelaw will improve management by updating measures and / or reducing confusion / duplication).
2. Contribution to statutory functions of the IFCA¹ – the byelaw is necessary for:-
 - a. Sustainable exploitation of sea fisheries resources;
 - b. Balancing social and economic benefits of exploiting the sea fisheries resources of the District with the need to protect the marine environment;
 - c. Contributing to sustainable development; and
 - d. Balancing the needs of persons engaged in the exploitation of sea fisheries resources in the District.
3. Administrative / pragmatic issues
 - a. Ease of amending byelaw

TSB Byelaw Review Group
October 2021

¹ This list summarises the IFCA duties set out in §153(2) of the Marine & Coastal Access Act 2009.

Annex A: Draft Byelaw Operational Plan

The transition from the existing suite of 47 byelaws made by 5 different organisations that were made over a period of several decades to a new suite of byelaws made by a single authority presents a challenge.

Despite the diverse origins of the existing suite of byelaws, some themes are evident, which may help form the basis of the transition plan. The existing byelaws fall into three broad categories:-

- **Issue-specific byelaws** - some of the existing byelaws in place address a specific issue across several different types of fishing activity (for instance NWSFC Byelaw 2 relates to all types of net meshes (mobile and static gear); NWSFC Byelaw 11 and CSFC Byelaw 4 both address marking of fishing nets and pots; NWSFC Byelaw 9 and CSFC Byelaw 3 set size limits for all fishing vessels).
- **Species-specific byelaws** – some byelaws are specific to one or more species of seafood (for instance NWSFC Byelaw 30 and CSFC Byelaw 26 apply to fishing for crabs, lobsters and whelks²)
- **Métier-specific byelaws** – some byelaws are specific to a particular method of catching fish (for instance, NWSFC Byelaw 26 and CSFC Byelaw 10 are for fixed nets alone);
- **Permissive byelaws** – most IFCA byelaws are restrictive (i.e. they put limits on activity), but the byelaws for fixed engines (nets) are permissive. These byelaws are made with the consent of the Environment Agency and permit an activity that would otherwise be illegal. These byelaws are different in this regard from all of the others and should be treated as special cases.

The byelaws made by the NWIFCA in recent years have been moving towards a more “Métier-specific” approach to fisheries management³: for example the 2019 Potting Permit byelaw includes measures that were previously scattered across five other byelaws (which were revoked), and also required amendments to 3 other byelaws.

The process of making the 2019 “Potting Permit” serves to illustrate the potential advantages and disadvantages of making major changes to the management regime in a single step: the numerous controversial issues and myriad complexities of this byelaw consumed many sub-Committee and Committee meetings and put a considerable strain on IFCA Officer-Member relations. Among other things, this byelaw probably defines the outer limit of what the IFCA can hope to achieve in a single step.

The operational plan to move the Authority from the existing suite of byelaws to a new, unified suite of byelaws should have regard to what is reasonable and practical. It is proposed that there could be two steps in the process:-

1. **Step 1 – Harmonise & remove duplication:** at its most basic level, this should be a housekeeping operation to establish a single set of NWIFCA byelaws that apply throughout the District, and to get rid of the old NWSFC, CSFC, NRA and EA byelaws. For some byelaws this may be simple; for others (such as vessel size limits) this is a major undertaking.
2. **Step 2 – Modernise:** once it is clear what a harmonised and duplicate-free regime would look like, it may then be appropriate to make new byelaws, particularly if the Authority decides to progress down the “métier based” approach to regulation.

By breaking down the review process into these two steps, it should become more manageable.

This process is intended to be flexible: it is possible for some byelaw areas that having carried out Step 1, then Step 2 might be straightforward. For other areas, it may be more appropriate to make a new byelaw at the end of Step 1, and then revisit Step 2 at a later date (for instance, after other overlapping byelaws have also been updated).

² It is noted that these byelaws are due to be replaced by a new “Potting Permit Byelaw”

³ This is essentially a change in management strategy which does not seem to have been formally discussed and agreed – perhaps something else to consider?

Transition proposal

The table below illustrates how the proposals for progressing the byelaw review from previous TSB discussions of this issue might be taken forward in this transition process.⁴ The approach set out here broadly builds upon the extraordinary TSB discussions in December 2019 and May 2020.

Starting Point	Notes	Step 1: Harmonised, duplicates removed	Step 2: Modernised byelaw	Notes
NWSFC Byelaw 2 – Attachments to nets	This byelaw relates to net meshes, all métiers.	NWIFCA Shrimp and Prawn Byelaw	NWIFCA Trawling byelaw	This would be a byelaw covering all fishing by trawlers in the District, whether for shrimps and prawns, for plaice, or other species.
NWSFC Byelaw 6 – shrimp and prawn fishing restrictions	All of these byelaws refer to beam length for trawls used when fishing for shrimps and prawns. A harmonised approach would be appropriate. Shrimp and prawn specific measures (riddling etc) are set out in the NWSFC & CSFC byelaws, but not in the NRA byelaw. NWSFC specify a trawl mesh size, CSFC do not.			
CSFC Byelaw 14 – 2004 shrimp and prawn restrictions				
NRA Byelaw 12 Use of nets – beam trawl or otter trawl				
NWSFC Byelaw 2 – Attachments to nets	Relates to net meshes, all métiers.	NWIFCA Mobile fishing gear byelaw		
NWSFC Byelaw 3 – Prohibition on seine netting	The NWSFC & CSFC byelaws relate to methods of fishing using mobile gear.			
CSFC Byelaw 13 – Multi-rigged trawling gear	CSFC Byelaw 20 specifies cod-end mesh requirements			
CSFC Byelaw 20 – For the protection of immature plaice – minimum mesh sizes				
NRA Byelaw 5 – Use of instruments	The NRA byelaw 5 refers to both trawls and trammel nets, and hence straddles two métiers.	NWIFCA Siting and marking of nets & fishing gear byelaw	NWIFCA Netting byelaw	This would be a byelaw covering all fishing using nets (gill, tangle, trammel).
CSFC Byelaw 4 – Marking and siting of fixed nets, traps, pots and lines.	These byelaws (as well as NRA #5) specify where it permissible to place nets; they also include requirements to mark nets.			
NWSFC Byelaw 11 – Marking of fishing gear and keep pots				

⁴ This table is illustrative, not definitive – current and ex-IFCOs will no doubt pick up on errors. The purpose of the table is to stimulate discussion, and not to demonstrate expertise (or a lack of it).

Starting Point	Notes	Step 1: Harmonised, duplicates removed	Step 2: Modernised byelaw	Notes
NWSFC Byelaw 27 – Mobile Nets	This is a restrictive byelaw that relates to the siting and use of nets.			
NWSFC Byelaw 2 – Attachments to nets	All relate to mesh sizes for non-trawl nets.	NWIFCA Net sizes (non-trawl)		
NWSFC Byelaw 7 – mesh sizes other than trawl nets				
NWSFC Byelaw 8 – small mesh nets other than trawl nets - restrictions				
NWSFC Byelaw 26 – Fixed Engines	These are permissive byelaws that have to be agreed with the EA. The purpose of the byelaws is to permit sea fishing using a métier that would otherwise be illegal under the SAFF Act. The complexity of these byelaws reflects the difficulty of using nets in coastal and estuarine areas without catching salmon	NWIFCA Fixed engines.	?	It might or might not be appropriate to join this to the overall netting byelaw – in the past the permissive and restrictive netting byelaws have always been kept apart.
CSFC Byelaw 10 – Fixed Engine fishery				
NWSFC Byelaw 9 – Mechanically propelled vessels	Each byelaw sets out a size / power constraint. Previous efforts to rationalise this regime have failed. Maybe the first step should simply be to put all of the constraints in one place, unchanged?	NWIFCA Vessel Size Byelaw #1	NWIFCA Vessel Size Byelaw #1	If the first step was simply to put the constraints all in one byelaw, the second step could be to harmonise sizes throughout the District, with appropriate sunset / grandfather clauses.
CSFC Byelaw 3 – Size limit of boats				
CSFC Byelaw 15 – Vessel with a registered engine power >221kW				
Etc	<i>This is not a complete table. The examples above show how we might use this approach.</i>			

Minor note – shortform for byelaws

In preparing this document it was noted that all of the old SFC byelaws are numbered, but the most recent NWIFCA byelaws no longer have a byelaw number.

In one respect this is a good idea – there are, for instance, 5 different byelaws numbered “Byelaw 2” within the District. This makes it hard to be certain which “Byelaw 2” someone is referring to. However, the use of numbers for byelaws is widely practised and prior to reorganisation of IFCA Districts in 2010 provided a clear, unambiguous and convenient shorthand for discussing byelaws.

It may be appropriate, as part of this review, to resurrect and update the practice of having a clear and unambiguous short title for each byelaw. We could, for instance, code them A-Z. For instance, a new netting byelaw could be called “*Byelaw M – Fixed Engines – Prohibitions and Authorisations*” (shortform = “*Byelaw M*”; or, phonetically “*Byelaw Mike*”).

If we ran out of letters (!) we could then go on to “*Byelaw A1 (Alpha-One)*” etc.

DRAFT