

**NWIFCA Technical, Science and Byelaw
Committee**

5th February 2019: 10:00 a.m.

AGENDA

ITEM NO.

11

BYELAW FLEXIBLE PERMIT CONDITIONS

Purpose: to review and consider further definition of processes to amend flexible conditions.

Recommendation: Consider any further work required to clarify the process for amending flexible permit conditions.

1. During the informal consultation on the draft potting Byelaw and the flexible permit conditions, industry queried the process NWIFCA would use to alter any of the flexible permitting conditions.
2. On reporting this question to the November 2018 TSB meeting members asked if the process could be set out in more detail and specifically who in the Authority would be responsible for oversight of amendments to flexible conditions.

Background

3. Flexible permit conditions have become a feature of many IFCA byelaws in recent years. They allow IFCA to modify permit conditions within defined limits to meet changes in circumstances without having changes approved by a Minister. They increase the potential for adaptive sustainable management by allowing fishery managers to be more responsive and reactive to changing conditions.
4. In drafting flexible permit conditions byelaws, IFCA have had some difficulty in defining what can be a flexible condition and what must be fixed in the text of the byelaw. There is still a lack of clarity in that area.
5. Flexible permit condition byelaws made by other IFCA were found to use similar wording to set out the process for amending flexible conditions. Processes used by other IFCA were investigated and it was found that a number of IFCA have prepared flow charts to illustrate the process of amending the flexible conditions.

Progress

6. The Authority's Standing Orders paragraph 11.5 gives TSB responsibility for 'making and amending byelaws'.
7. The Scheme of Delegations makes TSB more specifically responsible for discussion and drafting of byelaws and other changes to fisheries management.
8. Verbal legal advice was received from the Authority's legal advisor Mr Andrew Oliver at a meeting in December. Written confirmation of that advice is awaited however, the advice was clear that the approved process outlined by the wording within the flexible byelaws being made by IFCA is an adequate and secure process for amending flexible conditions. Further definition of the process is not essential and could expose the Authority to risk

9. Mr Oliver stressed that in making any further process to control the way flexible conditions are changed, the IFCA must not seek to impose new processes that have not been approved by the Minister. In legal terms the IFCA must not 'fetter the discretion' of the Authority. If found to have done so the Authority could be guilty of changing the byelaw which would be outside the powers of the Authority and an illegal act.
10. A flowchart could be useful and could be drafted so as to avoid the fettering of discretion problem but there is risk and a chart should be scrutinized by a lawyer before being brought into use.

CEO
24th January 2019

FLEXIBLE PERMIT CONDITIONS AND REVIEW PROCEDURE IN CONFIRMED IFCA BYELAWS

Flexible permit conditions.

On receipt of the information specified below, the Authority may in order to promote sustainable exploitation of sea fisheries resources attach flexible conditions to a permit including some or all of the following:

- a. dates times or tides during which exploitation of sea fisheries resources is permitted;
- b. areas where exploitation of sea fisheries resources is permitted;
- c. species for which exploitation of sea fisheries resources is permitted;
- d. the type, size, design of gear which may be used;
- e. the maximum number of permits which may be issued for a fishery;
- f. the size of any gear which may be used in a fishery
- g. the total catch limit permitted within a specified period or a specified area.

Review procedure

The Authority will review a flexible permit condition no less than once every four years as follows:

- (a) the Authority will consult in writing with permit holders and such other stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by changes in permit conditions;
- (b) the Authority will decide whether to add, remove or vary any permit condition taking account of the consultation responses and information received;
- (c) following a decision being made by the Authority, permit holders will be notified in writing and permits will be re-issued.

The information above includes any one or more of the following:

- (a) data collected from permit holders;
- (b) scientific and survey data gathered by the Authority or provided to the Authority by such other bodies, organisations, or persons as the Authority thinks fit;
- (c) advice provided by Centre for Environment, Fisheries and Aquaculture Science or Natural England or such other bodies, organisations, or persons as the Authority thinks fit;
- (d) an impact assessment of any proposed changes;
- (d) advice given by Natural England or such other bodies, organisations, or persons as the Authority thinks fit;
- (e) information from any other relevant source.