

**NWIFCA Technical, Science and Byelaw
Committee**

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

**AGENDA
ITEM NO.**

5

FOR ACTION: BYELAW REVIEW

Purpose: To enable discussion and propose the next steps for progressing the Byelaw Review with the involvement of Officers and Members

Recommendation: Approve the next steps for progressing byelaw review as set out below

Background

1. The TSB received the Byelaw Review paper (as updated) in Annex A in the May 2019 and August 2019 meeting.
2. TSB Members have been calling for a more detailed discussion on the byelaw review process for some time. In August 2016, the Chairman suggested consideration should be given to the formation of a sub-committee to review the byelaws. However, this has not yet happened and more urgent items such as the making of byelaws or management of active fisheries often take priority for discussion in TSB meetings.
3. At the August 2019 TSB meeting it was agreed that the Byelaw Review would be the substantive item on the agenda. Since this meeting, a number of Members have made comments to the Chair on how they would like to be involved in the Byelaw Review Process.
4. TSB Members have expressed an interest in being more engaged in the strategic direction and the decision making process regarding the Byelaw Review, for example: reviewing the suitability of current regulations; considering the need for additional management to support sustainable fishing activities; what kind of approach should be taken (i.e. sector specific); and when simple prohibitive or flexible permitting byelaws should be used.
5. It seems that TSB Members feel somewhat disengaged from the early stages of the byelaw drafting process and the strategic oversight, which may often only be overseen by one or two Officers. As a result, when the draft byelaws are put before TSB there are often a lot of iterations and amendments requested.
6. Even though, TSB have had sight of the Byelaw Review paper in Annex A several times, there has not been an opportunity for TSB Members to ask questions or discuss emerging priorities, and understand the strategy behind the proposed approach to byelaw consolidation.
7. Whilst it must be acknowledged that we are some way in to the Byelaw Review process, 8 years down the line there may still be some merit in taking a step back to assess the remaining legacy byelaws and how they will be reviewed, consolidated and interact with the byelaws that have been made since 2011.

Suggested Byelaw Review process

8. A total of 8 byelaws have been introduced since 2011, with various amendments required to meet the Landings Obligation. Meanwhile there are 32 legacy byelaws requiring District-wide consolidation, review or repeal (see Annex A), fitting into the following key themes: netting (static and mobile), vessel size, minimum size, non-commercial gathering of molluscs.

9. As there are a considerable number of legacy byelaws remaining in the review, a full discussion on each byelaw or theme including which legacy byelaws would be consolidated and why, may be too much to incorporate into a single TSB meeting (as outlined in August 2016) and a smaller focus group may be required. As such, a suggested approach to moving the Byelaw Review process forward is proposed as follows:
- i. **Chair and Vice-Chair of TSB meet with Senior Officers** (Chief Executive Officer, Senior Scientist, Head of Enforcement, Senior Operational Support Officer and Patrol Vessel Master) in December 2019 to discuss which byelaws might be required going forward, which could be consolidated, and which could be revoked. This will give Officers the opportunity to input, feed in their thoughts on which byelaws should be consolidated and why, and highlight any emerging enforcement needs/additional management requirements to ensure sustainable fisheries.
 - ii. **Outcome of the above meeting brought back for a structured discussion at February 2020 TSB meeting** including: aims and objectives, conservation issues, fisheries issues, enforcement need for each new byelaw required.
 - iii. **Outcome of February TSB to result in** bullet pointed list of what each byelaw should include and an agreement on the order of priority for new byelaw development – both taken to a formal vote.
10. This proposal follows a similar approach to that adopted for the byelaw audit process (see Agenda Item 6, Annex A) but instead of applying it to a single byelaw, it is applied to the Byelaw Review (i.e. the initial audit stages for multiple byelaws concurrently).
11. It is hoped that by increasing the discussion and involvement of TSB in the early stages of byelaw development as part of the wider strategic review, it will streamline the process and reduce the need to redraft various iterations of a byelaw due to the early incorporation of views from TSB Members.

Chair of TSB
23rd October 2019

BYELAW REVIEW UPDATED SINCE 14TH MAY 2019 VERSION

Purpose: To revise and update Byelaw review.

Recommendation: Approve revised byelaw review as set out below

Background

12. This paper first received by TSB on 16th August 2016 was updated for 14th May 2019 and 6th August 2019 meetings and again for this meeting.
13. Provisions in MACAA S155 – 162 define the scope of IFCA byelaw making powers.
14. Statutory Instruments (SI) transferred relevant SFC and other inshore fisheries byelaws to NWIFCA so there was no break in regulations. SFC and other inherited byelaws remain in force until revised or repealed by NWIFCA. IFCA aim to revise inherited byelaws as soon as possible.
15. Defra guidance on IFCA byelaw making was published in 2011 and is on the Defra website. Checking and quality assurance of draft byelaws is an MMO responsibility. IFCA are responsible for consultation with stakeholders. A documented impact assessment of all new byelaws is required to identify the rational, justification and regulatory costs.
16. An extensive review of IFCA byelaw making was undertaken for MMO by the consultancy MRAG. This report: **“Quality Assurance of IFCA Byelaw: process review”** published October 2018 was first considered by TSB in February 2019 and is included as an annex to the report for agenda item 6 this meeting.
17. MMO used this report to consider their roles and responsibilities in the IFCA byelaw making process and adopted a revised and more streamlined process of quality assurance by both MMO and Defra reported to TSB in February 2019.

Developments in byelaw making

18. In order to achieve increased flexibility in byelaw regulations, byelaw may now include flexible permit schemes whereby targeted permit conditions can be attached to meet specific fisheries. Examples of flexible permit condition byelaws are the NWIFCA Permit to Dredge byelaw, the draft Potting Permit and draft Cockle and Mussel permit byelaws.

The NWIFCA Byelaw review progress

19. NWIFCA inherited a uniquely complex set of byelaws arising from the amalgamation of 2 SFC Districts and the addition of the Dee estuary previously regulated by the EA. The current set includes byelaws made by North Western SFC and predecessor bodies, Cumbria SFC, the EA and predecessor bodies for the Dee. No other IFCA inherited such a complex byelaw regime and the byelaw review is particularly challenging in this District. The inherited byelaws contain significant differences in approach which are difficult to resolve into District wide regulations in some cases.
20. While the byelaw review is underway all existing byelaws continue in force to maintain an effective functional regulatory regime ensuring no loss of fisheries regulations. Inherited byelaws will be repealed as replacement byelaws come into force.
21. Table 1 shows Byelaws introduced since 2011. Despite the Government intentions to speed up byelaw making this has not worked in practice. Not only are recent byelaws

more complex, the making process has more stages including requirement for impact assessments, increased consultation and sign off by both MMO and Defra.

22. Table 2 shows current byelaw priorities. Byelaw development is lower priority than essential statutory duties such as enforcement and survey so the Authority has limited resources to implement new byelaws. Other factors are the requirements for consultation with stakeholders before and after the byelaw is made, the requirements for approval by the Authority at various stages in the byelaw making process and the capacity of the MMO byelaw team of 2 officers to scrutinize and advise all IFCA and MMO on byelaw proposals.
23. Table 3 provides an overview of the planned outcome of the full byelaw review resulting in replacement and repeal of all inherited byelaws.

Byelaw Description	Byelaw Reference	Year
Permit to fish for cockles and mussels	NWIFCA Byelaw 3	2012
Heysham Bass nursery area and prohibition of fishing	NWIFCA Byelaw 5	2013
Protection of European Marine Site features	NWIFCA Byelaw 6	2014
Amendments to byelaws requested by Defra to meet landing obligation	Various	2015
Restrictions on fishing for Bivalve shellfish	NWIFCA Emergency byelaw	2016
Restrictions on the use of a dredge byelaw 2017		2017
Prohibition on Foul hooking byelaw 2017		2018

NWIFCA Byelaws in development	Aim of new byelaw	Current position	Next stage and timescale
NWIFCA Byelaw 4 potting permit.	District wide permit scheme for commercial and non-commercial potting for crab, lobster, nephrops, whelk,	Statutory consultation underway concludes 8 Nov.	Address objections and seek confirmation.
NWIFCA Byelaw 3. Cockle and Mussel hand fishing permit	Improve regulation with flexible permit provisions.	Statutory consultation underway concludes 8 Nov.	Address objections and seek confirmation.
Net fishing regulations	Create a district wide regulatory framework for all fishing with nets.	Initial work begun	Identify byelaw measures required
NWIFCA Fish MLS Byelaw.	NWSFC byelaw 19 ensured EU MLS applied to shore fishing and set MLS for species not covered by EU legislation.	Following removal of powers to enforce MLS on non-commercial fishers, the Authority to consider if this byelaw is still needed and if should be made District wide.	Research by Science team underway to understand science underpinning MLS.
NWIFCA Byelaw 9. Shrimp and Prawn fishing	To create District wide mesh and net size regulations for shrimping.	Differences between parts of the District, to be resolved. A single District wide mesh size may lead to reduction in MLS England and reduced conservation benefit.	On hold pending resolution of measures.
NWIFCA Byelaw 2. Vessel size limits	To create District wide regulation of vessel size and engine power limits	Agreement on the need for this byelaw and measures required not yet in place.	

Table 3 Possible New byelaws	Inherited byelaws replaced
Possible Vessel size and engine power limits. Byelaw may not be required.	NWSFC Byelaw 9 (2005) Vessel max length 15m
	Cumbria SFC Byelaw 3 (1993) 0-3 miles. Vessel max length 13.72m
	Cumbria SFC Byelaw 15 (1993) Solway Firth. Engine power limit 221Kw
	Cumbria SFC Byelaw 13 (1996) Prohibition on multi-rigged trawls
Byelaw 9 Shrimp & Prawn.	NWSFC Byelaw 6 (2001) Shrimp and prawn fishing restrictions Cumbria Byelaw 14 2004 Shrimp & prawn regulations
Winkles byelaw Consider District wide replacement.	Cumbria SFC Byelaw 7 (2004) Fishing method and min size
NWIFCA Fish MLS Byelaw.	NWSFC Byelaw 19 2009 Fish MLS to cover shore fishing in byelaw. Cumbria Byelaw 9 1993 Skate min size
NWIFCA Netting Byelaw The main SFC netting byelaws NWSFC Byelaw 26 and Cumbria Byelaw 10 were reviewed by EA in 2010-11. A further review to incorporate other netting measures and lines and create a common regulatory netting and lining regime is being considered.	NWSFC Byelaw 2 (1951) Attachments to nets
	NWSFC Byelaw 3 (1989) Prohibition of seine netting
	NWSFC Byelaw 7 (1989) Mesh sizes for nets other than trawls
	NWSFC Byelaw 8 (1989) Small mesh net regs
	NWSFC Byelaw 10 (1985) Set and drift nets
	NWSFC Byelaw 26 (2011) District Fixed nets Protection of salmonids
	NWSFC Byelaw 27 (1996) Drift nets Protection of salmonids
	Cumbria SFC Byelaw 10 (2010) Fixed/drift nets salmonid protection
	Cumbria SFC Byelaw 20 (1998) Min mesh size for protection of plaice
	EA Byelaw 5 Dee Estuary Trammel nets, trawl nets, beam trawls, otter trawls, Any instrument
Gear marking to be included in specific fishery byelaws for potting, netting etc.	NWSFC Byelaw 11 (2003) Requirement to mark nets lines pots traps
	Cumbria Byelaw 4 (1993) Requirement to mark nets traps pots and lines
Measures covered by new draft NWIFCA byelaw 3.	NWSFC Byelaw 16 (1973) Shell fishery temporary closure
	Cumbria Byelaw 18 (1993) Shellfish temporary closure
Byelaws not needed. All will be repealed when suite of NWIFCA byelaws is complete.	NWSFC Byelaw 1 (1986) Defines District
	NRA byelaw 1 Defines EA District (Dee Estuary)
	NRA byelaw 2 EA District (Dee Estuary only) interpretation
	NRA byelaw 7 Exemptions
	NWSFC Byelaw 28 (1992). Pre 1992 byelaws apply within 3 miles
	Cumbria Byelaw 19 (1993) Pre 1992 byelaws apply within 3 miles
	Cumbria Byelaw 1 (1993) Revocation of all pre1993 byelaws
	Cumbria Byelaw 2 1993 Authority to make byelaws
EA Byelaw Fishing for seafish in rivers below tidal limit	

**CEO
October 2019**