

**NWIFCA Technical, Science and Byelaw
Committee**

9th August 2016: 10:00 a.m.

**AGENDA
ITEM NO.
13**

BYELAW REVIEW AUDIT PROCESS

1. Purpose of Report

- a) To provide Members with the Defra IFCA byelaw making guidance.
- b) To provide Members with the draft NWIFCA Byelaw Review Audit process that has been developed.
- c) To receive comment and feedback on how the proposed draft NWIFCA Byelaw Review Audit process may be improved.

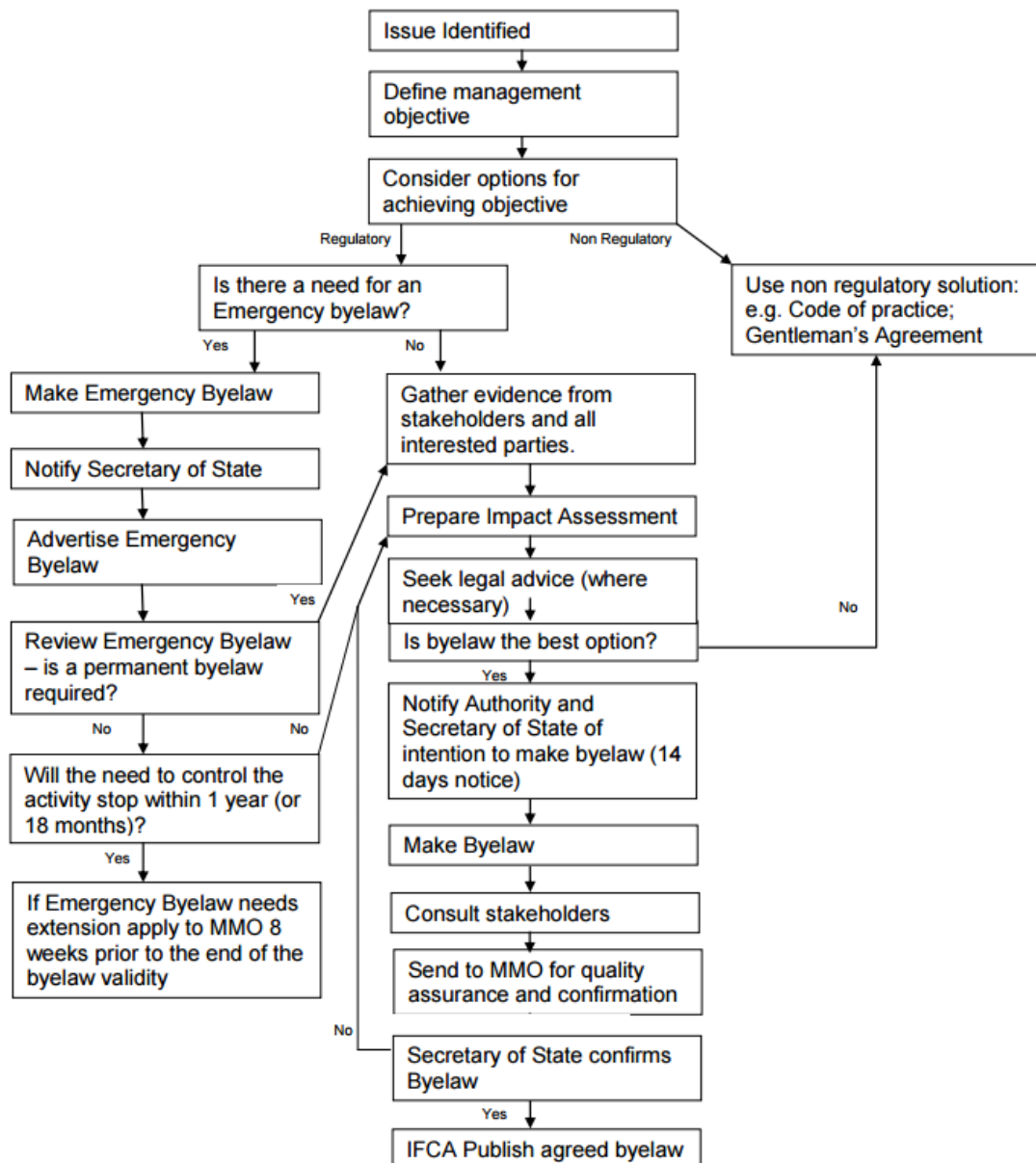
2. Recommendations:

- a) To support the development of a NWIFCA Byelaw Review Audit process.
- b) Where significant development on a new byelaw is underway, not to start again with this process.

In March 2011 Defra provided all IFCAs with guidance on the byelaw making powers and general offence under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Access Act. See <http://www.association-ifca.org.uk/upload/about/ifca-byelaw-guidance.pdf>

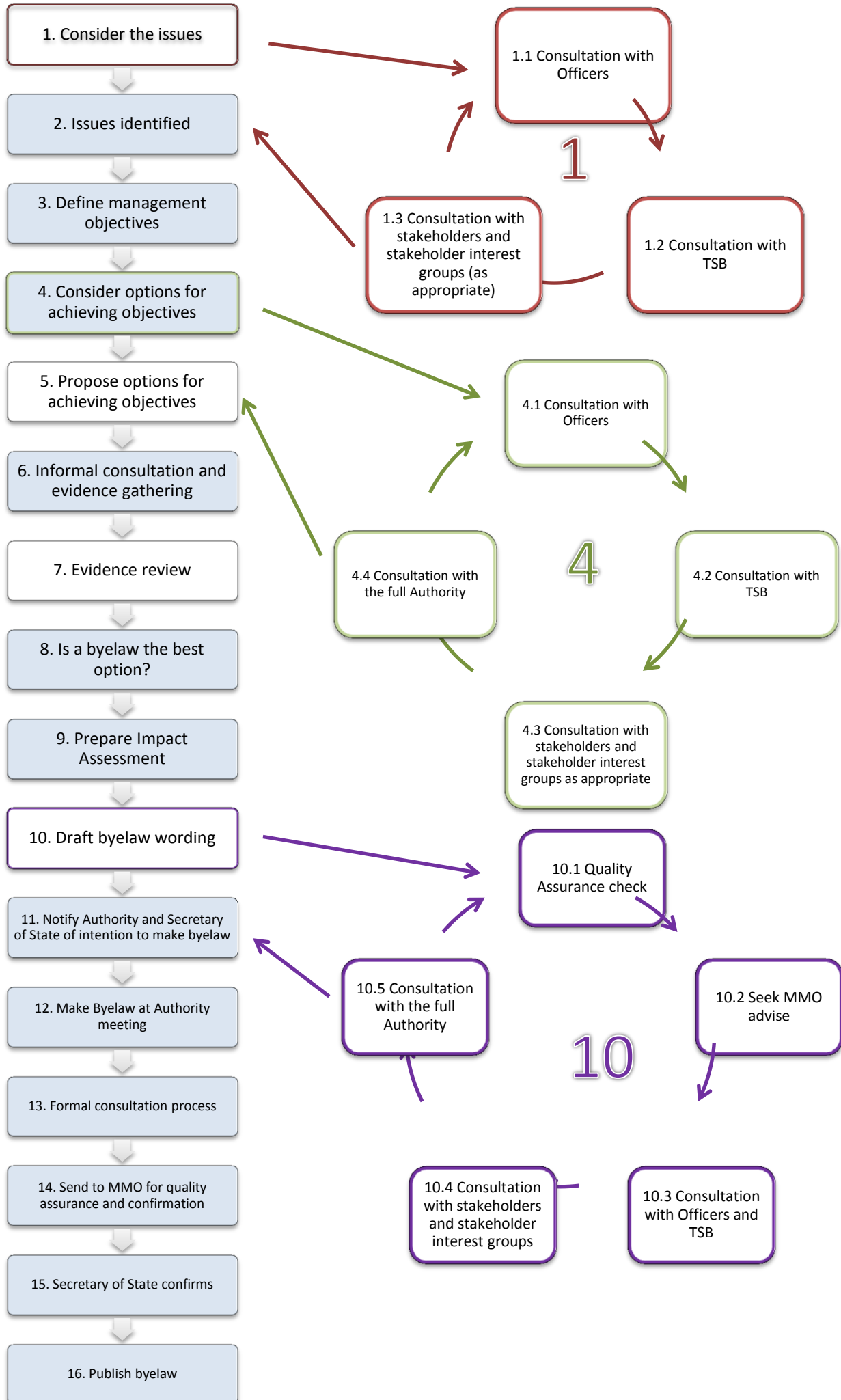
In this document the IFCA byelaw making process is summarised in the following flowchart:

16. IFCA Byelaw making flowchart



We have taken this guidance and developed it further to provide a more structured process for the NWIFCA to follow in its Byelaw Review Audit process. A more comprehensive flowchart (Fig. 1.), a byelaw review audit form, and byelaw review audit form guidance notes (detailing how to complete the form) has been developed.

Fig. 1. Draft NWIFCA Byelaw making flowchart



Draft NWIFCA Byelaw Review Audit Form

For guidance on how to complete this form and more details on the Byelaw Review Audit process see **NWIFCA Byelaw Review Audit Form Guidance Notes**.

This process should be conducted with regard and constant reference to the following supporting documents:

- Defra IFCA byelaw guidance <http://www.association-ifca.org.uk/upload/about/ifca-byelaw-guidance.pdf>
- 'What makes a successful byelaw' *exert from Wilson. A. 2009. Shellfish Industry Development Strategy. A 'Best-Practice' Guide of Sea Fisheries Committee Shellfish Byelaws pg 4.*

NB. The text boxes below expand to accommodate any volume of text.

New Byelaw (name and number):

Old Byelaw (name(s) and number(s)):

Lead author:

1. What is/are the issue(s) v.1?

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-
-
-
-
-

Propose consultation with wider stakeholders should take place at stage, by (describe communication strategy with stakeholders)

1.1 Action - Consultation with Officers

1.1.1 Feedback from Officers (incl. officers' initials) with lead author's comments (*in italics*)

1.1.2 What is/are the issue(s) v.2?

-
-
-
-
-
-

Propose consultation with wider stakeholders should take place at stage,

by (describe communication strategy with stakeholders)
.....

1.2 Action – Consultation with TSB

1.2.1 Feedback from TSB (identify/record who has provided the feedback) with lead author's comments (*in italics*)

1.2.2 What is/are the issue(s) v.3?

-
-
-
-
-
-

Consultation with wider stakeholders will take place at stage,
by (describe communication strategy with stakeholders)
.....

1.3 Action – Consultation with stakeholders and stakeholder interest groups as appropriate, if considered unnecessary at this stage, justify below and skip to 3.

1.3.1 Feedback from stakeholders and stakeholder interest groups as appropriate (identify/record who has provided the feedback) with lead author's comments (*in italics*).

2. Issue(s) identified

-
-
-
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-
-

Repeat stage 1, using the results from stage 2 if necessary.

3. What is/are the management objective(s)?

4. What are the options for achieving this/these objective(s) v.1?

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-
-
-
-
-

4.1 Action - Consultation with Officers

4.1.1 Feedback from Officers (incl. officers' initials) with lead author's comments (*in italics*)

4.1.2 What are the options for achieving this/these objective(s) v.2?

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4.2 Action – Consultation with TSB

4.2.1 Feedback from TSB (identify/record who has provided the feedback) with lead author's comments (*in italics*)

4.2.2 What are the options for achieving this/these objective(s) v.3? (It may be appropriate to list a variety of options for discussion here)

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4.3 Action – Consultation with stakeholders and stakeholder interest groups as appropriate.

4.3.1 Feedback from consultation with stakeholders and stakeholder interest groups (identify/record who has provided the feedback) with lead author's comments (*in italics*).

4.3.2 What are the options for achieving this/these objective(s) v.4? (It may be appropriate to list a variety of options for discussion here)

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4.4 Action – Consultation with the Authority

4.4.1 Feedback from Authority members (identify/record who has provided the feedback) with lead author's comments (*in italics*)

5. The proposed options for achieving this/these objective(s)

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-

Repeat stage 4, using the results from stage 5 if necessary.

6. Action – Full informal consultation and evidence gathering on the proposed management options.

6.1 Feedback from informal consultation and evidence gathered (identify/record who has provided the feedback) with lead author's comments (*in italics*)

7. Consolidation and review of the evidence for the impacts of the proposed management options.

8. Is byelaw the best option or could a non-regulatory suffice?

9. Action - Prepare Impact Assessment and seek MMO and legal advice where necessary

10. Draft byelaw wording v.1

10.1. Quality Assurance (QA) check of the proposed management options; address each of the 7 criteria for 'What makes a successful byelaw'

1. Enforceability
2. Communicates Law Effectively
3. Economic Viability
4. Ecological Viability
5. Evidence Based
6. European and Other Regulation
7. Social Viability

10.2 Action – Seek MMO advice

10.2.1 Feedback from MMO with lead author's comments (*in italics*)

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10.2.2 Draft byelaw wording v.2

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10.3 Action – Consultation with Officers and TSB

10.3.1 Feedback from Officers and TSB (identify/record who has provided the feedback) with lead author's comments (*in italics*)

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10.3.2 Draft byelaw wording v.3

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10.4 Action – Consultation with stakeholders and stakeholder interest groups

10.4.1 Feedback from stakeholders and stakeholder interest groups (identify/record who has provided the feedback) with lead author's comments (*in italics*).

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10.4.2 Draft byelaw wording v.4

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10.5 Action – Consultation with full Authority

10.5.1 Feedback from the Authority (identify/record who has provided the feedback) with lead author's comments (*in italics*)

10.5.2 Draft byelaw wording v.5

10.5.3 Action - Circulate draft byelaw wording v.5 to Authority for final approval

11. Action - Notify Authority and Secretary of State of intention to make byelaw

12. Action - Make byelaw at an Authority meeting

13. Action - Formal consultation

13.1 Record of feedback and NWIFCA responses to the formal consultation (identify/record who has provided the feedback).

14. Action - Send to MMO for quality assurance and confirmation

15. Action - Apply for confirmation of the byelaw by the Secretary of State

16. Action - Publish byelaw

Draft NWIFCA Byelaw Review Audit Form Guidance Notes

A NWIFCA Byelaw Review Audit Form has been created to provide a consistent approach, and a record of the development, of each byelaw. This process should be conducted with regard and constant reference to the following supporting documents:

- Defra IFCA byelaw guidance <http://www.association-ifca.org.uk/upload/about/ifca-byelaw-guidance.pdf>
- 'What makes a successful byelaw' (Annex A) exert from Wilson. A. 2009. Shellfish Industry Development Strategy. A 'Best-Practice' Guide of Sea Fisheries Committee Shellfish Byelaws pg 4.

Firstly the concept of a new byelaw and a new NWIFCA byelaw number is assigned. If this concept incorporates the review of any old byelaws these are specified. Following this an IFCO is nominated as lead author for the development of this new byelaw. Only the lead author is to amend the Byelaw Review Audit Form and they are solely responsible for its completion. These instructions have been written as an aid for the lead author completing the NWIFCA Byelaw Review Audit Form.

1. What is/are the issue(s) v.1?

Bullet point list of the issue(s) e.g. emergency byelaw ... will expire on (provide details of the issues the emergency byelaw covers), inherited SFC byelaw which requires review (provide details of the issues the inherited byelaw covers), whelks are being exploited before they attain sexual maturity, high mortality of bycatch within X fishery.

Propose a) at which stage(s) (e.g. 1.3, 4.3, 10.4) consultation(s) with stakeholders and stakeholder interest groups should take place. Informal consultation will always be necessary at stage 6 (in accordance with Defra guidance) and b) how consultation(s) with stakeholders may take place e.g. BMWG, regional stakeholder workshops, presentations to major angling clubs etc., this must be appropriate and proportionate in targeting the stakeholders affected by the issue (see Chapter 10: Stakeholder involvement, in Defra IFCA byelaw making guidance)

1.1 Consultation with Officers

Circulate internally to all officers by email asking for feedback, on both the issue and the stakeholder consultation proposal, and ask if Officers would like a meeting to discuss. It is likely that feedback may be provided by email for more simple issues but group meeting(s) will be required for complex issues where it is suspected that stakeholder consensus is unlikely to be reached, or where the issue(s) are inconsistent across the district.

1.1.1 Feedback from Officers

Record all feedback from Officers including IFCO initials. Provide a response to comments (individually (by individual responses) or collectively (by 'comment theme')) in italics.

1.1.2 What is/are the issue(s) v.2?

Revise the issues from stage 1.0. Utilise IFCO feedback to improve and thus revise the issue(s) and proposed approach to stakeholder consultation.

1.2 Consultation with TSB members

Circulate to TSB asking for feedback, on both the issue and the stakeholder consultation proposal. It is most likely this will be done as an agenda item at a TSB meeting.

1.2.1 Feedback from TSB members

Record all feedback from members including initials. Provide a response to comments (individually or collectively as appropriate) in italics.

1.2.2 What is/are the issue(s) v.3?

Revise the issues from stage 1.1.2. Utilise TSB member feedback to improve and thus revise the issue(s) and determine how, and which stage(s), stakeholder consultation will take place.

1.3 Consultation with stakeholders and stakeholder interest groups

Conduct consultation on the issue(s) if deemed necessary. This should be conducted in the manner appropriate for the issue(s); following feedback and guidance (see 1.2.2.). If consultation on the issue(s) is deemed unnecessary skip to stage 2.

1.3.1. Feedback from consultation with stakeholder and stakeholder interest groups

Record all feedback, identifying who has provided the feedback and provide a response to those comments (individually or collectively as appropriate) in italics.

2. Issue(s) identified

Revise bullet point list from stage 1.2.2 of the issue(s) encompassing the relevant feedback which has been received.

Repeat stage 1, using the results from stage 2 if necessary.

3. What is/are the management objective(s)?

Describe the management objective(s) e.g. to manage the extent of dredge interactions with the benthos within the district, to protect the spawning stock of X species, to protect conservation features XXXX.

4. What are the options for achieving this/these objective(s) v.1?

Create a list of bullet points of what management measures could achieve the objective(s). It may be appropriate to list a variety of options e.g. to have a minimum legal landing size and/or to prescribe the use of a riddle with defined dimensions. Have regard for the 7 criteria of 'What makes a successful byelaw' (Annex A).

4.1 Consultation with Officers

Circulate internally to all officers by email asking for feedback and ask if Officers would like a meeting to discuss. It is likely that feedback may be provided by email for more simple issues but group meeting(s) will be required for complex issues where it is suspected that stakeholder consensus is unlikely to be reached, or where the issue(s) are inconsistent across the district.

4.1.1 Feedback from Officers

Record all feedback from Officers including IFCO initials. Provide a response to comments (individually or collectively as appropriate) in italics.

4.1.2 What are the options for achieving this/these objective(s) v.2?

Utilise IFCO feedback to revise and improve the management options from stage 4.0. It may still be appropriate to list a variety of options here.

4.2 Consultation with TSB members

Circulate to TSB asking for feedback. It is most likely this will be done as an agenda item at a TSB meeting.

4.2.1 Feedback from TSB members

Record all feedback from members including initials. Provide a response to comments (individually or collectively as appropriate) in italics.

4.2.2 What are the options for achieving this/these objective(s) v.3?

Utilise TSB feedback to revise and improve the management options from stage 4.1.2. It may still be appropriate to list a variety of options here.

4.3 Consultation with stakeholders and stakeholder interest groups

Conduct stakeholder consultation on the management options. This should be conducted in the manner appropriate for the issue, following feedback and guidance from 1.2.2.

4.3.1 Feedback from consultation with stakeholder and stakeholder interest groups

Record all feedback, identifying who has provided the feedback and provide a response to those comments (individually or collectively as appropriate) in italics.

4.3.2 What are the options for achieving this/these objective(s) v.4?

Utilise stakeholder and stakeholder interest group feedback to revise and improve the management options from stage 4.2.2. It may still be appropriate to list a variety of options here.

4.4 Consultation with the Authority

Circulate to the full Authority asking for feedback. It is most likely this will be done as an agenda item at an Authority meeting. Where different management options exist, decisions should be made on which one(s) will be pursued whilst having regard for the 7 criteria of 'What makes a successful byelaw' (Annex A).

A procedure needs to be developed to deal with situations when consensus cannot be reached.

4.4.1 Feedback from Authority members

Record all feedback from members including initials. Provide a response to comments (individually or collectively as appropriate) in italics.

5. The proposed options for achieving this/these objective(s)

Revise bullet point list from stage 4.3.2 of the management options encompassing the relevant feedback which has been received from Authority members. Where different options were listed, use the feedback to determine which options to proceed with and explain/justify any choices that were agreed by the Authority. Have regard for the 7 criteria of 'What makes a successful byelaw' (Annex A).

Repeat stage 4, using the results from stage 5 if necessary.

6. Full informal consultation and evidence gathering on the proposed management options.

Circulate bullet points of proposed options for achieving this/these objectives (stage 5) to Officers, Authority members, appropriate stakeholders and stakeholder interest groups. Seek MMO advice if necessary. This should be conducted in the manner appropriate for the issue(s) having consideration for stakeholder consultations already conducted (stages 1.3 and 4.3) and feedback and guidance on stakeholder consultation from stage 1.2.2. During this process collect and collate additional evidence, in particular around the impact of management measures on stakeholders and stakeholder interests

6.1 Feedback from full informal consultation and evidence gathered

Record all feedback and evidence obtained, identifying who has provided the feedback and provide a response to those comments (individually or collectively as appropriate) in italics. For each comment either a) incorporate or b) justify not incorporating.

7. Consolidation and review of the evidence for the impacts of the proposed management options

Summarise and review the evidence on the impacts of the proposed management options.

8. Is byelaw the best option or could a non-regulatory solution suffice?

Consider if a non-regulatory solution would be sufficient, e.g. Code of practice, Gentlemen's agreement, consider risk and proportionality (see Chapter 8: Ensuring Proportionality, in Defra IFCA byelaw making guidance). If it is believed a byelaw is required, explain and justify why.

9. Prepare Impact Assessment (IA) and seek MMO and legal advice where necessary

The IA will be a separate document and follows its own guidance (see Chapter 11: Impact Assessments, in Defra IFCA byelaw making guidance)

10. Draft byelaw wording v.1

Write the legal wording of the byelaw (see Chapter 9: Content of IFCA byelaws, in Defra IFCA byelaw making guidance). Where appropriate engage legal services to do this and/or advise on this.

10.1. Quality Assurance (QA) check of the proposed management options; address each of the 7 criteria for 'What makes a successful byelaw'

Describe how the proposed byelaw meets each criteria.

1. Enforceability
2. Communicates Law Effectively
3. Economic Viability
4. Ecological Viability
5. Evidence Based
6. European and Other Regulation
7. Social Viability

10.2 Seek MMO advice

Send to MMO for feedback and guidance

10.2.1 Feedback from MMO with lead author's comments (in italics)

Record of feedback from MMO

10.2.2 Draft byelaw wording v.2

Utilise MMO feedback to revise and improve the wording of the byelaw from stage 10.

10.3 Consultation with Officers and TSB members

Circulate to all Officers and TSB asking for feedback on the draft byelaw wording.

10.3.1 Feedback from Officers and TSB members with lead author's comments (in italics)

Record all feedback from Officers and TSB members including initials. Provide a response to comments (individually or collectively as appropriate) in italics.

10.3.2 Draft byelaw wording v.3

Utilise Officer and TSB member feedback to revise and improve the wording of the byelaw from stage 10.2.2.

10.4 Consultation with stakeholders and stakeholder interest groups

Conduct stakeholder consultation on the draft byelaw wording. This should be conducted in the manner appropriate for the issue, following feedback and guidance from 1.2.2.

10.4.1 Feedback from stakeholders and stakeholder interest groups (identify/record who has provided the feedback) with lead author's comments (in italics).

Record all feedback, identifying who has provided the feedback and give a response to comments (individually or collectively as appropriate) in italics.

10.4.2 Draft byelaw wording v.4

Utilise stakeholder and stakeholder interest group feedback to revise and improve the wording of the byelaw from stage 10.3.2.

10.5 Consultation with the Authority

Circulate to the full Authority. It is most likely this will be done as an agenda item at an Authority meeting.

10.5.1 Feedback from the Authority (identify/record who has provided the feedback) with lead author's comments (in italics)

Record all feedback from members including initials. Provide a response to comments (individually or collectively as appropriate) in italics.

10.5.2 Draft byelaw wording v.5

Utilise Authority members' feedback to revise and improve the wording of the byelaw from stage 10.4.2.

10.5.3 Circulate draft byelaw wording v.5 to Authority for final approval

Repeat stage 10, using the results from stage 10.5.2 if necessary.

11. Notify Authority and Secretary of State of intention to make byelaw

Exert from Defra IFCA byelaw making guidance '14.3b) Notice of the intention to propose making a byelaw should be given in writing to the Authority members and the Secretary of Page 19 of 23 State not less than 14 days before the date of the meeting of the Authority at which the byelaw is to be made. A draft of the byelaw, the supporting evidence and the IA, should be included with a covering letter explaining the justification for and purpose of the byelaw'.

12 Make byelaw at an Authority meeting

See Chapter 12: Making IFCA Byelaws, in Defra IFCA byelaw making guidance.

13 Formal consultation

Exert from Defra IFCA byelaw making guidance '14.3d) Give notice of the intention to apply for confirmation of the byelaw by advertising it for two consecutive weeks in publications which target the stakeholders affected by the byelaw's measures. The advertisement should contain:

i. either a copy of the byelaw, or a summary of its provisions and the address where the byelaw may be inspected free of charge

- ii. a statement directing any person wishing to object to the byelaw to write to the IFCA and MMO not later than 28 days after the date of the newspaper in which the last advertisement appears
- iii. the address of the MMO and IFC Authority'

13.1 Record of feedback and NWIFCA responses to the formal consultation (identify/record who has provided the feedback).

Exert from Defra IFCA byelaw making guidance '14.3d) The IFCA should examine all timely objections before the byelaw is submitted for confirmation, respond in writing to objectors and, where appropriate, liaise with objectors with a view to resolving the objection. The IFCA may wish to consider amending the byelaw in light of those objections. Objections that cannot be resolved do not preclude confirmation but the IFCA must provide sufficient explanation as to why they have decided to disregard the objections. When responding to objectors, IFCAs should explain that their objections have been considered and why the byelaw has not been amended as they might have wished'.

14. Send to MMO for quality assurance and confirmation

See Chapter 14.3e: Application for Confirmation of the byelaw by the Secretary of State, in Defra IFCA byelaw making guidance.

15. Apply for confirmation of the byelaw by the Secretary of State

See Chapter 13: Confirmation of IFCA Byelaws and 14.3e Application for Confirmation of the byelaw by the Secretary of State, in Defra IFCA byelaw making guidance.

16. Publish byelaw

References

Defra IFCA byelaw guidance March 2011

<http://www.association-ifca.org.uk/upload/about/ifca-byelaw-guidance.pdf>

Wilson. A. 2009. Shellfish Industry Development Strategy. A 'Best-Practice' Guide of Sea Fisheries Committee Shellfish Byelaws.

http://www.shellfish.org.uk/files/PDF/22622best_practice_guide.pdf

ANNEX A

excerpt from Wilson. A. 2009. Shellfish Industry Development Strategy. A 'Best-Practice' Guide of Sea Fisheries Committee Shellfish Byelaws page 4.

What makes a successful byelaw?

Enforceability

A successful byelaw is easy* to enforce.

* The provision of suitable manpower, utilities, strategy, communication, funding, and propaganda to achieve the maximum compliance of the law within the region.

Communicates Law Effectively

A successful byelaw depends on succinctly communicating regulations, their rationale and associated penalties to the industry and public users of the fishery.

Economic Viability

A successful byelaw aims to maximise or maintain the economic viability of a commercial fishery for present and future users of the fishery.

Ecological Viability

A successful byelaw aims to leave an acceptable impact (footprint) on the target stock, associated marine habitats and non-target organisms (e.g. other species populations or juvenile organisms).

Evidence Based

A successful byelaw is based upon the best historic or scientific knowledge and understanding of a fishery. Therefore specific criteria (e.g. mesh sizes) are based upon the biology and ecology of a stock and/or built upon recognising limitations of previous fishing practices.

European Regulation

A successful byelaw should be built upon holistic regulations, commonly the minimum regulations made from the European Commission or potentially any internationally coordinated management which is aimed at managing fisheries appropriately.

Social Viability*

A successful byelaw should maintain or improve the social status of a region and its fisheries. * The link between social lives and economic activity: E.g. industry (employment), social wellbeing (wealth, personal use, personal safety etc), and personal attitudes (participation with governments, the community, and environmentally friendly approaches etc).