

NWIFCA Annual Meeting

12th June 2015: 11.00 a.m.

AGENDA

ITEM NO.

13

CHIEF EXECUTIVE OFFICER REPORT

Purpose of Report: Update and Information

Recommendation: The report be received

Contents

- I) Defra
- II) Health and safety policy
- III) Officer and member changes
- IV) Association of IFCA
- V) Procurement of a replacement main patrol vessel
- VI) Byelaw progress
- VII) Boughton Estate claim of fishing rights in Morecambe Bay

I) Defra

1. No changes in policy or priorities since the election are evident as yet.
2. The 4 year report on IFCA conduct and operation was published in March 2015 and circulated to members. The report indicates that IFCA are performing satisfactorily and does not propose any changes in the structure or remit of any IFCA.
3. Following the election the Right Hon Elizabeth Truss MP was appointed Secretary of State at Defra and Mr George Eustice (Fisheries Minister in the last Government) was reappointed as Minister of State. At the time of writing, Ministerial responsibilities in the new Government have not yet been announced.
4. Defra have asked IFCA and MMO to work together to look at possible cost savings and efficiency improvements achievable through joint working and asset sharing. The letter from Defra is attached at Annex A. Chief Officers are meeting in June to assess options for delivery of this request.

II) NWIFCA Health and Safety policy

5. The policy has been checked for breaches and reportable incidents in the last quarter (March – May 2015). None have been recorded. The register of NWIFCO training is maintained.

III) Officer and Member changes

6. IFCO Nick Walters commenced work with the Authority as part of the Enforcement Team on 9th March. He will be based in Carnforth replacing Matt Burdekin, mainly supporting shore based IFCOs throughout the District and undertaking data and sample collection for the science team.
7. Ms Abigail Leadbeater announced her resignation from the Authority in May to take up a post with an environmental organization 'Blue Ventures' in Madagascar. We extend thanks to Abigail for her important and valuable contribution to the science team for over 3 years.

Her new job will be training and educating volunteers in ecotourism activities including science and data collection involving diving. Her last day with NWIFCA will be 12th June and we wish Abigail every success in this exciting venture.

8. At the end of Members first 4 year appointment period (2011-15) in March, two members stood down and did not re-apply. The Authority extends thanks to Dr Alastair Maltby and Dr Judith Clark for their period of service to the NWIFCA.
9. Two members were re-appointed for a second term: Mr Ron Graham and Mr Trevor Jones.
10. Following the MMO recruitment of members earlier this year, two new members were appointed: Mr Calum Booth (RSPB) representing the conservation sector and Mr Brian Leigh representing angling. The Authority welcomes Mr Booth and Mr Leigh into membership of the Authority.
11. NWIFCA still has 4 vacancies and MMO announced a new recruitment of members in May. Members are invited to suggest potential good members from their contacts and encourage them to apply via the MMO website.

IV) **Association of IFCA (AIFCA)**

12. The AIFCA Members' Forum has not met since the 10th March meeting on which the CEO reported verbally at the 13th March NWIFCA meeting. The full minutes of the AIFCA meeting are attached at Annex B including notes of the discussion with the retiring Minister Mr George Eustice. The next AIFCA meeting will be on 9th June. CEO and Chairman plan to attend and provide a verbal report at the NWIFCA on 12th June.

V) **Procurement of main patrol vessel replacement**

13. CEO wrote to Lancaster County Council in May for an update on progress with procurement. Any information received will be reported verbally on 12th June.

VI) **Byelaw progress**

14. **Byelaw 8** Prohibition of foul hooking of fish. This byelaw is presented for making by the Authority at this meeting
15. **Byelaw 2.** Vessel size byelaw. A fishermen's meeting will be held in Whitehaven to gain feedback on the proposed vessel length and engine power restrictions in the draft byelaw.
16. Work is continuing on a number of other byelaws which are in development.

- VII) **Boughton Estate claim of fishing rights in Morecambe Bay** All the correspondence and papers to date were presented to the TSB in May and have been shared with Boughton Estate. As yet no evidence in support of fishery rights owned by Boughton Estate has been received. The most recent and most comprehensive advice from the NWIFCA solicitor Mr Peter Scott is attached at Annex C. We await any response from Boughton Estate to the clear position set out in this letter.

Chief Executive Officer
27 May 2015

NWIFCA CEO 'external' meetings March-May 2015	
Date	Event
26 th May	Chairman's Committee
15 th May	Defra consultation meeting on management of offshore EMS
12 th May	TSB
11 th May	Chairman's Committee
7 th May	Defra update on Bass policy telecom
1 st May	Meeting with NGO 'The Black Fish'
30 th April	Bivalve Mollusc Working group
23 rd April	Irish Sea Maritime Forum Steering Group telecom
15 th April	Chief Officers Group
14 th April	Defra-MMO-IFCA tripartite meeting re joint working telecom
23 rd March	Irish Sea Maritime forum Steering group telecon
13 th March	NWIFCA
10 th March	AIFCA
26 th Feb	Mark Oddy Boughton Estate Factor Meet Carnforth



Department
for Environment
Food & Rural Affairs

ANNEX A

Zone 8A Millbank
17 Smith Square
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www.gov.uk/defra

John Tuckett, CEO of the MMO
John Lamb, Chair of the Association of IFCA's
Tim Robbins, Chair IFCA Chief Officers Group
Andy Beattie, MMO Chief Operating Officer
IFCA Chairs
IFCA Chief Officers

12 May 2015

By email only

Dear Colleague

OPTIONS FOR JOINT WORKING BETWEEN IFCA's AND THE MMO

At the Tripartite meeting in April I indicated that I would write to you to initiate a piece of work aimed at identifying options for collaboration and joint working between IFCA's and the MMO. You will recall this is one of the main recommendations of the MMO Triennial Review and the IFCA four year report, which Ministers have endorsed.

Following the general election, the new administration will be asking government departments to identify how they might deliver future savings. Our returning Secretary of State, Liz Truss, has already indicated her priorities include the Spending Review and reforming the organisational landscape, which aim to transform Defra into a more modern and efficient department which encourages economic growth and efficiently protects the environment. As part of this work Defra and its arms-length bodies will contribute to budget savings exercises commissioned by new Ministers.

Between the IFCA's and the MMO you have a number of enforcement and research staff and own assets used in day-to-day monitoring and fisheries enforcement work.

I would be grateful if the IFCA Association, the IFCA Chief Officers and the MMO Chief Executive and Senior Executive Team can now begin to define and develop opportunities for joint working, with a view to delivering efficiencies and savings to central government. Your work should initially focus on the scoping of costed options, with co-enforcement and asset sharing as the core.

I would be grateful if you can share an agreed scope and approach to this work by 15 June, with firm costed proposals by the end of July which we can then factor into a Spending Review led by new Ministers. Your scope should exclude considerations around organisational matters concerning the Defra network of arms-length bodies.

A copy of this letter has been sent to John Tuckett, CEO of the MMO; John Lamb in his capacity as Chair of the Association of IFCA's; Tim Robbins in his capacity as Chair of the Chief Officers Group; Andy Beattie; and all IFCA Chairs and Chiefs.

Yours sincerely

Prof Sam Evans CBE
Defra Sustainable Fisheries and Marine Planning Division

**The Association of IFCAs
Members' Forum Meeting 10th March 2015 – 10:00 to 14:30**

To be followed by the Association Directors Meeting at 14:30

DEFRA, Nobel House

ACTION MINUTES

Attendance for the Meeting

CEO: Stephen Bolt (SB)

Chair: John Lamb (JL)

Members: Eddy Derriman (ED), Sam Davis (SD), Rob Clark (RC), Stephen Atkins (SA), Tim Dapling (TD), Tim Robbins (TR), Anthony Markley (AM), Will Wright (WW), David McCandless (DM), Mike Hardy (MH), Elaine Hayes (EH), Tony Tomlinson (TT), Phil Haslam (PH), Steve Watt (SW), Les Weller (LW), Andy Guy (AG), Malcolm Sims (MS)

Sam Evans (SE), Nigel Gooding (NG), Terence Ilott (TI), Rob Matthews (RM), Richard Inman (RI) DEFRA, John Tuckett (JT), MMO, George Eustice, MP

Minutes: Michelle Woodley

Apologies for absence: Robert Arckless, Chris Morris, Karen McHarg, Colin Eastwood, Ian Davies, Hilary Cox, Tony Delahunty

- 1) Introductions
- 2) Minutes of the last Association meeting 3rd December 2014 – agreed
Matters arising not on the agenda: none
- 3) Finalising matters to raise with the Minister:
 - Update on 4 yearly report to Parliament
 - IFCAs/MMO joint working JL
 - Pro-active Bass management SB
 - What will happen with the MPA process? WW
 - Bylaws MS
 - Aquaculture management – the IFCA role RC
 - Tidal lagoons AM
- 4) CEO report/update
 - VAT – Issue fully resolved
 - Budget out turn for 1st and 2nd Quarter - SB explained that the predicted out-turn would be around £5-10k over budget, but that following the adjustment of the £15k authorised spending from the reserves (on Habitats Directive legal advice), this would then become a £5-10k underspend
 - Budget proposals 2015/16 and beyond – Association income for this financial year was slightly higher due to the Associate Membership fees. The standstill budget for 2015-16 was agreed at the December Members Forum meeting.
 - Legal Advice on Habitats Directive – It was re-iterated that the Legal advice document was not for general public circulation. **Action 1: COG to prepare a paper to clarify the IFCA interpretation of the Habitats Directive. Action 2: SB to engage with Natural England over the revision of the MOU**
 - Driftnet Ban – It was agreed that this issue would not be discussed further at present.

- Capital Equipment Insurance - Although the under-writers would remain the same for the Insurance of the Association owned equipment, the account needs to move with the brokers. **Action 3: SB to liaise with Colin Trundle (Cornwall IFCA) and action move.** The £4k costing has been absorbed into the budget
 - Four yearly report to parliament update – RI confirmed that this will be potentially put before parliament on 17/3/15
 - MPAs -
 - i. Reporting to Project Board: **Action 4: SB to send out MPA reporting requests by 13/3/15.** Completion deadline for these is March 24th to enable SB to report at the April Project Board meeting
 - ii. MPA Revenue £300k division between the IFCA's: **Action 5: SB to send out simple template for the IFCA's to bid for a share of the revenue monies to enable the achievement of DEFRA's MPA 2016 deadline.** The final decision on allocation will be made by DEFRA
 - iii. MPA NE timetables: **Action 6: IFCA's to report back to SB regarding the revised conservation advice template, and in particular how the £300k revenue may alter the importance of the revised NE timetable**
 - Bass Update – The IFCA position on Bass was discussed with the Minister (see appendix 2) and was not consequently re-discussed. The IFCA Bass Position is a draft working document for discussion with DEFRA. It has not yet been discussed with individual committees, but represents an appropriate way forward for the IFCA's.
 - MMO/IFCA Joint Working – This was discussed at length with the Minister, Sam Evans and John Tuckett (see Appendices 1 and 2)
 - Association Meeting Log – For information
- 5) MMO Appointee recruitment process update – There were 84 vacancies and 108 applicants. 96 applicants were interviewed. Discussions around shortcomings from the recruitment process centred around the lack of communication, the complexity of the application process disenfranchising applicants, calibre of applicants and timeline issues. JT said these would be addressed at a formal post-process "lessons learnt" review.
- 6) 11.00 Sam Evans, Nigel Gooding, Rob Matthews, Richard Inman, Terence Ilott, John Tuckett. Introductions and brief updates: Appendix 1
- 7) 11.30 George Eustice: Appendix 2
- a) Minister's perspective
 - b) Questions and Answers
- 1 pm Lunch
- 8) Unfinished items
- 9) Date of next Members Forum Meeting 9th June 2015
- 10) AOB (Please advise in advance)
- 14.30 Close of meeting to be followed by Association Directors meeting

Appendix 1:

John Tuckett, Sam Evans, Rob Matthews and Terence Ilott Question and Answer session with the Members

There was discussion around joint working. JT said that any joint working approach needed to be imaginative, and start from a 'blank sheet' rather than from pre-conceived ideas. JT mentioned that the MMO had set up a Fisheries project board dealing specifically with fisheries management. **Action 7: SB to contact Andy Beattie regarding Joint working.**

SE then spoke of the necessity for joint working, and for the need to be positive about this. There would need to be governance in place to enable equitable partnership working. SE said that there was a need to recognise that each organisation has a responsibility to fulfil its delivery targets, and any joint working should not hinder this.

JL said that the IFCAs were interested in discussing the potential for creating efficiencies in delivery through co-operation with other stakeholders. WW spoke of the importance of recognising the individualism of the regional IFCAs and for the need to adopt a flexible approach to take account of subtle nuances rather than adopt a 'one-size-fits-all' approach. TD stressed the need to look for opportunities for co-operation to achieve the aims of each organisation.

EH raised the query on a previously mentioned marine mammal report on the protection of mobile species in special areas of conservation. TI explained that this was a JNCC report and that he would make enquiries about it and respond to EH via the Association. **Action 8: SB to ask TI for details of the report and forward to the IFCAs as appropriate**

Nigel Gooding update

There have been 4 years of close working between the IFCAs and DEFRA, with good examples of delivery of HLOs.

Evidence should be gathered via the IFCAs, EA, DEFRA, the MMO and CEFAS on how joint working and collaboration would promote success. TR mentioned that evidence gathering is duplicated with the IFCAs going to sites and finding CEFAS and NE have already gathered evidence. This is an area where partnership working would prevent this duplication. PH said that there needs to be acknowledgement to the stakeholders involved, that the process has moving targets, and NG agreed that it is important to communicate the message that there will be incremental increases to the management measures to achieve targets and to prove effective.

TD mentioned that the pace of achievement is not always recognised at a local level, as IFCA members may have diverse views. He suggested that DEFRA could produce a guidance plan to promote the work of the IFCAs to the IFCA members, to ensure their future support. A plan is needed to help the IFCAs communicate their drivers and expectations to their members. **Action 9: SB to ask TI to review.**

NG was asked for an update on CFP: NG indicated that the regional implementation of the discard ban had presented no significant problems with pelagics. However a demersal ban will need to be implemented on a regional basis, with a phased approach seeking agreement from the counties in that region. There will be a consultation on how to practically implement a ban, its impact on licensing control, and its management. It is hoped to gather information from fishermen first-hand. It is hoped that the timescale will be commencement in January 2016 and phased by species to January 2019. A species led targeted approach could marginalize inshore fisheries. NG said that the consultation will create an overhaul for all fleets, with solutions being fed in to the plans, with an agreed approach region by region.

NG stressed that regular DEFRA updates via the Association would keep regions abreast of developments. He acknowledged that it will be the biggest challenge since the UK joined the CFP. JT mentioned that there would need to be joint working over the implementation of the discards ban.

The subject of the Section 31 grant was discussed. RM explained that there would be targeted allocation based on needs.

Appendix 2: Minister's perspective followed by questions and answers

The Minister spoke about the 4 yearly Report to Parliament. Themes were the work that has been achieved despite the challenges of budget and the environment. He mentioned the variance in committee sizes around the IFCAs; those that are too big make decision making difficult, whilst the very small committees may not be representative of key interests.

Within Marine planning there is a need for democratic accountability. Licensing decisions made via Local Authorities or IFCAs can get caught in a lengthy process before being agreed. The Minister said that there was a need to simplify the process, creating an environment where closer working between the IFCAs and the MMO can speed up the process, but still maintain the appropriate level of accountability.

MCZs: The 2nd tranche consultation is continuing as agreed. The 3rd tranche consultations will begin in 2016; the aim of these is to explain designation to the layman to obtain support for this necessary protection of features. The Minister announced £300,000 in New Burdens money to support the IFCAs to achieve their 2016 targets. JL voiced concern that the IFCAs may not receive all of this from the Local Authorities. RM of DEFRA clarified that this was NOT New Burdens funding, but a Section 31 grant which the IFCAs could apply to DEFRA for via the Association.

SB spoke to the Minister about the IFCAs pro-active draft consolidated position on Bass. The Minister responded by saying that at the December Council (EU) emergency measures for a pear trawling ban for the January-April season had been discussed. He acknowledged the need to recognise fishing mortality from gill netting and otter trawling, and spoke of bag limits and minimum landing size as being possible management measures to consider.

JL spoke to the Minister about joint working, and the Tri-Partite meetings being held between the IFCAs, DEFRA and the MMO, and re-iterated that the IFCAs were positive about the need to explore joint working. TD said that the culture of co-operation (which is mentioned in the MACAA) needs to be remembered especially for such areas as training, survey work and enforcement to avoid duplication of tasks and wasting of resources.

TM spoke to the Minister regarding tidal lagoons, with particular reference to those in the North West. He enquired on the emergence of marine planning in these areas. SE agreed that it was a relatively new area to be managed and that there was a need to monitor these areas and to evidence any emerging impacts on the marine environment.

MS spoke about the timescales currently surrounding bylaw creation. The lengthy process is having a negative impact on the professional reputation of the IFCAs. SE responded by saying that a Bylaw team to specifically process bylaw applications in a timely manner was needed. SE asked that any problems currently surrounding bylaw processing should be brought directly to him and his team, for attention.

RC spoke about aquaculture, saying that at the end of the recent consultation, the IFCAs were now managing these 100 year old sustainable fisheries. The IFCAs are sub-leasing the land to these commercial businesses and there is no public right to access the sites. The IFCAs would welcome clarification from Sea Fish and/or DEFRA regarding the role and capacity of the IFCAs in this area of enforcement/management. SE responded by saying that in this new area of management there is a need for the conservation and economic opportunities to be contextualized. Further discussion would be needed on this.

MPAs were discussed by the Minister who acknowledged that the Tranche 1 sites had represented a big challenge, impacting greatly on the time and resources of the IFCAs. He said that the IFCA model was however best placed to implement this challenging management plan, as their individual localism provided good solutions to protect the marine environment at a relatively low cost. RC said that overall tranche 1 had not been contentious, as voluntary measures and

local agreements had been adapted to reflect current conservation issues. However the challenge of tranche 2 would be the likely need for more bylaws to be created. LW mentioned the reference areas and the challenges on legality. NG said that the issue would be taken to the new administration following the election. The project to review the potential use of HPMAs in tranche 3 is ongoing to investigate if they might provide a useful tool in the well managed network of Marine Protected Areas. DEFRA are considering the results of a recent report, and will incorporate findings into the tranche 3 sites.

TD thanked the Minister for the support via the DEFRA capital funding which has enabled the IFCAs to use shared kit, to provide evidence which supports sound management plans. However TD enquired whether the NE timetable of conservation advice was consistent with the DEFRA timings, as there are still issues with providing sound evidence within the timescales required.

Table of Actions

Action Number	Action	By whom
1	COG to prepare a paper to clarify the IFCA interpretation of the Habitats Directive	Tim Dapling
2	Association to engage with Natural England over the revision of the MOU	Stephen Bolt
3	Association to liaise with Colin Trundle and action move	Stephen Bolt
4	Association to send out MPA reporting requests by 13/3/15	Stephen Bolt
5	Association to send out simple template for the IFCAs to bid for a share of the revenue monies to enable the achievement of DEFRA's MPA 2016 deadline	Stephen Bolt
6	Report back to the Association regarding the revised conservation advice template, and in particular how the £300k revenue may alter the importance of the revised NE timetable	All IFCAs
7	Association to contact Andy Beattie regarding joint working	Stephen Bolt
8	Request for details of the report on mobile species protection to be forwarded to the IFCAs as appropriate	Stephen Bolt to liaise with Terence Illott
9	Association to ask DEFRA to review guidance to IFCAs	Stephen Bolt to contact Terence Illott

Our Ref: PGS/LCD/116980

Stephen Atkins Esq.
CEO
NWIFCA
1 Preston Street
Carnforth
Lancs
LA5 9BY

1st May 2015

Dear Stephen

Boughton Estates' claim or application for several rights in Morecambe Bay

Further to our email correspondence I confirm that the information which the clerk has extracted from the records of the former sea fisheries committee provides strong evidential support to the proposition that the public fishery for all species of fish extends over the foreshore of Morecambe Bay the title to which has been accepted by H M Land Registry, and over any areas of foreshore and fundus beyond that claimed by Boughton Estates. This information was not considered by Dr Crosby who prepared the report for the claimant almost twenty years ago; it has now been provided to the solicitors acting for the estate.

No clarification has yet been received from the solicitors as to whether a private fishery is claimed for all species or only some species. The burden of establishing a several fishery is on the claimant, and that burden in my view is far from being satisfied.

It is unnecessary for the authority to take any further steps in relation to these claims at this time, based on the information provided, and it would serve no useful purpose in any event. This is because if the authority were to seek a declaration against the estate the judgment would only be valid against the estate and would be of no value whatever if (as appears possible) the interest in the fishery was vested in Cavendish and not Boughton. It is up to any party challenged to demonstrate that as a matter of law he is not bound by the byelaw if the facts grounding an offence are otherwise established beyond reasonable doubt. The offender is likely to be an individual fisherman.

My advice is that the authority has full power to enforce the byelaws against all persons fishing for wild fish in the waters of Morecambe Bay. I have informed the solicitors acting for the estate of my advice to your authority in this respect, specifically that the authority will be advised to apply and enforce the byelaws without fear or favour and without discrimination as to the party concerned or the ownership of title to the ground.

I have suggested to the estate that if it wishes to establish as a matter of authority an exclusive right to take mussels from its land or part of it then it should apply to DEFRA

for a several order under section 1 of the Sea Fisheries (Shellfish) Act 1967, which provides a statutory basis of legal protection against the world at large, and can be applied for even by a party which considers that it has a good claim to a several right of fishery at common law. This legislation was established in the 19th century in order to protect shellfish beds for over-exploitation and to encourage long term management. Such an order would vest all molluscs of the specified species within the areas detailed in the owner of the fishery. The procedure requires the application to prepare a management plan, and leads to a public consultation; in the light of the responses to that consultation including the views of Natural England the IFCA NGOs and the fishing interest DEFRA will determine whether there are substantial objections which require a public inquiry to be called to consider them.

You have asked me to clarify the authority's legal position in relation to molluscan aquaculture projects and proposals which exist or are proposed in relation to this or other areas within the district. My advice distinguishes very sharply the position with regard to bottom laid mussels and other molluscs and those which are contained within or on fixed installations.

For example, landowners can erect bouchot posts, oyster trestles and other structures with SSSI consent or planning permission and the cultivation of molluscs within bags trays etc on those structures can be pursued without any several order or byelaw consent, as they are private property.

Relaid cockle and mussel fisheries etc with very limited exceptions will come under the public right of fishery unless they obtain a several order. The main exception would be where there is an oyster pond within which the only molluscs can be identified as the private property of the fisherman who brought them into his control; generally this can only be justified in relation to hardening off or temporary storage and physical delimitation of the pond is required.

It is possible to have both situations in the same location where structures are above the surface of the foreshore. You have noted that the impact of ancillary activities such as clearance of mussel seed around aquaculture structures is important in this District. Clearing seed mussel around installations will I advise always require NWIFCA consent as it is an exercise of the public right of fishery. Any restriction on the public right of fishery i.e. fishery by others around bouchot posts etc does require a several order but it is likely in any event that the obligations under the several order will require compliance with the byelaws by the operator.

Ownership of the foreshore and fundus is irrelevant to whether several order or byelaw consent is required, even if the species (e.g. cockles or razor or other clams) is below the surface. Fishermen have a right to pass over the foreshore (at least on foot – the use of vehicles is controversial in legal terms) for the purpose of taking fish.

Conceivably engineering operations which have the incidental effect of removing fish with the material in which they lie would not require NWIFCA consent, but I am being extremely pedantic in even mentioning the theoretical possibility.

Technically any installation within a public fishery can constitute a nuisance to the exercise of the public fishery; this would apply to fixed moorings for example. It does not take away the public fishery over the waters which can be exercised. One could, for example, fish by hand for mussel under oyster racks. Such interference is however not

actionable as a public nuisance by a fisherman because of the special damage rule that he has to be affected more than a member of the public; take the example of a slipway: the exercise of a right of fishery for some species will be prevented, but it will remain for others, and the public right technically still exists.

When the authority makes decisions which require an appropriate assessment under the Habitats and Birds directives it is required to take into account the impact of other plans and projects in combination with the matter concerned, regardless of whether the authority's consent is required in relation to the other plans and projects. Considering parts of the area in isolation is likely to be in conflict with the directive obligations, and therefore in my view maintaining the full coverage of the district with the authority's byelaws is likely therefore to remain an important element of the implementation of the directives in the north-west; it follows that any discrimination between interests in the fisheries of Morecambe Bay without strictly fisheries environmental or health and safety justification for it would be likely to be unlawful.

Yours sincerely

Peter G. Scott

Partner

Quality Solicitors Parkinson Wright

Direct dial: 01386 760676