

## ANNEX B

Text of email from Mr Jones dated 8 September 2015 to all members

Dear Tony, Stephen and Authority members,

In response to Irene's message of the 24th August and Kelsey's message below, I would like to register my dismay that Kelsey's letter of the 11th June has not yet received a response. Kelsey has raised legitimate questions regarding the proposed changes to the Constitution of the Authority and these should be answered forthwith. I deem it paramount that the proposed alteration to the Quorum be addressed as this is cast in the Authority's Statutory Instrument.

In addition to Kelsey's comment below regarding the proposed change to 8.3 (c) (not (d)), I would like the following proposed changes to be included:

1. Minutes, 7.5 (b) (There is conveniently no (b) present):

*"The minutes be disseminated to all members as soon as they are drafted and in any case within one month of the meeting having been held."*

2. Both Stephen and Mandy have recently made reference to Eastern IFCA documents. I have read the relevant EIFCA documents, one of which was their Constitution and Standing Orders, and compared this with the proposed new NWIFCA Constitution.

It seems to me that a major omission from the proposed NWIFCA Constitution at present is the "Scheme of Delegation" that is set out in detail in the EIFCA Constitution. This "Scheme of Delegation" specifies the rôle and competence of the Full Authority, its Sub-Committees, and the Chief Executive. It brings great clarity to the manner in which the Authority should be operated.

This "Scheme of Delegation" seems to me to be something that the NWIFCA could benefit greatly from. A suitably amended form of it should be included in our own Constitution.

The EIFCA Constitution is attached to this message.

In the hope that this slightly late response will be deemed worthy of consideration,

Regards,

Trevor Jones.  
MMO Appointee, (Aquaculture, Commercial)

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Letter from Mr Thompson to Tony Markley dated 11<sup>th</sup> June 2015, previously tabled and discussed at June quarterly

Dear Tony,

1. Whilst reading the papers that were circulated last week ahead of the NW-IFCA annual meeting on Friday 12<sup>th</sup> June, I became concerned about proposed changes to the NW-IFCA Constitution (Report Number 7). I have discussed these concerns with some of my colleagues on the Authority and it transpires that we were all separately reaching this same conclusion. After some discussion we decided that we should send you a brief summary of our thoughts to alert you to our concerns ahead of the meeting.

Background.

2. It is not clear to any of us where these proposals emanate from, or why they are needed, particular questions that we have include:

3. Is this part of a national review of IFCA constitutions or is it peculiar to the NW-IFCA? What (if any) discussions have taken place among IFCA members to discuss and formulate these changes?

Procedure.

4. No explanation of the procedure for making these changes is provided and the report really should explain:

Is there a formal procedure that IFCA's should follow when amending their constitution (we cannot believe that there is not)?

What is the procedure for independent scrutiny and approval of the changes (for instance by the MMO)?

Is there a procedure for ensuring harmony between IFCA's to avoid one IFCA getting out of step with the others in any regard and to ensure that all around the UK everyone is working to the same underlying procedures?

Legality.

5. We are more than a little concerned about some of the aspects of the proposed changes which seem to either reproduce or disagree with the Order establishing the IFCA's (which of course in any dispute would have supremacy), in particular:

Section 5.1 (a) proposes a quorum of 25%, the previous version of the Constitution indicates this should be 8 members and the Marine and Coastal Access Act the Statutory Instrument establishing the Authority requires a quorum of 8 members, surely the Authority has no power to over-write this requirement?

Transparency & Accuracy.

We have compared the commentary of changes in the report with the appended version of the Standing Orders and the version on the website and there are numerous errors and omissions which in our view mean that it is impossible for anyone reading the report to fully understand what has been added and removed from the document or why.

To take a few examples:

6. The changes to Section 3.1 result in removal of reference to the Statutory Instrument creating the Authority concerning the appointment of the Chair and Members, the basis for removing needs to be explained.
7. The list of Proposed Changes indicates that there have been changes to Section 4.1 €, there is no 4.1 € neither is there a 4.1 (e) in either the original or revised document.

Removal of text: - for instance:

8. Section 7.6 has been performed with no rationale or explanation and it is not possible for the reader to determine what has been removed and why.
9. The changes made to Section 9.1 are not accurately reflected in the commentary or the version of the Constitution provided, the words "Except in special circumstances...." which currently form the start of paragraph 9.1 (a) have been removed which changes the rules for questions from the public considerably. This change is not evident from the report submitted to the Authority, and this by itself is a matter of grave concern.

10. Section 10.1 – the changes made to the Constitution here are incorrectly marked in the report.
11. Paragraph 11 (c) – the amendments remove the requirement for the Authority to publicly advertise all senior posts, this needs to be explained as it would seem to us to be a matter of good practice to ensure the public advertisements of all senior posts within the Authority.

These are not exhaustive comments but just what have caught our eye so far, other members may identify other issues and yet more may emerge during discussion.

12. For us as members, (and surely you as Chairman) the biggest worry are the discrepancies between the proposed new Constitution and the Statutory Instrument (MACAA) establishing the Authority, these discrepancies would undermine the legal authority of decisions taken by the Authority under the proposed new arrangements.

We are quite frankly amazed that this should be proposed, unless it is supported by some robust legal advice or guidance from DEFRA that explains why such a fundamental deviation is permissible.

13. We should perhaps conclude by noting that Section 1.1 states that:

*“Any motion to add to, vary or revoke these Standing Orders shall when proposed and seconded stand adjourned without discussion until the next ordinary meeting of the Authority.”*

So it would be very helpful to us all if the Officers could explain the implications of this and how it impinges upon both the proposed changes and the timescale for their implementation.

We will raise these matters during discussion of the agenda item at the meeting and hope you will appreciate this advance notice of some of our concerns.

14. I would also have expected in this day and age that both existing and proposed Constitutions would have been prepared in a single document format where both removals and additions/alterations could be clearly read.

Regards.

Kelsey Thompson  
MMO Appointee.

Text of cover email to above letter dated 4<sup>th</sup> September

15. There are also more changes in this new edition and one in particular I do not agree with is:

8.3 (d) *“This Committee shall have the power to suspend the membership of any member under investigation by the Authority or the MMO for an alleged breach of a member's code of conduct until such investigation is determined. A suspended member shall be prohibited from speaking or voting at meetings except with the Chairman's permission or attending meetings not open to the public. A suspended member may not be appointed to a Committee of the Authority.”*

In this Country a person is innocent until proven guilty and (unless physical violence has been threatened) should be treated as such and allowed to continue until proven guilty (or not as the case may be).

### Comments on above emails by CEO on behalf of Chairman

Dear Mr Thomson & Mr Jones,

Thanks for your further comments and recent letter of 11<sup>th</sup> June. I have formatted your 11<sup>th</sup> June letter to number the questions as above and includes the further point in Mr Thompson's email of 4<sup>th</sup> September.

1. As you know, your 11<sup>th</sup> June letter was tabled on 12<sup>th</sup> June despite its late arrival with verbal answers and discussion by members. No comments from other members have been received.
2. The proposed changes are suggested by myself and are intended to assist the smooth conduct of IFCA business at meetings. Agreement on the wording is a matter for members. No changes are essential and members may choose to revert to the 2013 Standing Orders. My concern as I have previously stated is that the 2013 version contains language which is both incorrect and out of date with the way the Authority now operates.
3. There is no national review or overview. Each IFCA is autonomous. Officers have received informal comments from members that Standing Orders need updating. Authority meetings are members' opportunity to consider proposed changes.
4. There is no procedure other than paragraph 1 of Standing Orders. There is no independent scrutiny by MMO or any mechanism to create harmony between IFCA cover England only (not the UK). All IFCA work to their individual procedures determined locally.
5. The Order takes precedence in the event of legal challenge but I suggest that Authority standing orders should allow for business to continue when membership is reduced through a failure to reappoint members. For example, NWIFCA currently has only 26 members (4 vacancies) and may wish to continue operating with a quorum of 7 instead of 8 as in the SI. The Authority is entitled to do that but could in theory face challenge to decisions taken with only 6 or 7 members present.
6. I am now suggesting that the SI be included in full in the NWIFCA constitution, removing the need for the references to the SI in Standing Orders.
7. I don't understand this point.
8. I suggest removing para 7.6 because the meaning and purpose is unclear.
9. The 'special circumstances' are not defined so the phrase appears unnecessary. The change is evident in the track changes version.
10. Agree some of the original wording is lost in the track changes version. Please refer to the 2013 version.
11. The proposed amendments to 11b require all posts to be advertised other than temporary posts.
12. Only 1 discrepancy is identified covered under 5 above which I think would be useful when membership is reduced. Legal challenges arising from this are highly unlikely but the amendment could allow business to continue. Each IFCA legally autonomous. Defra and MMO have in the past indicated they are unwilling to provide legal advice to IFCA on their Standing Orders.
13. Para 1.1 was considered unclear. The proposed version provides for all members to have defined input to proposed changes.

14. A 'clean' copy (with track changes removed) of the proposed standing orders is attached. Members are invited to read this version in conjunction with the 2013 version which all members should have from their induction packs. If another copy is needed this will be provided by the Clerk. Officers are happy to consider any other suggested ways of making the proposed changes clear for members. In the meantime I suggest that members who have concerns about Standing Orders consider if the new version provides all the measures needed to ensure the fair and transparent delivery of IFCA business.
15. This clause should not prejudice any investigation taking place but is intended to clarify the position of members whose conduct is the subject of a complaint until the complaint is determined.

## ANNEX D

### CHAPTER 4 of Eastern IFCA constitution Scheme of Delegations

#### Responsibility for functions

1. Chapter 4 of this Constitution sets out the extent to which the Authority's functions are:

the responsibility of the full Authority;  
the responsibility of Sub-Committees of the Authority;  
the responsibility of the Chief Executive Officer.

The allocation of responsibilities aligns with the three County Councils' interpretation of the approach to the division of functions between Executives and Authorities, namely:

Determination of the policy framework and budget and other constitutional and quasi legislative functions are to be the responsibility of the full Authority. Functions which involve the delivery of the vision of Eastern IFCA across the spectrum of Conservation and Enforcement business are to be the responsibility of the Chief Executive Officer (CEO).

All other functions are to be the responsibility of either the CEO or the Authority's Sub-Committees.

2. Within this framework all members have agreed that it is the role of Authority members to concentrate upon broad strategy and policy decisions and that it is essential that the CEO and subordinate managers have clear managerial control and authority to implement those decisions.
3. It is part of the role of Authority members to raise concerns, particularly those of stakeholders, and bring to the attention of the CEO matters of concern on any element of Eastern IFCA business. Members agree that their involvement in day to day management beyond this is unlikely to promote the most effective service. In exercising their delegated powers, the CEO shall consider the concerns and comments of Members whilst recognizing their responsibility to manage delivery of Eastern IFCA outputs in accordance with the Authority's policy framework.

#### MATTERS WHICH IT IS THE RESPONSIBILITY OF THE FULL AUTHORITY TO DISCHARGE

1. Approving and adopting the Annual Budget and setting the levy to Councils.
2. Agreeing quarterly accounts and statements of payments made and monies received.
3. Approving bank signatories.
4. Adopting and changing the Constitution including reviewing Standing Orders; Schedule of Delegations; Non-Elected Members' Code of Conduct; Anti-Fraud and Corruption policy and other constitution documents.
5. Agreeing and reviewing annually the Members' expenses scheme.
6. Agreeing and/or amending the terms of reference for Sub-Committees, deciding on their composition and making appointments to them.
7. Appointing Member representatives of the Authority to outside bodies.
8. Agreeing the Authority's strategic policy framework as follows:  
Annual Report  
Annual Plan  
Research and Environment Plan  
Communications and Engagement Strategy  
Research Reports  
Biosecurity Plan  
Risk Management strategy  
Derogations Policy
9. Agreeing the Authority's strategic enforcement framework as follows:  
Enforcement Strategy  
Enforcement Code of Conduct

- Financial Administrative Penalties for Fisheries Offences
10. Receiving reports on complaints against the Authority and on Freedom of Information 2000, Environment Information Regulations 2004 and Data Protection Act 1998 requests.
  11. Agreeing and signing Memoranda of Understanding and other partnership initiatives.
  12. Receiving minutes of meeting of the Association of Inshore Fisheries and Conservation Authorities.
  13. Managing inshore fisheries outwith WFO 1992 as delegated and approved by DEFRA.
  14. Waiving any of the procedures relating to contracts which are set out in the Financial Regulations.
  15. Agreeing the sale of assets worth more than £10,000.
  16. Receiving reports and agree action on bad debts.
  17. Acting as a consultee for planning proposals and other issues that may affect or impact on fisheries resources or the marine environment within the Authority's District.

#### **MATTERS WHICH IT IS THE RESPONSIBILITY OF THE FINANCE & PERSONNEL SUB-COMMITTEE TO DISCHARGE**

1. Decision making powers concerning strategic financial matters and approving the annual Statement of Accounts, transfers between accounts, appointment of the Auditor and amendments to the Financial Regulations, but not the setting of the levy, approval of quarterly accounts and statements and approval of bank signatories, all of which are reserved to the full Authority.
2. Decision making powers in developing the Human Resources strategy for the organisation including staff structure and employment policy to include personal development, training and appraisal strategies to assure adherence to relevant UK employment law and other mandated public sector initiatives.
3. Decision making powers regarding policy on the recruitment, remuneration and retention of personnel.
4. Decision making powers to approve standing interview procedures and the appointment of interview panels for the recruitment of the Chief Executive Officer and Executive personnel including Consultants. Authority members of interview panels will be drawn from this Sub-Committee and panels will also include appropriate Authority senior officers; panels will normally be chaired by the Chair of this Sub-Committee; panels will carry out all processes leading to the selection of the successful candidate who will be appointed by the Sub-Committee.  
Executive posts deemed to be Head of Finance; Head of Human Resources; Head of Marine Conservation; Head of Marine Protection
5. Decision making powers to conduct Disciplinary/Grievance appeals panels.
6. The Sub-Committee may delegate any of its powers to an individual member of the Sub-Committee or to the CEO except where the power falls to be discharged by a panel.
7. The Chair of the Sub-Committee, or the CEO in consultation with the Chair, may refer any of the matters set out above to the full Authority for determination where this is in the Authority's interests.

#### **MATTERS WHICH IT IS THE RESPONSIBILITY OF THE MARINE PROTECTED AREAS SUB-COMMITTEE TO DISCHARGE**

1. Decision-making powers in relation to the following provisions of the WFO 1992:  
Opening fisheries for the prescribed shellfish species in the area of the Wash covered by the WFO 1992 providing notice of at least 7 days of the intention to Entitlement holders.  
Management measures for fisheries in the relevant area of the Wash including approving any underpinning research initiatives.  
Granting and revoking licences.  
Approving and reviewing the Derogation process.
2. Decision making powers in relation to European Marine Site (EMS) responsibilities including:  
Establishing the policy framework to enable accommodation of developing EMS initiatives material to Authority outputs.
3. Making recommendations to the full Authority in relation to the management and administration of all Marine Protected Areas in the district.

4. The Sub-Committee may delegate any of its powers to an individual member of the Sub-Committee or to the CEO.
5. The Chair of the Sub-Committee, or the CEO in consultation with the Chair, may refer any of the matters set out above to the full Authority for determination where this is in the Authority's interests.

#### **MATTERS WHICH IT IS THE RESPONSIBILITY OF THE PLANNING AND COMMUNICATIONS SUB-COMMITTEE TO DISCHARGE**

1. Developing the Authority's vision and strategic planning to deliver the DEFRA success criteria.
2. Preparing the Authority's Annual Plans and Annual Report.
3. Approving the Authority's Annual Plans to meet DEFRA deadlines.
4. Developing the Authority's Engagement and Communication Strategy.
5. Formulating the replacement strategy for Authority capital assets for recommendation to the full Authority.
6. The Sub-Committee may delegate any of its powers to an individual member of the Sub-Committee or to the CEO.
7. The Chair of the Sub-Committee, or the CEO in consultation with the Chair, may refer any of the matters set out above to the full Authority for determination where this is in the Authority's interests.

#### **MATTERS WHICH IT IS THE RESPONSIBILITY OF THE REGULATORY AND COMPLIANCE SUB-COMMITTEE TO DISCHARGE**

1. Making, amending, revoking, re-enacting or adopting byelaws.
2. Reviewing enforcement strategy assuring adherence to UK Law, other legal precedents and mandated public service protocols.
3. Developing a risk-based enforcement strategy suitable for Authority purposes.
4. The Sub-Committee may delegate any of its powers to an individual member of the Sub-Committee or to the CEO.
5. The Chair of the Sub-Committee, or the CEO in consultation with the Chair, may refer any of the matters set out above to the full Authority for determination where this is in the Authority's interests.

#### **MATTERS WHICH IT IS THE RESPONSIBILITY OF THE CHIEF EXECUTIVE OFFICER TO DISCHARGE**

##### **Human Resources**

1. Being the Head of the Eastern IFCA's paid service and ensure that the Authority deals effectively and lawfully with day to day operational control of personnel issues, including management of staff structure, recruitment, retention, welfare, training, disciplinary and grievance matters. To develop plans to deliver HR strategy.
2. Managing the performance of staff to ensure that the Authority's policies and decisions are implemented effectively and that key targets and objectives are met.
3. Being ultimately responsible for all other HR matters that have not been delegated to the Finance & Personnel Sub-Committee or reserved to the full Authority.

##### **Protection and Conservation**

4. Leading and directing the Authority's officers in the enforcement of all legislation relating to the management and policing of the inshore fisheries and the conservation of the marine environment.
5. Instigating and taking legal proceedings for offences under any legislation which empowers the Authority to take legal proceedings, after consultation with the Chair and Vice-Chair of the Authority.
6. Making emergency byelaws under Section 157 of the Marine and Coastal Access Act 2009 after consulting with the Chair and Vice Chair of the Authority and notifying the Chair and



- Vice Chair of the Regulatory & Compliance Sub-Committee. On making an emergency byelaw, the CEO must call an extraordinary meeting of the full Authority.
7. Ensuring that the Authority liaises and works in co-operation with other inshore fishery and conservation organisations, including other IFCAs.
  8. Being ultimately responsible for all fisheries management matters that have not been delegated to the Marine Protected Areas Sub-Committee or reserved to the full Authority.

### **Governance and Financial management**

9. Being the Responsible Financial Officer for the Eastern IFCA as defined in the Authority's Financial Regulations.
10. Entering into and varying contracts on behalf of the Authority where these are necessary to implement the Authority's decisions or to discharge the responsibilities of the CEO and provide the best value for the Authority.
11. Being responsible for all financial management matters that have not been delegated to the Finance & Personnel Sub-Committee or reserved to the full Authority.
12. Acting as signatory in respect of permits, licences, agendas, cheques and other such Authority documentation.
13. Ensuring that all governance, enforcement, financial management and HR policies and procedures are maintained in an accurate and up-to-date state and are adhered to by all staff and members.
14. Ensuring that all matters within the decision-making powers of the full Authority and its Sub-Committees are brought forward to the relevant forum in a timely manner and with all information necessary for a robust and lawful decision.
15. Receiving and investigating complaints against non-elected members of the Authority and making recommendations to the appointing body. Referring complaints against elected members to the relevant county council Monitoring Officer.
16. Ensuring the Authority's complaints procedure is implemented and monitored.
17. Ensuring the preparation and circulation of agendas, papers and minutes for all Authority and Sub-Committee meetings in line with legal requirements and the Eastern IFCA Constitution.
18. Attending, or being represented, at all meetings of the Authority, Sub-Committees, working groups, and other meetings and ensuring that advice is available on legal and procedural issues.
19. Ensuring the Authority meets its obligations under the Freedom of Information 2000, the Environment Information Regulations 2004 and the Data Protection Act 1998

### **External representation and communications**

20. Ensuring that the Eastern IFCA is appropriately represented at meetings with other bodies such as DEFRA, MMO, Environment Agency, Natural England, Association of Inshore Fisheries and Conservation Authorities, county councils etc.
21. Ensuring effective communications between Eastern IFCA staff and members, and between the Authority and other bodies.
22. Maintaining effective community consultation, engagement and participation arrangements for the Authority that meet external and internal objectives.

### **Powers of Delegation**

23. Delegating functions to another officer of the Eastern IFCA but remaining accountable for the outcome of such delegations.

### **Provision for emergencies**

24. Where, in the opinion of the CEO (or their nominated deputy in their absence) a decision which is within the powers of the Authority, but is not within the CEO's delegated powers, is urgently required by the Eastern IFCA, and cannot be delayed until an Authority or relevant Sub-Committee meeting is convened, the CEO may take the decision, having first consulted the Chairman and the Vice-Chairman of the Authority and, where relevant, the

Sub-Committee Chair and Vice-Chair. All such decisions must be reported to the next meeting of the Authority and the relevant Sub-Committee.

**Delegation to the Chair and Vice-Chair of the Eastern IFCA**

*On 11 October 2011, the Authority delegated the following power to the Chair and Vice-Chair of the Eastern IFCA:*

To the Chair (and in their absence, the Vice-Chair), sign orders for the payment of money by the county councils jointly with the CEO.