



# **A guide to all aspects of the D&SIFCA Byelaw Review Work**

**June 2017**

# D&SIFCA Byelaw Review Work

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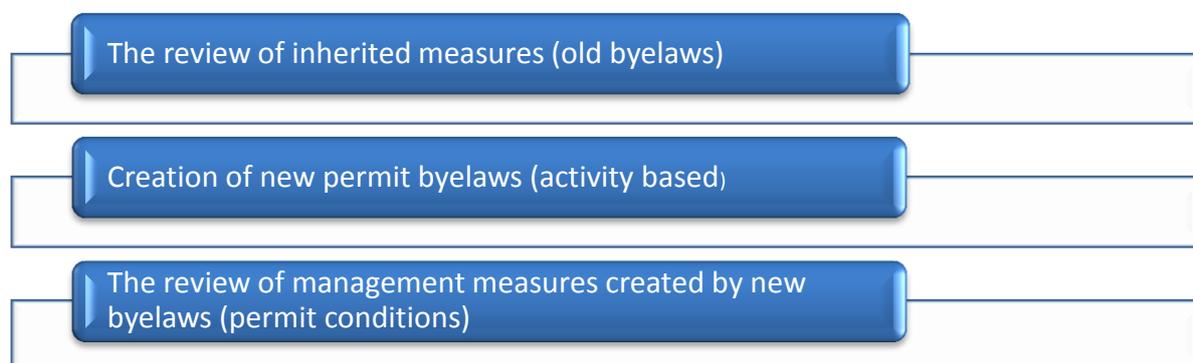
# D&SIFCA Byelaw Review Work

## 1. Purpose of report

The purpose of this report is to provide a guide to some of the more important aspects of D&SIFCA byelaw work. Key questions are addressed along with an explanation of how members can use the material presented to them, become more directly involved in the work, and ultimately have more confidence to make decisions at Authority meetings.

## 2. What is the byelaw work and why do it?

Byelaw work is separated into different areas:



Byelaws are put in place to manage the fisheries within the District. They are local measures specific to our District. D&SIFCA inherited many byelaws from the predecessor organisation (Devon Sea Fisheries Committee); however the responsibilities for the D&SIFCA have been increased and are more extensive to those of Devon Sea Fisheries Committee.

The D&SIFCA have statutory duties as specified within the Marine and Coastal Access Act 2009 (MaCAA). The Act contains several sections relevant to IFCA working; however Section 153 (Management of inshore fisheries) and Section 154 (Protection of marine conservation zones) are of particular significance. As a result, inherited byelaws must be examined (reviewed) against the criteria within the relevant sections of the Act in regard to, are they fit for purpose? Any new byelaws that are created must take the statutory duties into account. From a policy perspective, there must be a link between our new byelaws and our statutory duties.

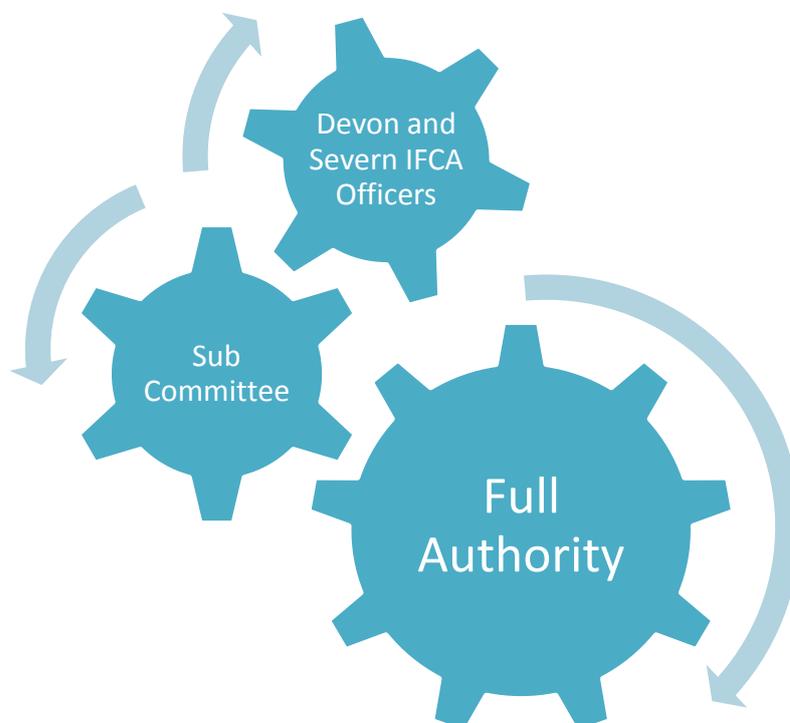
***The D&SIFCA would be failing in its duty if it does not manage the exploitation of sea fisheries resources in its district.***

## 3. Who does the byelaw work?

All of the separate elements of the byelaw work are a team effort. Although the officers prepare the majority of the material (reports) required for the process, the Officers do not take decisions at any time.

## D&SIFCA Byelaw Review Work

The Full Authority is comprised of 30 members drawn from relevant Local Authorities (Councillors), General Members (appointed to the Authority by MMO) and Statutory Appointees (MMO, EA, & NE).



The Byelaw work is often a lengthy and complex process. It does require some specialised skills and background knowledge. This Authority has created a sub-committee to conduct the byelaw work. The Byelaw and Permitting Sub-Committee is formed by a number of Full Authority members, each offering a different set of skills or background knowledge that is utilised to complete the required work. Officers prepare material which is used by the Sub-Committee for their deliberations (meetings) and the Sub-committee's recommendations are then presented to the Full Authority at key stages. It is the Full Authority members that make the final decisions\*.

The type of information that is collated and presented to both Sub-Committee members and Full Authority members is explained in more detail later in this report.

*\*In certain circumstances delegated powers have been granted for decisions to be taken directly by the Byelaw and Permitting Sub-Committee. This is potentially of use when reviewing existing management (permit conditions) and can help avoid delays in process and the implementation of the required changes to the permits issued via the newer permit based byelaws.*

## D&SIFCA Byelaw Review Work

Any member of the Full Authority can become a member of the Byelaw and Permitting Sub-Committee and are encouraged to do so.

### 4. D&SIFCA byelaw strategy and principles

The Byelaw and Permitting Sub-Committee have formulated a strategy for the byelaw work and have identified some overarching principles for byelaw creation. Two key points are as follows:

- To adopt an activity based byelaw model
- To use permit based byelaws

Since 2011, the Authority has taken a view that a traditional model of byelaw making (in most circumstances) does not provide a suitable management structure. Inherited byelaws were identified as being too rigid to fit an ever changing situation. The new permitting byelaws can replace multiple legacy byelaws related to a particular activity.

Section 156 of MaCAA provides the opportunity for D&SIFCA to create permit based byelaws. Permitting byelaws provide the Authority with a flexible, adaptive approach to management and has become the chosen model when legislation is required.

Permit based byelaws introduced to date include:

- Mobile Fishing Permit Byelaw
- Potting Permit Byelaw
- Diving Permit Byelaw
- Netting Permit Byelaw<sup>1</sup>

Permit based byelaws provide scope for both fixed and flexible management measures via the conditions of use within the permits issued to fishers. The scope of the flexible conditions is limited to catch, gear, spatial and time restrictions. The review procedure of flexible conditions is detailed within the main Byelaw(s). D&SIFCA has a duty to review all of the flexible conditions (per byelaw) at least every three years but can review conditions within a shorter time period as considered necessary. Any new permit byelaw (the whole byelaw) needs to be reviewed within five years.

Permit based byelaws allow separation of different users (fishers) or slightly different types of fishing activity managed by a single byelaw. Separation is achieved by the issue of separate categories of permits dependent on the activity being managed.

For example the Mobile Fishing Permit Byelaw manages commercial activity such as trawling and scallop dredging; however mobile fishing activity is divided between “at sea” fishing and “estuary” fishing and two types of permits are therefore issued. The other permit based byelaws often separate commercial fishers and recreational fishers, with the permit’s conditions of use proportionate to their needs.

The Authority has taken the view that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to

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<sup>1</sup>Awaiting confirmation (sent to the MMO in May 2017)

## D&SIFCA Byelaw Review Work

secure the correct balance for different fishery users who have different needs. The Authority has taken the view that recreational catch restrictions are appropriate and proportionate measures to apply through permit conditions.

### Other guiding principles

To recognise the duties of the D&SIFCA as specified in MaCAA and in order to develop a strategy to review the legacy byelaws, review principles have been established. The principles underpin the development of the byelaws and the management measures contained within the associated permits. In formulating these principles other factors such as the Hampton Review have been considered. Some principles would apply to the whole byelaw review process and some are developed for each individual byelaw in its early creation or foundation phase.

Key principles of the most relevance include the following:

- A pre-cautionary stance must be taken where required to secure compliance with the UK's international Treaty obligations.
- To avoid permit limitation/creation of a private fishery
- Remove laws which have become irrelevant from the statute book (Hampton Review);
- Consider alternative management approaches (gentlemen's agreements and codes of conduct);
- Use the wider byelaw making powers provided by MaCAA;
- To use emergency Byelaws as a last resort;
- Where possible make the legislation easier to understand;
- Encourage legitimate activity removing illegal, un-licenced and un-regulated fishing activity;
- Recognising that sustainable development is where the management of the fishing activities seeks to maximise the social, economic and environmental benefits in the medium and long term;
- New byelaws should ideally achieve behavioural change and high compliance;
- Draft legislation so that it assists with enforcement;
- The cost of a permit will be £20 (for administration)

All of the principles are important, but it is important that several are further explained and better understood.

- **A pre-cautionary stance can be taken**

*The D&SIFCA aims to collect the best available evidence during the process of creating new byelaws and also reviewing management measures already established in existing permit based byelaws. Good evidence assists decision making. Where evidence is lacking, the D&SIFCA must take a pre-cautionary approach in regard to the content of a byelaw (or control measures via permits) so it meets its statutory duties and the objectives of the Byelaw.*

## D&SIFCA Byelaw Review Work

- **Not to limit permit numbers and to issue different types of permits**

*The D&SIFCA have taken the view that permits issued for fishing methods should not be limited, thereby creating a private fishery as fish is a public resource available to everyone. Control of different fishing activities will be achieved via the conditions in the permits rather than limiting the overall number. Limiting permit numbers provides difficulties in deciding who initially has access to the fishery; it can create an economic advantage for those issued with the permits, it blocks the path for new entrants wanting to enter the fishery and provides complications in regards to managing waiting lists for permits.*

- **Consider alternative management approaches (Options for Management)**

*In recognising the Hampton Review, alternatives to legislation are considered. Options for management are discussed at the early stages of byelaw development by the Byelaw and Permitting Sub-Committee. These considerations are documented. Voluntary measures are obviously a weaker form of management than legislation. The risk of non-compliance and the effects of non-compliance are key considerations.*

- **Draft legislation so that it assists with enforcement**

*Legislation has to be able to be enforced and this is also a factor been recognised. The provisions within the permits are drafted so the D&SIFCA can realistically enforce the measures. Historically, “loop holes” have been created by accident and these are sometimes exploited. By using permits, catch restrictions can be implemented to achieve what in effect is a deeming clause. Fishers make a choice when considering applying for a permit and in doing so will be bound by the conditions within the permit. The fisher has a choice to either accept the conditions of the permit or can choose not to have a permit and not fish in the Authority’s district.*

- **The cost of a permit will be £20 (for administration)**

*The permits that are currently issued via other D&SIFCA Permit Byelaws are £20 for a two year period. This fee is for administration only, and is not an attempt at full cost recovery. The Authority has suggested that once the complete suite of activity based byelaws are active, then the burden placed on the Authority and the £20 permit fee can be reviewed.*

### **5. The creation of new byelaws**

Firstly, it is important to recognise that D&SIFCA byelaws cannot be less restrictive than domestic and EU legislation. These forms of legislation take precedent over the Byelaws. New byelaws (Permit Conditions) can’t be introduced if measures contained within them allow an activity to take place when in fact it is prohibited under national or EU legislation.

Defra have provided guidance on the process to be followed when creating a new byelaw which is followed exactly by the Byelaw and Permitting Sub-Committee.

## **D&SIFCA Byelaw Review Work**

Early stages for the work of the Byelaw and Permitting Sub-Committee involve significant planning. Considerations include reviewing relevant legacy measures, examination of principles, and development of communication initiatives.

In terms of process, there are separate phases of development. The different phases require different types of work all of which are well documented and circulated. The Full Authority participates in the process at necessary key stages.

### Gather Information

- The D&SIFCA seeks views of stakeholders.
- The D&SIFCA conducts research and makes use of previous research
- The D&SIFCA begins work on the Impact Assessment
- Options are considered (via meetings of the Byelaw and Permitting Sub Committee)

### Make a Byelaw

- Obtain legal advice
- Issue notice
- Present information
- Make a Byelaw (Byelaw still in draft but is suitable for consultation)

### Consultation (formal)

- Advertise the Byelaw for Consultation
- Consider responses
- Respond to the responses

### Confirmation

- Finalised version of Byelaw (agreed by Full Authority) sent to the Marine Management Organisation (MMO).
- The MMO quality assures the byelaw including determining whether the correct process has been followed. (Defra's IFCA Byelaw Making Guidance) and assessing the evidence.
- Application for confirmation of the Byelaw will be made to the Secretary of State

## **Impact Assessment**

The D&SIFCA has to create an Impact Assessment to accompany the creation of any new byelaw. The Impact Assessment has different stages of development with the first version developed for the "formal consultation" phase. A final version is developed in preparation for the "confirmation" phase.

The Impact Assessment documents the rationale for the creation of a new byelaw. Best available evidence is used to assess social and economic impact. Key monetised and non-monetised costs are explored. The Impact Assessment is made publicly available throughout the byelaw creation process with an on-line version posted on the D&SIFCA website. The formal consultation phase tests the documented evidence and additional evidence is added and considered.

## **D&SIFCA Byelaw Review Work**

### The structure of the Permit based byelaws

The D&SIFCA Permit Byelaws provides the platform for the issue of permits containing conditions of use. The overarching byelaw includes interpretations, prohibitions, fixed provisions (such as fees) and list different categories of management control as follows:

- Catch restrictions
- Gear restrictions
- Spatial restrictions
- Time restrictions

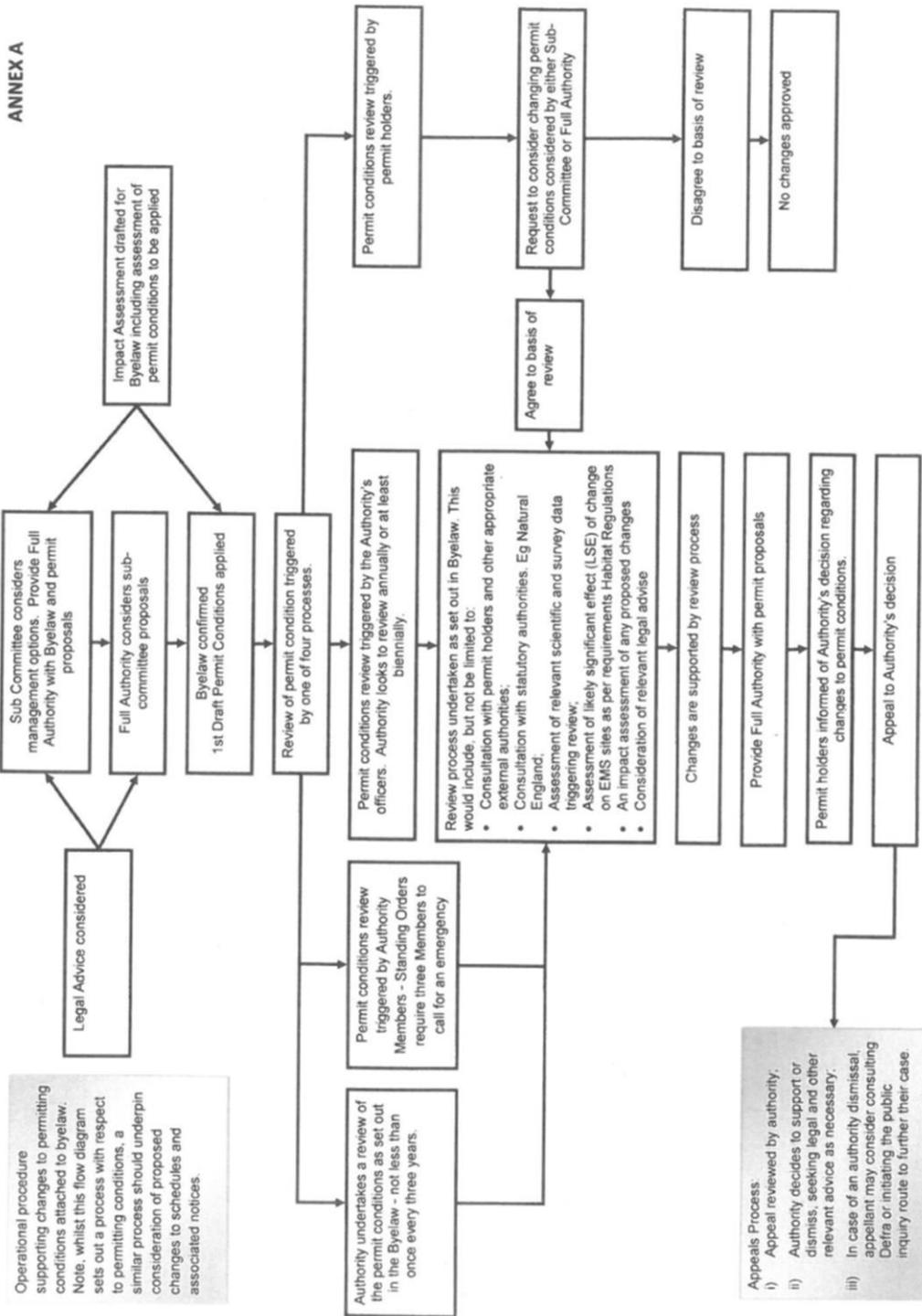
These categories are used to organise the conditions of use for the fishers within the permits that are issued. The complexity of spatial management can be simplified by the use of annexes (charts) that are also issued with the permits.

The permitting byelaw model has introduced the flexibility needed by setting out part of the management in the permit conditions rather than in the byelaw itself. Those affected by the legislation are safeguarded by the introduction of an open and inclusive management review system within the byelaw that describes the process by which changes to permit conditions will be made.

A review can be triggered at any stage as set out in the diagram (Annex A) and conditions must be reviewed at least every three years.

# D&SIFCA Byelaw Review Work

## ANNEX A



# D&SIFCA Byelaw Review Work

## 6. Permitting byelaws and review of conditions

Once a new permit byelaw is in place, it offers some advantages as opposed to the traditional byelaw model. Internal and external research work can inform management and the mechanism in place allows for D&SIFCA to react to changes in a timelier manner. This is of particular importance for the D&SIFCA to recognise its environmental responsibilities. In addition, developments in new technologies can be implemented when systems (such as vessel monitoring systems) are considered fit for purpose.

An immediate advantage of permit based byelaws is that it provides the D&SIFCA with a known number of fishers involved in a particular fishing activity. The application process captures the details of fishers. The resulting data base allows for direct communication with all permit holders.

As with byelaw creation, a review of permit conditions does present a significant amount of work for the Byelaw and Permitting Sub-Committee and Officers. The formulation of management proposals, conducting consultation, summary work, building and documenting evidence bases and assessing impact of potential changes to management are all required in a review of permit conditions.

## 7. Communication (members and other stakeholders)

Communication is of utmost importance in all aspects of the byelaw work. Communication (consultation) with stakeholders is vital, but so too is internal communication such as updating the Full Authority with progress of the work and providing all members with a clear understanding of process followed.

Many communication initiatives have been used since 2011, with perhaps more focus placed on informing stakeholders rather than all members of the Authority. Communication initiatives have included the following:

- Information flyers
- Direct notification to permit holders
- Mobile presentation events
- Meetings and presentations
- Multi-media (D&SIFCA website and twitter)

During the creation of the Netting Permit Byelaw, some Full Authority members raised some concern that they needed more information on the on-going byelaw work. With the endorsement of the Byelaw and Permitting Sub-Committee, a new byelaw communication concept has been developed that will hopefully better inform both members and also stakeholders of developments and process.

Members will continue to receive stand-alone papers when required, and it is possible that some information may be duplicated; however, whenever possible, they will receive more complete progress reports that document all aspects of either byelaw creation or byelaw (permit) review work.

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### New progress and process reports

The two reports provided for members for the Full Authority meeting in June 2017 provide an example of more complete progress and process reports.



Within these reports (the other not shown) the complete process is documented from start to finish. Both reports are built over time with new information added at different stages of development.

During byelaw creation a similar approach can be taken, with members able to use the material to aid their decisions at key stages.

Although the byelaw reports will be circulated directly to members, the reports<sup>2</sup> will also be placed on the D&SIFCA website to inform a wider audience. Electronic versions of each report are more extensive than paper versions as imbedded material (hyperlinks) can then be utilised by readers.

Officers will still continue to provide verbal updates at meetings and often conduct focussed presentations; however agenda items can now be directly linked to the relevant sections of the appropriate reports and these reports will provide members with instant access to all relevant reference material.

### Other new communication opportunities

The D&SIFCA website is currently being developed into a more visually appealing site. The new site will still include a members' area where information can be posted. The use of images will feature strongly as the site becomes more "news" orientated. Development of traditional quarterly reporting into a newsletter style is another concept being explored for future use.

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<sup>2</sup> With possible editing to protect sensitive information

## **D&SIFCA Byelaw Review Work**

Members should be aware that Officers are available for questions by contacting them directly. With prior arrangement and approval of the CO, officers can also potentially present information to members in dedicated sessions.

Much of the consultation work conducted to date has required stakeholders to provide written responses. Officers have been made aware that many stakeholders, in particular commercial fishermen are not comfortable with this form of engagement. To mitigate lack of response or submissions of poor quality, officers are considering potential development of organised appointments to include telephone interview sessions.

### **8. The role of members**

- a) Understand the information that the Byelaws or permit conditions are based on and the decision making process.
- b) Vote on the recommendations made by the Sub-Committee
- c) Members should be prepared to provide reasons if they wish to vote against recommendations made by the Sub-Committee<sup>3</sup>

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<sup>3</sup> As detailed within the public body decision making document presented to the Full Authority in December 2016