



**Eastern  
Inshore Fisheries and Conservation Authority**

**MARINE AND COASTAL ACCESS ACT 2009 (c. 23)**

**Wash Cockle and Mussel Byelaw 2021**

The Authority for the Eastern Inshore Fisheries and Conservation District in exercise of its powers under sections 155 and 156 of the Marine and Coastal Access Act 2009 (c.23) makes the following byelaw for the District.

**Interpretation**

1. In this byelaw:
  - a) “the Authority” means the Eastern Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010/2189);
  - b) “the District” means the Eastern Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the Eastern Inshore Fisheries and Conservation Order 2010;
  - c) “fishery” means the description of a targeted set of cockles or mussels which includes reference to at least the species targeted, the fishing method used and a spatial description of the area targeted;
  - d) “person” means a natural person only;
  - e) “the le Strange Estate” means the area as defined in the judgement of Mr David Halpern QC sitting as a deputy High Court judge and handed down by the High Court on the 27<sup>th</sup> July 2018 with the reference John

Henry Loose -v- Lynn Shellfish and others: Neutral Citation Number:{2018] EWHC 1959(Ch);

f) “permit” means a Category One or Category Two:

- i. a hand-work cockle permit;
- ii. a hand-work mussel permit;
- iii. a mussel dredge permit;

Issued under paragraph 11 of this byelaw.

g) “fishing” includes:

- i. “prop-washing” which is the practice of turning a vessel in tight circles to aid the removal of cockles;
- ii. digging for bait;
- iii. the shooting, setting, towing and hauling of fishing gear;
- iv. gathering sea fisheries resources by hand or using a hand operated implement; and
- v. catching, taking, transporting or removing sea fisheries resources;

h) “The Wash” means the area set out in Schedule 3 (The Wash area);

i) “fishing gear” means any nets, pots, ropes, anchors, surface markers, lines, dredges, grabs, rakes or other implements used for the purposes of, or facilitating, fishing;

j) “certificate of gear approval” means the document issued under paragraph 9 of this byelaw;

k) “vessel” means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) and a hover craft or any other amphibious vehicle, used or capable of being used as a means of transportation on water;

l) “named representative” means a person who has been granted permission to fish under the authority of a permit issued under this byelaw, on behalf of the permit holder;

- m) “flexible permit conditions” means any of the conditions attached to permits in accordance with paragraph 23 of this byelaw;
- n) “catch return form” means a form issued by the Authority pursuant of paragraphs 35 to 39 of this byelaw;
- o) “marine protected area” means any of the sites specified in section 158(6) of the Marine and Coastal Access Act 2009;
- p) “operating times” mean the time periods that a fishery is open to fishing activities as determined by the Authority under paragraphs 32 and 33 of this byelaw;
- q) “total allowable catch” means the quantity of cockles or mussels that the Authority has determined can be removed from a fishery;
- r) “cockle” means any bivalve mollusc belonging to the genus *Cerastoderma*;
- s) “mussel” means any of the species belonging to the genus *Mytilus*;
- t) “harvestable mussel fishery” means a mussel fishery, the flexible permit conditions for which, allow for mussels fished for, taken or removed from the fishery to be sold directly to a market;
- u) “relaying mussel fishery” means a mussel fishery, the flexible permit conditions for which do not allow mussels to be sold directly to market but instead, must be relayed for the purpose of aquaculture;
- v) “prop-washing” means the practice of turning a vessel in tight circles to aid the fishing of cockles;
- w) “bottom-towed-gear” means any fishing gear designed to be towed, dragged or pushed through the water whilst in contact with the seabed;
- x) “recreational purposes” means fishing which is not for sale or reward.

## **Prohibitions**

2. A person must not fish for, take or remove any cockles or mussels unless that person is:
  - a. the holder of a valid permit relevant to that fishery; or

- b. a named representative of the holder of a valid permit relevant to that fishery.
3. Subject to paragraph 4, a person must not fish for, take or remove cockles or mussels using a vessel, or to carry on board any cockles or mussels caught from within the Wash unless:
  - a) that vessel is named on a permit; and
  - b) either the permit holder or named representative is the skipper of that vessel.
4. Paragraph 3 does not apply where a person is fishing under the written agreement of the Authority and in accordance with any conditions of that agreement. Such agreement may be given in circumstances where the permit holder, nominated representative or the named vessel, are unable to put to sea.
5. A person must not fish for, take or remove from the fishery any cockles or mussels from within The Wash except in accordance with any restrictions set out in Schedule 2 (Restrictions in The Wash) of this Byelaw.
6. A person must not fish for, take or remove cockles or mussels from a fishery, or parts thereof, which is closed under paragraphs 29 and 31 of this byelaw or outside of the operating times issued under paragraph 32 and 33 of this byelaw.
7. Subject to paragraph 8 (below), a person must not fish for, take or remove from the fishery cockles or mussels under the authority of a permit using fishing gear unless:
  - a) a certificate of gear approval has been issued by the Authority for that fishing gear; and
  - b) a tag provided by the Authority is affixed to the gear with a reference number which is associated with the certificate of gear approval.
8. Paragraph 7 (above) does not apply in relation to any fishing gear for which there are no restrictions, specification or requirements under this byelaw or under permit conditions issued under this byelaw.
9. For the purpose of paragraph 7 above, a certificate of gear approval will;
  - a) only be issued if the fishing gear has been inspected by an Officer of the Authority who determines the fishing gear meets the restrictions,

specifications or requirements under this byelaw or under permit conditions issued under this byelaw;

- b) be invalid if the fishing gear is modified in any way after the certificate of gear approval has been issued;
- c) be valid for the period the associated permit is valid.

10. A person must not fish under the authority of a permit except in accordance with any conditions attaching to a permit.

## **Permits**

11. The Authority may issue a Category One or Category Two:

- a) hand-work cockle permit authorising a person to fish for, take or remove cockles from a hand-work cockle fishery;
- b) hand-work mussel permit authorising a person to fish for, take or remove mussels from a hand-work mussel fishery;
- c) mussel dredge permit authorising a person to fish for, take or remove mussels from a dredged mussel fishery.

12. Permits are:

- a) valid for a specified period and for a maximum of 12 months after the date of issue;
- b) subject to paragraph 13 (below), not transferable between persons or vessels.

13. Paragraph 12(b) does not apply where such is permitted via eligibility criteria.

14. For the purpose of paragraph 12, 'specified' means specified on the permit.

15. The Authority may restrict the number of permits issued under this byelaw in accordance with the procedure set out in Schedule 4.

16. Only one of each of the permits in paragraph 11 may be issued in respect of each vessel which is named on a permit or to each person issued a permit without a vessel and a person cannot hold a permit on which a vessel is named and a permit on which no vessel is named.

## **Permit fees**

17. A fee will be charged for each permit which must be paid prior to the issuing of that permit.
18. The fee payable for a permit will be determined in accordance with Schedule 1.

## **Eligibility for a permit**

19. An application for a permit must be made by completing forms available from the Authority which will require information and evidence in relation to:
  - a) applicant details;
  - b) details of any named representatives;
  - c) vessel details, documentation and certification;
  - d) business or financial information.
20. The Authority may issue, vary or revoke criteria to restrict:
  - a) eligibility to hold a permit;
  - b) eligibility to be a named representative on a permit;
  - c) the maximum number of named representatives who may fish under the authority of a permit;
  - d) eligibility to fish under the authority of a permit;
  - e) eligibility to skipper a vessel named on a permit for the purposes of fishing under the authority of that permit;
  - f) eligibility to name a vessel on a permit; and
  - g) eligibility to transfer a permit from one person or vessel to another.

in accordance with the procedure set out in Schedule 5.

21. For the purposes of paragraph 20 (above), 'the Authority' means either the full Authority, at a statutory meeting or members of an appropriately delegated sub-committee only.

22. Where a person fails to comply with:

- a) this byelaw; or
- b) section 292 of the Marine and Coastal Access Act 2009 where Inshore Fisheries and Conservation Officers, or persons authorised on their behalf, are carrying out relevant functions in relation to this byelaw;

and any enforcement action leads to a conviction by a court the permit associated with the failure to comply will be withdrawn.

### **Flexible permit conditions**

23. The Authority may attach to permits flexible conditions which fall within one or more of the following categories;

- a) vessel design restrictions;
- b) catch restrictions;
- c) fishing gear restrictions;
- d) fishing effort restrictions;
- e) spatial restrictions;
- f) time restrictions;
- g) vessel monitoring device restrictions;
- h) experience requirements;
- i) catch returns; and
- j) permitted number of persons who can fish under the authority of a permit as a named representative;

24. The Authority may issue, vary or revoke flexible permit conditions following a review conducted in accordance with the procedure set out in Schedule 4.

25. The Authority may, with no less than 12 hours' notice, issue, vary or revoke flexible permit conditions if:

- a) there is a risk to stocks;
- b) there is a risk to site integrity in relation to any marine protected areas that a fishery is situated within;
- c) such would facilitate effective prosecution of the fishery or detection or prevention of non-compliance.

26. Any action by the Authority under paragraph 25 will be reviewed in accordance with Schedule 4 within two months of the date of such action being taken.

27. Any failure to comply with a flexible permit condition constitutes a contravention of this byelaw.

### **Opening and closing fisheries**

28. The Authority may open a fishery, within specified areas, for specified species, using specified fishing gears and for a specified time in accordance with Schedule 4.

29. The Authority may, with no less than 12 hours' notice, open or close a fishery or parts thereof if

- a) there is a risk to stocks;
- b) there is a risk to site integrity in relation to any marine protected areas that a fishery is situated within;
- c) such would facilitate effective prosecution of the fishery or detection or prevention of non-compliance.

30. Any closure under paragraph 29 (above) shall be reviewed in accordance with Schedule 4 within two months after the date of such closure unless the closure is rescinded.

31. The Authority may close a fishery or parts thereof if the total allowable catch has been exhausted or as a result of a review undertaken under paragraph 30 or to enable a stock survey in relation to the associated fishery.

### **Operating times**

32. The Authority may issue, vary or revoke operating times following a review conducted in accordance with the procedure set out in Schedule 4.



33. The Authority may, with no less than 12 hours' notice, issue, vary or revoke operating times if:

- a) there is a risk to stocks
- b) there is a risk to site integrity in relation to any marine protected areas that a fishery is situated within;
- c) such would facilitate effective prosecution of the fishery or detection or prevention of non-compliance.

34. Any action by the Authority under paragraph 33 (above) shall be reviewed in accordance with Schedule 4, within two months after the date of such action being taken.

### **Catch returns**

35. A person must not fish for, take or remove any cockles or mussels using a vessel unless they have on board catch return forms for the fishery they are operating in which will be provided by the Authority.

36. Return forms must be completed with such information as is required by the Authority within 24 hours of fishing for, taking or removing from the fishery any cockles or mussels.

37. Return forms relating to the previous weeks fishing must be submitted to the Authority by the Wednesday of the week following fishing activity unless otherwise specified in the flexible permit conditions for that fishery.

38. A person must not fish for, take or remove from the fishery any cockles or mussels under the authority of a permit after seven days of being notified by the Authority that return forms are more than fourteen days in arrears unless they have been further notified that the Authority has received the return forms which were the subject of the first notification. Any such notification shall be in writing.

39. The information referred to in paragraph 35 to 38 may include:

- a) spatial information;
- b) information on fishing effort;
- c) catch data;
- d) by-catch information;

- e) gear information;
- f) date and time information;
- g) vessel information.

## **Exemptions**

- 40. This byelaw does not apply in relation to fishing for, taking or removing from the fishery, less than five kilograms of cockles or mussels for recreational purposes, per person, within one calendar day.
- 41. This byelaw does not apply to the area of the le Strange Estate or in relation to any area which is the subject of an Aquaculture Production Business Certificate.

## **Revocations**

- 42. The byelaw with the title 'Byelaw 4: mussels (*Mytilus edulis*) – minimum size', made by the Eastern Sea Fisheries Joint Committee is revoked.

## **Amendments**

- 43. The Minimum Sizes Byelaw 2019 which was made by the Authority on the 11<sup>th</sup> December 2019 is amended as follows:
  - a) after paragraph 1(e), insert: '(f) "The Wash" means the area set out in Schedule 2";
  - b) within paragraph 6(b), after 'Queen scallop (*Chlamys spp.*)', insert: "mussels (*Mytilus edulis*) caught within The Wash 45 millimetres" and, "mussels (*Mytilus edulis*) caught outside of The Wash 50 millimetres"; and
  - c) after the Schedule 1, insert with the title "Schedule 2 – The Wash Area" schedule 3 of this byelaw.
- 44. The Closed Area Byelaw 2020 is amended as follows:

Within paragraph 5, after 'Paragraph 2 does not apply to fishing under the authority of a...' substitute 'licence issued under Article 8 of the Wash Fishery Order 1992 in Restricted areas 1 to 13' for "permit issued under the Wash Cockle and Mussel Byelaw 2021 in Restricted areas 1 to 13".

45. The byelaw with the title 'Byelaw 3: Molluscan Shellfish Methods of Fishing' made by the Eastern Sea Fisheries Joint Committee is amended as follows:

Substitute "within that part of the District contained within the boundaries of the Wash Fishery Order 1992, under the provisions of a licence issued under the said byelaw" for "under the authority of a permit issued under the Wash Cockle and Mussel Byelaw 2021"

### **Commencement**

46. The byelaw will come into force not before the 4<sup>th</sup> of January 2023.

I hereby certify that the Wash Cockle and Mussel Byelaw 2021 was made by Eastern Inshore Fisheries and Conservation Authority at their meeting on 10 March 2021.

Chief Executive Officer

Eastern Inshore Fisheries and Conservation Authority

6 North Lynn Business Village, Bergen Way, King's Lynn, Norfolk PE30 2JG

*The Secretary of State for Environment, Food and Rural Affairs in exercise of the power conferred by section 155 (3) and (4) of the Marine and Coastal Access Act 2009 confirms the Wash Cockle and Mussel Byelaw 2021 made by the Eastern Inshore Fisheries and Conservation Authority on 10 March 2021.*

Date:

A Senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs.

## **Schedule 1**

### **Permit fees**

1. The fee referred to in paragraph in paragraph 19 of this byelaw is determined as follows:
  - a. for the first permit issued between the 1<sup>st</sup> April and 31<sup>st</sup> March in any year, the fee is the sum of £757.75 and,
    - i. for a hand-work cockle permit, £339.57;
    - ii. for a hand-work mussel fishery, £101.39;
    - iii. for a mussel dredge fishery, £162.48
  - b. for any subsequent permit issued during the same period;
    - i. for a hand-work cockle permit, £339.57;
    - ii. for a hand-work mussel fishery, £101.39;
    - iii. for a mussel dredge fishery, £162.48

subject to paragraphs 2 and 3 of this schedule.

2. The fee for each permit will vary on the 1<sup>st</sup> April each year in accordance with latest release available of the Consumer Prices Index including occupiers' housing costs 12-month inflation rate issued by the Office of National Statistics .
3. The Authority may vary permit fees otherwise in accordance with paragraph 2 of this schedule, in accordance with the following conditions and procedures:
  - a. the Authority will consult in writing with commercial permit holders;
  - b. the fee will not be changed for any permit already issued;
  - c. the fee will not be increased more than the equivalent value of 50%;
  - d. the Authority will make a decision whether to vary the permit fee taking into account:
    - i. the responses from the consultation under paragraph 3 (a)
    - ii. expenditure arising from the administration of permits and processing permit holder data required by the Authority
    - iii. any regulatory impact assessments associated with this byelaw
    - iv. Authority expenditure to conduct any survey activities that support the implementation of permits
    - v. Authority costs associated with arranging and attending meetings with permit holders
    - vi. any relevant Authority expenditure incurred by implementation of this byelaw.

## Schedule 2

### Restrictions in The Wash

The following restrictions apply in relation to fishing for, taking or removing from the fishery, cockles or mussels from within The Wash in accordance with paragraph 5 of this byelaw.

#### **Vessel length restrictions**

1. Subject to paragraph 2 (below), a person must not fish for, take or remove from the fishery cockles or mussels using a vessel which is more than 14 metres in overall length.
2. Paragraph 1 above does not apply to the effect that an exemption existed immediately preceding this byelaw Regulation 7 (vessel length restrictions) of the Wash Fishery Order (SI 1992/3038) and only to the effect that that exemption applied.
3. Any change in beneficial or legal ownership of a vessel exempt under paragraph 2 shall cause the exemption to end unless ownership is transferred within existing business arrangements and with the agreement of the Authority.

#### **Daily catch restrictions (cockles)**

4. A person must not, in any one calendar day, fish for, take (save for doing so with the intention of riddling or otherwise sorting catch in accordance with paragraph 12) or remove from the fishery more than 2000 kg or the maximum weight or volume of cockles specified in the permit conditions by hand.
5. For the purpose of determining the weight of catch no allowance will be given for the weight of any containers or sand or other material.

#### **Daily catch restrictions (mussels)**

6. A person must not, in any one calendar day, fish for, take (save for doing so with the intention of riddling or otherwise sorting catch in accordance with paragraph 12) or remove from the fishery:
  - a. More than 4000 kilograms of mussels during a harvestable mussel fishery; or
  - b. More than 8000 kilograms of mussels during a relaying mussel fishery.

unless otherwise specified in permit conditions.

7. For the purpose of determining the weight of catch no allowance will be given for the weight of any containers or sand or other material.

8. A person must not fish for, take or remove from a fishery any mussels from a harvestable mussel fishery if, during the same calendar day, that person has fished for, taken or removed from the fishery mussels from a relaying mussel fishery.
9. A person must not fish for, take or remove from the fishery any mussels from a relaying mussel fishery if, during the same calendar day, that person has fished for, taken or removed from the fishery mussels from a harvestable mussel fishery.

### **Mussel dredge restrictions**

10. A person must not fish for, take or remove from a fishery mussels using a mussel dredge with an inside opening of more than one metre unless otherwise specified in permit conditions.
11. A person must not fish for, take or remove from a fishery mussels using more than two mussel dredges at any one time unless otherwise specified in permit conditions.

### **Sorting of catch**

12. Any material rejected through the sorting of catch of any bivalve mollusc must be returned immediately to the sea or seabed, as near as possible to the place from which it was taken and spread thinly and evenly over that area.

### **Transshipping prohibition**

13. A person must not tranship or otherwise relocate any of the cockles or mussels, or containers of any description containing any of the prescribed species, fished from the Regulated Fishery from one vessel to another.

### **Requirement to land (cockles)**

14. A person fishing for cockles must:
  - a. take any cockles fished for straight to port;
  - b. land such cockles immediately; and
  - c. not leave cockles on the sand or deposited in the water in bags or any other container for later collection.
15. A person must not land cockles on more than one occasion during one calendar day.

### **Dual fishing prohibition**

16. A person must not fish for, take or remove from within a fishery any cockles or mussels under the authority of a permit if, on the same calendar day that person

fishes for, takes or removes cockles or mussels under the authority of a separate permit issued under this byelaw or in relation to fishing for cockles and mussels except under the authority of a permit issued under this byelaw.

17. A person must not have on board any bottom-towed-gear which could be used to fish for, take or remove from the fishery any cockles or mussels when fishing for, taking or removing from the fishery any cockles or mussels from a hand-work fishery.

### **Standard bags**

18. A person must not land mussels or cockles unless such are contained in a bag which must:

a. be of the following dimensions:

i. 120 centimetres or 60 centimetres in height;

ii. 97 centimetres in depth;

iii. 97 centimetres in width: and

b. have the words 'Wash Fishery' written on at least two sides with lettering which is at least 10 centimetres tall.

### **Prop-washing**

19. A person fishing for cockles must not use an anchor which affixes the vessel to the bottom of the seabed during the practice of prop-washing;

20. A person must spread any cockles dislodged from prop-washing thinly and evenly over the ground, as nearly as possible to the area from which they were dislodged before leaving the area fished.

### **Tenders**

21. A vessel must not carry or tow a tender which is greater than six metres in overall length.



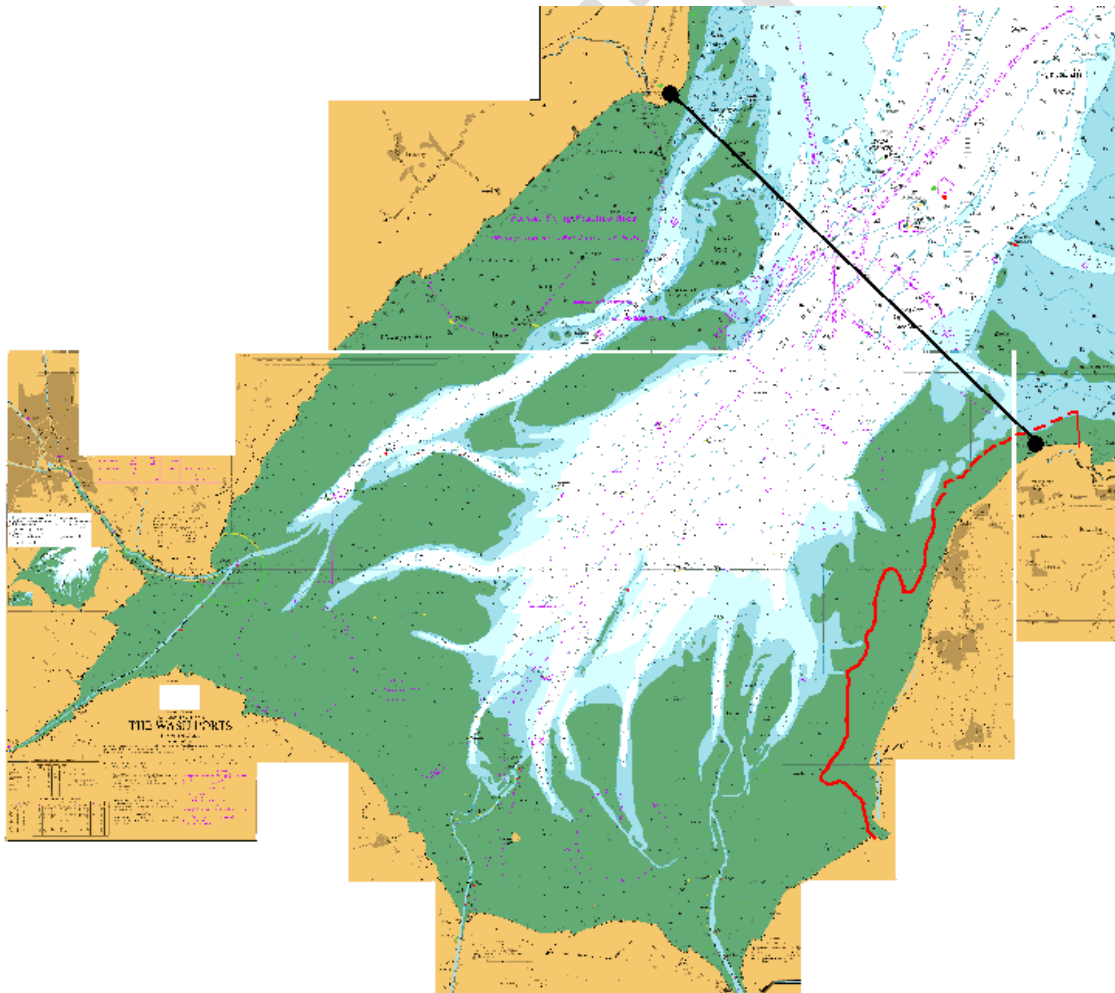
DRAFT

### Schedule 3

#### The Wash area

The Wash is defined as the area of the District landward of a line drawn connecting the two points listed in the table below and as set out in Chart 1 for illustrative purposes.

Point	Latitude	Longitude
1	53° 05.70' N	00° 19.89' E
2	52° 58.55' N	00° 32.27' E



## Schedule 4

### **Procedure for flexible management measures: limiting the number of permits issued, permit conditions, opening and closing fisheries and operating times**

1. The procedure referred to in paragraphs 15, 24, 26, 28, 30, 32 and 34 (in this Schedule, 'the proposed changes') must include the following steps:
  - a) acquisition of relevant available evidence including:
    - i. scientific and survey data, and scientific advice provided by the Authority, the Centre for Environment, Fisheries and Aquaculture Sciences or such other persons as the Authority thinks fit;
    - ii. advice given by Natural England or other external authorities, organisations, persons or bodies as the Authority thinks fit; and
    - iii. information from any other relevant source including that which is relevant to effective enforcement;
  - b) consultation by such methods as the Authority considers appropriate with such stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by the proposed changes;
  - c) undertaking an impact assessment relating to the proposed changes;
2. The Authority shall review flexible permit conditions and restrictions on the issuing of permits no less frequently than every four years after the date that a flexible permit condition or restriction on the issuing of permits has taken effect.
3. The review of flexible permit conditions or restrictions on the issuing of permits will be in accordance with a formal operational procedure agreed by the Authority and will include the steps set out in paragraph 1 of this schedule.
4. Where restrictions on the issuing of permits or flexible permit conditions are issued, maintained, varied or revoked permit holders will be notified in writing.

## Schedule 5

### **Procedure for flexible management measures: setting eligibility criteria**

1. The procedure referred to in paragraph 20 (in this Schedule, 'the proposed changes') must include the following steps:
  - a. consultation as follows:
    - i. inviting comment on proposals for no less than four weeks; and
    - ii. advertisement by such means as the Authority considers appropriate and through written means (either letter or email) to existing permit holders.
  - b. undertaking an impact assessment relating to the proposed changes.
2. The Authority shall review eligibility criteria no less frequently than every four years after the date that an eligibility criterion has taken effect.
3. The review of eligibility criteria will be in accordance with a formal operational procedure agreed by the Authority and will include the steps set out in paragraph 1 of this schedule.
4. Where eligibility criteria are maintained, varied or revoked, permit holders will be notified in writing.