

# Wash Cockle and Mussel Byelaw 2021

## Formal Consultation May 2021: Outcome

This document presents the outcome to the formal consultation on the Wash Cockle and Mussel Byelaw 2021. This consultation ran from 25<sup>th</sup> March to 3<sup>rd</sup> May 2021. The responses table below was approved by the Authority in June 2021 to be shared with respondents to the consultation. Work to develop policies for access to the fisheries is ongoing and notes have been added to the original table in blue to reflect the position as of 6<sup>th</sup> September 2021.

Version	Date	Changes
V1	09/06/2021	Response table approved by the Authority
V2	06/09/2021	Notes added (in blue) to responses reflecting further developments

### We asked

We formally consulted on the Wash Cockle and Mussel Byelaw 2021 which will replace the management of the Wash Fishery Order 1992 when it expires in January 2023. The Wash Cockle and Mussel Byelaw will manage public cockle and mussel fisheries in The Wash.

The purpose of the consultation was to seek the views of our stakeholders on the byelaw to inform its development. Eastern IFCA is required to formally consult with stakeholders as part of the process of making a new byelaw.

### You said and our response

117 individuals responded to the consultation, mostly in objection to the byelaw. Many of those who responded did so in multiple ways. These included, two different group letters of objection, independent written responses, questionnaire responses, and responses via a solicitor.

During the consultation, fisheries stakeholders were engaged through the arrangement of five separate meetings via fishing associations in The Wash. These were held in person, or online due to the COVID-19 pandemic.

The Authority is required to respond to and seek to resolve objections, where appropriate. Objections that cannot be resolved do not prevent the formal consent of the Byelaw where adequate explanation is provided. We are committed to involving the views of our stakeholders at every reasonable opportunity in the development of the new Byelaw.

Read summaries of what was said by stakeholders in this consultation and our response in the anonymised table below. The table highlights the key concerns and shows how these have been sought to be resolved or have been taken into consideration in further decision making.

You Said	Our Response
<p>The new byelaw will not provide fishermen with any long-term security, it will be too easily changed.</p> <p>An order can guarantee a 30-year future in fishing if the fisherman follows best practice.</p> <p>Until the byelaw assures fishermen of stability, flexibility in the byelaw represent a threat to investment and financial planning.</p>	<p>A byelaw can provide the same level of security as an order. Under the WFO much of the security was afforded by the ‘policies’ rather than written into the Order itself. It is particularly noteworthy that the WFO already enables the Authority, subject to any directions given by the Minister, to determine the number of licences issued and also, following consultation, to reduce the number of licences issued in any given year where it is desirable to limit exploitation of the fishery. What this means is that, in reality, the WFO has never provided the degree of security that is perceived. Perhaps more importantly, the Authority has not sought to do anything that threatens continuity of businesses and reductions in entitlements to licences have been achieved when ‘entitlements’ have no longer been required (e.g. as a consequence of fishermen retiring).</p> <p>In the case of ‘entitlement’ to further licences under the WFO, which <i>is</i> included in the Order itself, this provision can be replicated in the policies under a byelaw.</p> <p>Under the policies and eligibility criteria, ways are being considered to enable permits to be held for consecutive years, so that a fisherman can have secure future access to the fishery – which is understandably critical to assist in the sustainable management of individual business models.</p> <p>The content of the policies and eligibility criteria will be developed together with industry. This will make sure that they best fit the needs of the fishery and industry stakeholders.</p> <p>The byelaw will be reviewed every 6 years, as is required by Defra. Review does not mean that substantial changes will be made and importantly, the byelaw does not expire. It is an opportunity to adjust the byelaw, if necessary, to make sure that it continues to meet the needs of the fishery. This review also enables management to evolve with a consistently changing fisheries environment. The review will involve input from industry, including consultation on any changes, and IF changes are required these will be authorised by the full Authority</p>

	<p>to go into a new byelaw and whilst this happens the existing byelaw would remain in place.</p> <p>Flexibility provided within the byelaw provides a future-proofed tool for the Authority to effectively manage the fishery which can better incorporate changes in the environment and fishery practices to the benefit of the industry. It is not intended to reduce stability in the industry. Safeguards, including a robust consultation process are written into the byelaw to ensure that flexibility and discretion is exercised whilst taking into account the impacts on businesses.</p> <p>It is intended that stability is provided through the adoption of policy and eligibility criteria, a model which has been successfully implemented in Poole Harbour by Southern IFCA.</p> <p>It is noteworthy that the same model of byelaw is in place to manage the whelk fishery i.e. that the byelaw enables the Authority to limit the number of permits issued and introduce, vary and revoke eligibility criteria and that new vessels have been built during this time in order to operate within this fishery.</p> <p>The flexibility provided within the byelaw is not considered to provide a threat to investment on that basis and the development of policies, in consultation with industry will further reduce the perceived threat of instability.</p>
<p>Fishermen should not have to take a permit out every year to maintain their access to the fishery.</p>	<p>How and to whom a permit is issued will be subject to further input through consultation with industry.</p> <p>We agree that fishermen should have secure and stable access to the fishery to avoid any insecurity about their livelihoods.</p> <p>As discussed above, to meet the aim and objectives for managing access, which involve ensuring a sustainable and equitable fishery into the future, options are being considered to enable active fishermen to maintain their access to the fishery through a consecutive permit.</p>

	<p>This would provide the security of access to the fishery in the same way that is currently enjoyed under the WFO 1992.</p>
<p>The cancellation of a permit and 12-month suspension is not proportionate and risks the livelihood of individual fishermen.</p>	<p>Eastern IFCA’s approach to enforcement, as outlined in our Enforcement Policy is focused on education and engagement and is always proportionate to the offence.</p> <p>Currently, under the WFO, licence and entitlement holders can lose their access to the fishery <i>permanently</i> after two offences with 24 months. Permanent loss of access, even following conviction, would have a significant impact on livelihoods and was felt to be disproportionate.</p> <p>Under the byelaw, it is proposed that after one offence where it results in conviction by a court, would result in the loss of the permit for a limited period only (proposed to be 12 months). This is intended to maintain the deterrent effect of the provision under the WFO whilst being more proportionate in its impact than complete future loss of access, which is currently the case.</p> <p>Enforcement action that results in prosecution is not frequent, and typically reflects circumstances of multiple offences (following low level enforcement action) or in the case of serious breaches.</p> <p>Further consideration is being given to whether wording which would enable the Authority to exercise discretion is appropriate, in the context of maintaining an appropriate deterrent effect and to how best this may be achieved.</p> <p><b>Note: Current thinking is that the Authority exercising discretion would complicate matters and risk diluting the deterrent effect.</b></p>
<p>The byelaw will not allow me to hand down my licence to my children or close family, as is currently the case.</p> <p>The Wash fishery is an important part of the local history and diversity of the area and should be celebrated for its societal and</p>	<p>A decision about this issue has not been made. It is possible for the byelaw to include policy to enable the transfer of licences to children and close relatives. How and to whom a permit is issued will be subject to further input through consultation with industry.</p> <p>We acknowledge the importance of supporting the generational fishing activity that is so fundamental to</p>

<p>economic benefits and be protected.</p> <p>Transfer of licences between family and close relatives should be extended to include other active fishermen.</p>	<p>The Wash and our whole district. The aim and objectives for managing access to the fishery reflect this prioritisation. We are keen to develop policy, with input from industry, which will continue to support this.</p> <p>It is also important that new ways are considered which do not negatively impact active fishermen who may not have generational fishing heritage, or children or close relatives to whom their activity can be passed on to.</p> <p>This matter is under consideration as part of the development of policies on access to the fishery. The byelaw enables transfers via eligibility criteria.</p>
<p>Fishermen will no longer be able to form a partnership, so when they retire, they cannot sell their share of the partnership.</p>	<p>Under the WFO the sale of licences, and the practice of renting them out to maintain a retirement, is prohibited by current policy.</p> <p>Permits, or licences, are intended to be solely for access to and prosecution of a fishery.</p> <p>However, it is understood that partnerships between active fishermen can be a sustainable way of enabling access to a fishery where there are high overheads and upfront costs to enter.</p> <p>This issue will be considered in the development of the policies and eligibility criteria.</p> <p><a href="#">Note: The draft policy includes the ability for permits to be issued to maintain business continuity. It also includes that permits will be issued at the ultimate discretion of the Authority.</a></p>
<p>A Category 2 permit would allow access to everyone to the detriment of fisheries sustainability and industry viability. There is no need for them.</p> <p>The lack of certainty around how a permit will be used is worrying for fishermen.</p> <p>Category 2 permits could open the fishery to challenge enabling more vessels to enter. More information</p>	<p>In response to the involvement of industry and concerns raised in this consultation, amendments have been made to the byelaw, notably the removal of the option for two categories of permits, and the process of work to allow for more discussion on the policies before the byelaw itself is progressed.</p> <p>It was always the case that the provisions of a category one and category two permit would be developed in consultation with industry, with the intent that a system could be developed to the benefit of industry that would provide for the different business models and circumstances in the Wash</p>

<p>about how two permits could be used is required.</p>	<p>than is provided currently with the one licence system.</p> <p>However, as made clear in responses from industry to this consultation, the uncertainty involved in the development of a new system was of key concern. Therefore it has been recommended to the Authority that the byelaw is amended to only provide one category of permit, as a continuation of the current licence system under the WFO. This would also prevent any temporary access to the fishery which had been under consideration. It is intended that this resolves any uncertainty about the potential usage of category two permits.</p> <p><i>Note: Further consultation with industry following this response has identified that it is desirable to preserve the position of business models that may not fit with the developing new model for access to the fisheries, for which different types of permit may be required. Changes will be made to the byelaw to the effect that permit types will not be flexible, they cannot be used for temporary access, and they will be clearly defined in the byelaw. This should resolve any uncertainty about the use of different permit categories.</i></p>
<p>The consultation about the management of access, through policy and eligibility criteria, should be part of this consultation.</p> <p>There is not enough information about the management of access to provide industry with the assurance and security of the continuation of the fishery.</p> <p>Not enough information has been provided to understand the intent of the byelaw due to the approach to separate the management of access from the byelaw consultation.</p> <p>The eligibility criteria must be formulated in parallel with the byelaw to be approved jointly with the byelaw by the minister.</p>	<p>The intention of the byelaw is set out in the 'policy objective' within the associated Impact Assessment. In summary, the intention is to provide a tool to manage the cockle and mussel fisheries within The Wash over time through a flexible permit scheme.</p> <p>It is recognised that the separation of the byelaw from consideration of the allocation of permits has created a level of uncertainty and as a consequence it is proposed that the two elements are brought closer together to provide more clarity.</p> <p>The Authority agreed the approach to the replacement of the WFO 1992, to separate the byelaw itself from the policies, because the development of the policies will require repeated industry involvement as they are developed collaboratively.</p> <p>This would result in significant delays to the process of the byelaw, which is the mechanism, which can take up to two years to be reviewed and approved</p>

	<p>by the MMO and Defra. In an attempt to avoid a situation where the fishery is left without replacement management, resulting in there being no fishery in 2023, these processes have been separated.</p> <p>It is recognised however that matter of access to the fishery (the focus of the policies and eligibility criteria) are the key concern of the stakeholders involved and that many of the objections to the byelaw are in fact in relation to these, rather than the byelaw itself.</p> <p>There is a risk to delaying the consideration of the byelaw in that there is a clear deadline being the expiry of the WFO (Jan 2023). However, it may be appropriate to informally submit the byelaw for MMO QA prior to formal submission to the Minister for consideration such that the key policy work can be completed for submission at the same time. This would be with the intention of allaying concerns about the level of flexibility of the byelaw.</p>
<p>The byelaw will deter new entrants to the fishery.</p>	<p>The fishery currently under the WFO is a ‘closed shop’. There are very few access opportunities to enter the fishery for new entrants. Even some fishermen who have been active in the cockle and mussel fisheries in the Wash do not have independent access to the fishery. Therefore it is not considered that the byelaw itself will be the deterrent to new entrants.</p> <p>The aim for the management of access to the fishery under the byelaw seeks to be sustainable and equitable into the future. This will involve ensuring that opportunities for new entrants, that are currently only available in specific circumstances, are more accessible for all.</p> <p>It is also the case that access to the fishery will be limited, as must be the case to meet the socio-economic requirements of the fishery and environmental requirements of the Wash. Therefore a balance between ensuring access to the fishery for active fishermen and supporting opportunities for new entrants must be found.</p>

<p>Regulating orders have a longer history of success than byelaw provisions (Whiteley 2016<sup>1</sup>)</p>	<p>The Whiteley (2016) report produced for Seafish on the contribution and value of several, regulating and hybrid orders in UK fisheries was considered in the development of the comparative document presented to the Authority at the 39th Meeting.</p> <p>The report has also proved very useful in the development of the aim and objectives for the fishery. The report emphasises the capabilities of Orders in enabling a 'security of tenure' (Whiteley 2016, 5) as a provision of security for fishermen, creating a sense of ownership and buy-in to management (2016, 30). As Whiteley discovers, the success of this provision is context dependent. We reflected the importance of security through referencing the continuity of business models directly in the objectives and intend to continue to do so in the development of policy, permit conditions and eligibility criteria.</p>
<p>Industry have been 'effectively disenfranchised' from decision making, which is contra to the government directive on partnership working in the fisheries white paper.</p> <p>Eastern IFCA is not following the government's agenda of co-management as outlined in the fisheries white paper.</p> <p>The Fishing into the Future project is focused on the involvement of stakeholders in fisheries management.</p>	<p>It is incumbent upon Eastern IFCA that representations from industry are taken into account in decision making.</p> <p>Outcome reports produced by officers detailing how decisions are made incorporating input from our stakeholders are reported to the Authority, shared on our website, and often sent to respondents directly.</p> <p>Our approach to involving stakeholders in our work, through targeted letters, consultations, frequent and flexible meetings (currently online due to the ongoing Covid-19 pandemic), onshore quayside engagement and through social media is reflective of this.</p> <p>In response to the involvement of industry and concerns raised in this consultation, amendments have been made to the byelaw, notably the removal of the option for two categories of permits, and the process of work to allow more discussion on the policies before the byelaw itself is progressed.</p>

<sup>1</sup> Whiteley, R. 2016, UK Shellfish Production and Several, Regulating and Hybrid Orders: The Contribution and Value of Orders in Relation to the Sector's Past Development and Future Growth, Seafish Report, pp.1-71



	<p>We are continually reflecting upon our engagement strategies towards the management of different fisheries and welcome suggestions from our stakeholders as to how greater involvement can be achieved.</p> <p>Consultation with industry is intended to result in collaborative development of management measures. By way of example, the process for developing the management for access to the fishery has included stakeholder involvement by way of consultation from the inception of an aim and objectives to guide the development of the measures.</p> <p>In certain circumstances, shorter consultations to enable more reactive changes in management are required to manage the fishery effectively, as has been the case under the WFO since its implementation. Examples include the opening of beds rapidly due to potential 'die-off' of cockles.</p>
<p>Fishermen can be more involved with the development of an order than a byelaw.</p>	<p>Eastern IFCA recognises and prioritises involvement from our stakeholders in decision making. It is also the case that there is often a balance of requirements across the diverse perspectives among our stakeholders, alongside the task of managing a successful, sustainable, and equitable fishery in a heavily designated area for marine conservation.</p> <p>We encourage all our stakeholders who work in the fishery in all roles and scales to include themselves and their knowledge in the development of management. As an Authority of combined expertise, we currently have five commercial fishermen as members of the Authority.</p> <p>There are no less powers and rights for stakeholders under a byelaw than an order. The guidance on IFCA byelaws provided by Defra specifies a requirement to consult with stakeholders and take into account the impacts of any the associated measures.</p> <p>Feedback from our stakeholders has already been essential in the development of the byelaw, notably the removal of the suggested new system of two permit categories, and the removal of the</p>

	<p>acceptance of a Financial Administrative Penalty as cause for the permit to be withdrawn. Additionally, consultation towards the end of 2020, on the aim and objectives for managing access to the fisheries, afforded essential feedback from our stakeholders, which significantly shaped the final version of these.</p> <p>Note: As the situation with COVID-19 has progressed, Eastern IFCA has attempted to arrange small in-person meetings with industry members. The objective of these meetings was to talk to stakeholders in more detail about specific policy ideas and how they might affect individual activity, to ensure that the views of all fishermen are considered. Work to discuss the development of the policies with stakeholders is ongoing.</p>
<p>A regulating order would have more accountability due to the involvement of the Secretary of State.</p>	<p>IFCAs were established with statutory powers that enable them to manage fisheries and exercising these powers to manage the Wash cockle and mussel fisheries is in accordance with the Authority's statutory duties. There is no apparent rationale that would support any degree of enhanced accountability for the Authority's management of the cockle and mussel fisheries over and above other fisheries managed by the Authority.</p> <p>Under the proposed Byelaw, the provisions which enable restricting access to the fishery, by setting a limit on the number of permits and via eligibility criteria, also require due process to be undertaken, which includes consultation and an impact assessment, and subsequent authorisation from the full Authority.</p> <p>In addition, regardless of the powers provided under a byelaw, the Authority has duties to make reasonable and justifiable decisions in that regard and would be held accountable, for example, by way of Public Inquiry under the powers provided to the Secretary of State.</p>
<p>The current order should be the basis for a new order.</p>	<p>The WFO 1992 has been the basis for the development of the Wash Cockle and Mussel Byelaw 2021. Many aspects of the order have been carried across directly, such as the licence fees and regulations but other elements are considered to be outdated and require revision.</p>

<p>Eastern IFCA sought a loophole using legal advice to avoid talking to industry about the decision of a byelaw or an order.</p>	<p>Legal advice has been sought on several occasions with regards to issues raised by industry. Such legal advice has been sought to ensure that these issues were properly considered and that the use of a byelaw would not jeopardise the fishery. All of the advice received in relation to these issues has confirmed the use of a byelaw is appropriate.</p>
<p>Eastern IFCA have misled the committee about the decision of a byelaw or an order.</p> <p>Fishermen were told that the WFO would be renewed but with changes made.</p> <p>Eastern IFCA are unwilling to evaluate the option of a regulating order against the wishes of industry.</p>	<p>The Wash Fishery Order 1992 expires after its 30-year term in January 2023 and therefore must be replaced. Any replacement, be it another Order or a Byelaw, would involve a review because much has changed in fisheries activity and management since 1992. This does not necessarily imply that there will be wholesale change, but some degree of change is likely, and it is appropriate that the management of the fishery is reviewed.</p> <p>Within Action Item 10, (39th Eastern IFCA meeting, 11 March 2020), it was reported that Defra had advised that Regulating Orders were not being extended; this was on the basis of personal correspondence with the Defra department responsible for Several and Regulating Orders. The same department later clarified that, although this was based on a recent rejection of an extension to an order, this was not a general Defra policy but that, whilst Orders may be extended, it was unlikely that this would be the case without amendment to the wording because fisheries management has changed since the Orders had been in place. Therefore, it is likely that the wording would have to be reviewed and changed as in the case of proposing a new Order in any case.</p> <p>The Defra department further advised that the process for extending an Order was the same as for replacing it with a new Order and crucially, because an order grants access to the fishery at the exclusion of others, consultation is required. Therefore, whilst the position of Defra has been revised, this revision would not have changed the recommendation of officers as, the extension of the WFO would have been regarded as having the same benefits and drawbacks of replacing it with a new Order.</p> <p>It is important to note that this issue was not a key factor in the Authority's decision, which was</p>

	<p>primarily based upon a detailed analysis of what could be achieved under a byelaw versus and order.</p> <p>Options for the direction of replacement have been considered by the Authority, including the potential for extending the current order, replacing the order with a new order, or replacing the order with a byelaw. Assessment and subsequent legal advice have concluded that a byelaw will be the best mechanism for managing the fishery, continuing to ensure a successful and sustainable fishery into the future.</p> <p>Aspects of the current order will be carried over to the new byelaw, such as the fees and regulations. While adjustments are required, it is not necessary to change all aspects of the current management regime under the new byelaw. We also recognise the challenges in making changes to fisheries management and we will seek to avoid introducing new problems.</p> <p>In recognition of the representation we have received to this effect, we are refocusing our 'dual approach' to this work and will be progressing consultation with industry on the stage one policies and eligibility criteria that will address how access to the fishery is managed, prior to officers returning the byelaw to the Authority for consideration of any required changes.</p> <p>It is intended that this mitigation will provide industry with the necessary confidence in the future for the byelaw and the cockle and mussel fisheries, allaying potentially misplaced concerns about the management mechanism itself.</p>
<p>More permits to the fishery should not be given out on good years, the benefits of the fishery should be for the fishermen who are there in all years. Fishermen themselves are invested in protecting future stocks.</p> <p>There should be a limit to the number of permits to enter the fishery which should not be varied each year.</p>	<p>We understand the importance of maintaining consistent access to the fishery for fishermen that weather the good years and the bad. We also understand the security that can come from having overall limited access available for the fishery that is transparent and consistent.</p> <p>At the 43<sup>rd</sup> Authority meeting in March 2021 members agreed that, subject to further research by officers and consultation with industry, access to the cockle and mussel fisheries in the Wash will be restricted to a finite number of primary permit</p>

	<p>holders. This was in response to the ongoing concerns represented by industry about increasing access to the cockle and mussel fisheries in the Wash.</p> <p>The agreement also reflects the first policy objective for managing access which is ‘to limit access to the fishery to a number of persons which meets the aim’. Therefore permits to the fishery will be issued in accordance with the objectives, providing security to the individuals that are consistently active within the fishery.</p> <p>We also recognise the importance of designing policy that can account for when unexpected circumstances arise, or where an individual may not purchase a permit for a particular year, to make sure fishermen are not beholden to prosecuting the fishery to maintain access where it may put themselves or their business model at risk.</p>
<p>There has not been enough detail provided about what the amendments and revocations to existing byelaws will mean.</p>	<p>The revocations and amendments are specifically in reference to where the wording in existing legislation would require amending to refer to the new byelaw, rather than to the WFO 1992.</p> <p>A list of all the byelaws that are currently in place in our district is available on our website or from the office on request, including information about byelaws that are still in progress such as the Shrimp Permit Byelaw 2018, and the Marine Protected Areas Byelaw 2019.</p>
<p>The permit will be too expensive.</p>	<p>Fee increases under the WFO 1992 were agreed by the Authority in 2017 and are based upon cost recovery but capped at a maximum of 50%. The fee structure for the new byelaw will be carried over from the WFO.</p>
<p>The prevention of the use of tenders is a safety issue and should be down to the fisherman to decide their use.</p>	<p>There is national legislation on the use of tenders (following from the Sea Fish Licencing Regulations 2019), therefore this is regulation carried over from the WFO 1992.</p> <p>We recognise that the use of tenders for some activity is important for safety while the activity follows the national legislation on this issue.</p>

<p>There should be a 10% allowance on weight to allow for waste shell and mud and the weight of the bag. This should be responsive to the different beds when can have different levels of shell.</p> <p>Standard bags for the fishery should be used to measure the cockles by volume, as is practiced in the Thames Cockle Fishery.</p>	<p>The technical measures discussed here are carried over from the WFO as they were recently reviewed as part of the fisheries management plan in 2019.</p> <p>The issues surrounding this are understood and further consideration will be given as to whether changes to the byelaw and fisheries management plan are required.</p>
<p>The requirement to land cockles (regulations carried over from WFO) would prevent any future relaying of cockles.</p>	<p>The requirement to land cockles was introduced to deter the practice of hiding bags of cockles in rivers with the intention to land them after officers have left the quay. The provision makes it an offence in itself so as to reduce the potential for breaching the daily catch restriction in the cockle fishery.</p> <p>The relaying of cockles is thought to be very limited. However, this provision is not intended to preclude this activity. Proposed amendments to the wording of the provision will enable the 'relaying' on written authority from the Authority.</p>
<p>The flexibility of a byelaw would give IFCA too much power and rash decisions could be made that wouldn't be under an order.</p> <p>That substantial changes can be made at any time with only a four-week consultation is a threat to business security.</p>	<p>The flexibility provided by a byelaw is in accordance with the statutory duties of all IFCAs, which were established to manage inshore fisheries.</p> <p>The Secretary of State (SoS) for Defra, and the MMO, are still crucially involved in the development of the byelaw, as part of the quality assurance process, and any changes to the byelaw itself that are considered in the future will require consultation with industry and sign of from the SoS. However the byelaw, unlike an order, will not go before parliament.</p> <p>It is important to note that the capacity for policy changes to be made to the byelaw without involvement of the SoS, would still require due process to be followed, involving consultation and engagement with industry and consideration of any subsequent impacts.</p> <p>A four-week consultation period is analogous with the 28 days recommended within Defra guidance for making byelaws. This is considered sufficient to</p>

	<p>gather views of industry to inform decisions on eligibility criteria. Additional criteria have been added to the process for introducing, varying or revoking eligibility criteria to formalise the Authority taking into account the impacts of any such decisions.</p>
<p>Fishermen cannot work securely under a temporary permit.</p>	<p>It has been recommended to the Authority that the byelaw is amended to only provide one category of permit, as a continuation of the current licence system under the WFO. This would also prevent any temporary access to the fishery which had been under consideration.</p> <p><b>Note:</b> Following further feedback it appears that more than one permit category may be required to preserve current business models in The Wash. To prevent any ambiguity in their use, different permit categories, if required, will be clearly defined in the byelaw with no option for temporary access to the fishery.</p>
<p>The consultation documents do not provide an accurate statement of the status of the byelaw and do not clearly indicate that this is the opportunity for respondents to comment on, support, or object to the byelaw.</p>	<p>In accordance with Defra guidance to IFCAs on byelaw making, a public notice was placed in the Fishing News which set out our intention to submit a byelaw to the Secretary of State and that stakeholders could object to such.</p> <p>In addition, with the intention to ensure we reached all stakeholders who are known to us to be impacted by the byelaw, we sent out additional material via letter and published the same on the Eastern IFCA website. The wording of the material (the 'consultation documents') refer to stakeholders providing 'feedback' rather than using the formal term of 'objection'. The intention being to use less formal language to encourage genuine dialogue to inform the continued development of the byelaw, rather than to seek simple objections only.</p> <p>These documents correctly portray the status of the byelaw in that we are seeking views of industry in order to inform further development of the byelaw on that basis before we submit it to the Secretary of State.</p>
<p>Eastern IFCA should agree to a process of mediation which respects Defra policy about co-</p>	<p>The efforts of the legal and fisheries management representatives appointed by industry members to</p>

<p>management. If this offer of mediation is rejected industry would have no alternative but to apply to the SoS to direct an inquiry to the IFCA's proposals.</p>	<p>engage in dialogue and represent the industry are well received and have been taken as offered.</p> <p>There is an indication, however, that the industry is not completely represented by the appointed representatives, with the views of industry varying more than is evident from the proforma objections received.</p> <p>It is noted that Defra are considering the issue of co-management, but no firm proposals have yet been produced and it appears that the term 'co-management' has yet to be clearly defined and it may mean different things to different people. The IFCA construct, with the inclusion of industry members on the Authority and substantial efforts put into engagement and consultation, could be said to be a version of co-management and given the Authority's constructive approach to engagement with industry, including taking account of their views and making amendments to the byelaw, it is not clear what mediation would achieve.</p> <p><b>Note: In order to ensure that all voices are heard, officers are currently actively seeking engagement with individual industry members.</b></p>
<p>The schedules for the byelaw do not create clear mechanisms for there being differences in policies and eligibility criteria for the different categories of permit.</p>	<p>As above, category two permits have subsequently been removed from the byelaw following representation from industry.</p> <p><b>Note: As mentioned in previous notes, category two permits as proposed in the formal consultation will not be pursued. Clearly defined different permit categories will be used, if required, to cater for all business models.</b></p>
<p>There has been no policy framework to guide the development of the policies. That they are to be developed over the next two years is worrying and a clear indication that EIFCA do not have any concrete proposals. This will create a cliff-edge for management that is avoidable.</p>	<p>An aim and objectives were drafted which are intended to guide the development of policies and eligibility criteria. These were consulted on with industry with the intention that they would capture the key issues at the highest level with regards to managing access in the fishery.</p> <p>These were finalised following feedback from industry, discussed at the Fisheries and Conservation Management Group and are presented to the Authority at this meeting for consideration.</p>



	<p>In addition, recognising the concerns expressed by industry an overall policy objective for the replacement of the WFO was agreed by the Authority at their last meeting in March 2021.</p> <p><a href="#">Note: The aim and objectives for managing access as consulted on with industry were approved by the Authority at their meeting in June 2021.</a></p>
<p>It is irrational and unworkable to not include the other fisheries for bivalve molluscs in the Wash from this byelaw.</p>	<p>The cockle fishery and, to a lesser extent, the mussel fishery, are the two key bivalve mollusc fisheries in The Wash. No other bivalve fisheries are viable at present. It is intended that a separate and more generic bivalve mollusc byelaw will be introduced to enable management of these throughout the district. The intention is to recognise the importance of these two fisheries by having a standalone mechanism for their management. For these reasons, it is not considered irrational.</p> <p>Given that no other fisheries are presently active within The Wash, is not considered 'unworkable'.</p> <p>If other fisheries do emerge, they will require the development of fisheries management plans and habitat regulation assessments which are separate to those for cockle and mussels which are already well established. It is therefore possible, or even likely, that management for such would be very different to that established under the WFO for cockles and mussels and these should be considered as and when they occur. That said, a generic mechanism to enable this management is intended to be implemented via a separate byelaw as set out above.</p>
<p>It is impossible to prevent the permit from having 'value'.</p>	<p>This matter is not relevant to the byelaw. Policies and eligibility criteria which deal with access to the fishery will have an impact on this. It is the case that a permit allocation scheme can be developed whereby a permit has no value (as a tradeable commodity), for example, if there was no limit on the number of permits or if a permit allocated to the person actively fishing, rather than the owner of a vessel associated with the fishing. Management of the transfer of licences will also impact on this.</p>

<p>It has been overlooked that fishermen in the Wash exercise their right to a public fishery.</p>	<p>The matter of access to the fishery is being considered within the development of policies and eligibility criteria. The intention of the byelaw is to provide a mechanism to manage access to the fishery as part of a wider fisheries management plan. The right of those who currently fish in The Wash for cockles and mussels is no greater than the right enjoyed by any person at the point the WFO expires. It is recognised that the fishery may not be viable if access is not limited to a finite number and so a process is required to determine fair access to the fishery.</p>
<p>EIFCA don't want fishermen to earn pensions from licences.</p> <p>Retired fishermen should be able to benefit from the profits of the fishery</p>	<p>The wording of the byelaw will not act to prevent this, but it is a matter under consideration via the development of policies for access to the fishery.</p> <p>The policies and eligibility criteria will determine the allocation of permits rather than the byelaw. Nothing in the byelaw will affect the matter raised but this will be taken into consideration when considering access policies.</p>
<p>EIFCA is acting beyond its powers in the imposition of economic models operating within the fishery.</p>	<p>Nothing in the byelaw will act as an imposition of economic models operating in the fishery.</p>
<p>It is not clear why the byelaw should require financial information unless it is intended to attack economic models.</p>	<p>The byelaw includes a provision which would enable the Authority to ask for financial information to inform decisions on permit allocation. The intention is to enable evidence gathering to inform the fairest allocation of licences, which will meet the needs of all persons engaged in the fishery and it is anticipated that financial information will be useful in achieving this.</p>

## Outcome

As documented in the table above, we reviewed all responses and objections to the consultation, and will undertake the following key changes to the byelaw:

- We have increased the review period of the byelaw from 4 to 6 years. Any review before then will only be if it is urgent.
- Permit categories will be clearly defined in the byelaw, and they will not be flexible or temporary. We are exploring options for separate permit categories to support the continuation of the current varied business models in The Wash.

- We have brought the work on the policies and the byelaw together. You now have the opportunity to comment on the policies before the byelaw is formally submitted.

We will also continue to seek to resolve concerns raised by Wash stakeholders where they can be reasonably addressed in the eligibility policies for managing access.

## Next Steps

- We will continue to consult with industry on the development of the policies.
- External consultants will be undertaking their own consultation work with stakeholders as part of the economic assessment of the Wash fisheries that has been commissioned by the Authority.
- We are seeking to return the byelaw for formal submission in December 2021.
- The development of the Several Order to manage the private shellfish lays in the Wash is ongoing.

We recognise the burden that this amount of consultation places on industry. Your continued engagement is critical to the development of the Byelaw and associated policies that will best suit the needs of industry. Thank you for your engagement with this work so far.

## References

Whiteley, R. 2016, UK Shellfish Production and Several, Regulating and Hybrid Orders: The Contribution and Value of Orders in Relation to the Sector's Past Development and Future Growth, Seafish Report, pp.1-71