

## Wash Cockle and Mussel Byelaw 2021

### Access Policy: Informal Consultation October 2021: Outcome

This document presents the outcome to the informal consultation on the policies of the Wash Cockle and Mussel Byelaw 2021.

The Wash Cockle and Mussel Byelaw 2021 is currently in development and will replace the Wash Fishery Order 1992 when it expires in January 2023. The byelaw will manage public commercial cockle and mussel fisheries in The Wash.

The policies of the Wash Cockle and Mussel Byelaw 2021 will determine how access to the cockle and mussel fisheries in The Wash will be managed.

The policies have been written using the principles of the Access Policy Aim and Objectives as guidance. [The aim and objectives can be read here.](#)

The consultation was open from 9<sup>th</sup> September to 11<sup>th</sup> October 2021.

### We asked

The purpose of this consultation was to seek views from fishermen in The Wash about the policies. A summary of the key policies was provided for discussion. [This can be accessed here.](#)

We invited fishermen to small meetings to discuss ideas about policy in more detail. This was an important opportunity for our stakeholders to consider how the policies will impact them and their business model.

With the input from our stakeholders from this consultation we can develop the policies to make sure that they work well for all active cockle and mussel fishermen in The Wash.

### You said and our response

We spoke to 25 Wash fishermen during this consultation. We successfully held several small meetings in person and online due to the COVID-19 pandemic, and we also had many informative discussions on the phone. Additionally, some stakeholders provided a written response to the policy summary.

Read summaries of what was said by stakeholders in this consultation and our response in the anonymised table below. The table highlights the key points and concerns raised and our responses should how these have been taken into consideration in further decision making.

You Said	Our Response
<b>'Legacy permit' holders may have difficulty paying the eligibility fee</b>	The increase in fees was agreed under the WFO in 2017. The implementation of the increase came

<p><b>every year as a significant cost in comparison to what they are able to earn from participating in the fishery.</b></p>	<p>into effect in April 2021 due to delays, including as a result of agreed delay to reduce impact in face of Covid-19 pandemic.</p> <p>The fee acknowledges that access to the fisheries is not open to everyone. In the case of ‘legacy permits’, previous consideration was given to a reduced fee for reduced access model. This model was not considered acceptable by stakeholders at the time. Those so affected provided feedback that they did not want lesser access to the fishery and were prepared to pay the full fee to maintain the ability to do so. In addition, the byelaw has been amended to remove reference to a separate permit in any case and as such, only one permit fee can apply.</p>
<p><b>What will happen in years where there isn’t an available cockle or mussel fishery to go in to? There hasn’t been a viable mussel fishery in the Wash for several years.</b></p>	<p>The policies do not currently distinguish between the fisheries, with the effect that you can retain eligibility to all mussel and cockle fisheries. This may be subject to change if required and would be informed by consultation and consideration of impacts but would take into account the lack of mussel fisheries in any case.</p> <p>The current policies also seek to address this issue by having a mechanism for taking into account where fisheries are not opened or other exceptional circumstances (for example vessel breakdown).</p>
<p><b>It is very important that the different business models that operate in The Wash are considered, even businesses that seem on the surface very similar can be managed very differently.</b></p>	<p>The policies are designed explicitly to take into account the varying business models in The Wash, as outlined in the agreed <a href="#">aim and objectives</a>.</p>
<p><b>People who are retaining licences but are no longer active fishermen may be put off by the cost of the eligibility fee. This would have a negative impact on the fishery as it would mean an increase in effort where the</b></p>	<p>It is agreed in our <a href="#">aim and objectives</a> that the policies will prioritise allocation to active fishermen. It is not considered appropriate for an individual to hold on to a permit that they are not using. This denies access to active fishermen. The number of permits will be agreed with consideration that they are all being used to their full capacity. Therefore it</p>

<p><b>permit would be reallocated to an active fisherman.</b></p>	<p>is not the case that if all permits are used this would increase effort with a negative impact on the fishery.</p>
<p><b>An ‘activity’ requirement will result in an increase effort for the fishery, it is a positive that individuals can be permit holders without being active fishermen.</b></p>	<p>There may be years where it is unviable for a permit holder to enter the fishery. It is intended that the policies will cater for this, and the draft policies include a wider description of relevant fishing activity to include fishing within the Wash and North Norfolk Coast generally.</p>
<p><b>Fishermen should be given reminders about the requirement to pay the fee every year.</b></p>	<p>A process for reminding permit holders in advance of upcoming payments is likely to be implemented. A start and payment date for permits will also be set to provide consistency for applicants.</p>
<p><b>Natural England should contribute to the cost of the surveys.</b></p>	<p>Natural England provides Eastern IFCA with advice on the conservation and management of the marine environment in the Eastern IFCA district.</p> <p>The Wash is an area with multiple conservation designations. Under the <i>Conservation of Habitats and Species Regulations 2017</i> objectives for these designations are set in law and must be followed. To enable fisheries to operate within areas such as The Wash, Eastern IFCA must ensure that fishing activity will not adversely impact the conservation objectives of the site. To do this we undertake annual surveys of our cockle and mussel fisheries in The Wash.</p> <p>Natural England is a non-governmental public body, funded by Defra. It is not within their remit for the body to fund the costs of surveys undertaken in the interest of a public fishery (which is restricted in access). Eastern IFCA is funded by its constituent councils: Lincolnshire, Norfolk and Suffolk, and receives limited direct funding from Defra.</p> <p>The increase in licence fees was agreed in 2017 under the WFO 1992. The new fee structure will be carried over to the Wash Cockle and Mussel</p>

	<p>Byelaw 2021. More information about the fee increases <a href="#">can be found here at Item 14</a>.</p>
<p><b>The limit to the number of permits should be kept the same as it is currently to maintain the status quo.</b></p>	<p>Eastern IFCA has commissioned an Economic Assessment of The Wash fisheries. This assessment will provide information to inform what the appropriate number of permits should be, and take into account the viability of the different business models active in the fishery and the interdependencies of the cockle and mussel fisheries with other fisheries in The Wash.</p>
<p><b>There should be opportunities for small increases to enable already active cockle fishermen to get permits where wanted.</b></p>	<p>The number of permits that they recommend will be considered alongside other factors including input from industry, industry viability and security to inform what the limit will be.</p>
<p><b>The limit to the number of permits should be reduced, the level of current licences is unsustainable due to a competition for space on the sands.</b></p>	<p>It is anticipated that the number of permits will be similar to the number of current licences. A significant change in the number of licences is not considered a viable option due to the impact on industry.</p>
<p><b>There shouldn't be a limit to the number of permits, this will support new entrants in accessing the fishery; the limit will be restricted as a result of eligibility anyway.</b></p>	<p>The <a href="#">aim and objectives</a> agreed that a limit to the number of permits would be set. This was further agreed by members at the 44<sup>th</sup> Authority meeting (<a href="#">Item 10</a>) subject to further research and consultation.</p> <p>A key concern from many stakeholders is about ensuring their continued access to the fishery. Restricting access to the fisheries reflects that they are relatively easily accessed. Because the fishery is managed by the setting of an annual 'total allowable catch' an open access system would likely result in adverse socio-economic impacts on active fishermen.</p> <p>However, consideration will be given to the need to balance viable access for all, including those excluded from access currently.</p>

<p><b>The economic assessment should not be considered as a factor because there is already an existing assessment of the fishery which states the number of licences that the fishery can support.</b></p>	<p>The previous assessment referred to in this comment is a report conducted by MarineX Consultants in 2006. The objective of the report at the time was to provide limited assessment of the 2008 management policies of the WFO which were in development at the time. The report was not an economic assessment, and whilst a recommendation as to the number of licences was made, this was done in the context of environmental rather than economic sustainability.</p> <p>The fishery has changed since 2006 and a new assessment, with different objectives, is required. Additionally the Authority agreed at the <a href="#">37<sup>th</sup> Authority meeting</a> in September 2019 to undertake an economic assessment of the fishery following concerns by some in industry that the handwork only fisher is unviable for businesses.</p> <p>Eastern IFCA is duty-bound to make decisions about management informed by the best available evidence. The economic assessment, as it is informed by our stakeholders' own practices, will be an important addition to this evidence base.</p>
<p><b>Main concern is about continuing access to the fishery for currently active fishermen.</b></p>	<p>This concern is understood and will be taken into account as the policies are developed. The <a href="#">aim and objectives</a> set out that the continuity of active participants will be prioritised in the policies.</p>
<p><b>Decisions about permits should be backdated to prevent changes once the permits are confirmed but before they take effect.</b></p>	<p>When the policies are agreed by the Authority a past date will be used when considering business models and activity to ensure that changes to business models are not made to align with the new system at the expense of active fishermen.</p>
<p><b>MCA renewal times should be considered as a factor if changes in vessel ownership are required (for those who are currently nominated representatives with only beneficial ownership of their vessels)</b></p>	<p>This point will be given further consideration to avoid unnecessary impact on stakeholders. However it is understood that if the vessel is well maintained this should not be a significant issue.</p>

<p><b>Fishermen should be required to prove they are paying tax to be eligible for a permit.</b></p>	<p>Eastern IFCA is required to ensure that the obtainment of evidence is justified. Tax returns may be one method through which a permit holder can evidence that they are the beneficial owner of a vessel.</p>
<p><b>Consideration should be given to vessels whose beneficial ownership is a company rather than an individual.</b></p>	<p>This point will be given further consideration in the development of the policies. It is anticipated that it will be possible for beneficial owners of the vessel in these circumstances to provide evidence of being a key shareholder of the named company and therefore the beneficiary of the vessel.</p>
<p><b>The impact of shifting permit ownership (to the model of the permit holder being on board the vessel) should be considered in detail, including considering business resiliency in the face of such change.</b></p>	<p>The impact of the policies and an assessment of risk is being considered as the policies are developed. Particular attention will be given to policies which mark a substantial shift from the current system, such as with the model of the permit holder being on board. The proposal was suggested with the understanding that this would be a way to remove any issue of persons renting out their permit for use by another individual, as well as creating a sense of stewardship amongst permit holders who are directly responsible for their vessel and are most affected by the policy.</p> <p>It is understood that for most operating in the fishery currently this model would have minimal impact on current practice but could impact future growth opportunity.</p> <p>For those that are multiple permit holders in the fishery this would represent a significant shift, and therefore the proposal was made to protect existing multiple licence holders, acknowledging the different business models that currently operate in The Wash. Further consideration will be given to this as the policies develop to ensure an equitable approach to all active fishermen.</p>
<p><b>Nominated representatives who are the beneficial owner should not be given automatic eligibility for a permit.</b></p>	<p>The conflicting perspectives here demonstrate the diversity of perspectives across the fishery. These concerns are understood and will be considered</p>

<p><b>Making nominated representatives eligible for permits rewards those that have circumvented the rules in gaining access to the fishery under the WFO. Others could have taken this route but decided against it and are now being denied access.</b></p>	<p>with the objective of achieving balance where possible in the development of the new policies.</p> <p>In these draft policies Eastern IFCA has taken the approach to support currently active fishermen as set out by the <a href="#">aim and objectives</a>.</p> <p>The consultation has identified conflicting views on this matter.</p>
<p><b>Nominated representatives should get permits if they are the beneficial owner, they are already operating in this way so it shouldn't have an impact.</b></p>	<p>The draft policies have sought to address this issue in two key ways:</p> <ol style="list-style-type: none"> <li>1. In phase 1 of the transitional provisions, where a WFO licence is being rented out, there will be no automatic issuing of a permit in relation to that licence.</li> <li>2. In phase 2 of the transitional provisions, those persons who are currently active within the Wash cockle and mussel fisheries, including because their business model relied on access to the WFO fisheries, will be given priority for the issuing of available permits.</li> </ol> <p>This approach is intended to provide a balanced approach to the issue and further rationale is set out in the report associated with this paper. Further dialogue with stakeholders on the matter is also intended to further refine the approach.</p>
<p><b>After current entitlement holders have been issued permits under the policy, any remaining should all go back into a pot to be allocated according to the 'new permits' policy.</b></p>	<p>The draft policies include transitional provisions which will consider each WFO licence in turn in the first instance. This is intended to provide continuity for active participants.</p> <p>Where further permits can be issued, the draft policies also include a points based 'new permit' system which prioritises good compliance and active participation in Wash and North Norfolk Coast fisheries.</p>
<p><b>All WFO licences should go back into a pot and be issued as</b></p>	<p>This approach, whilst potentially the most transparent, is likely to cause uncertainty and</p>

<p><b>permits according to a points-based system.</b></p>	<p>insecurity for currently active fishermen. This would contradict the agreed <a href="#">aim and objectives</a>.</p>
<p><b>Fishermen that are fishing with bad practice should not be eligible for permits.</b></p>	<p>Under the byelaw, permit holders convicted of an offence will have their permit suspended for 12 months. This is intended as a deterrent against non-compliance and will be enforced following Eastern IFCA's proportionate <a href="#">enforcement policy</a>.</p> <p>Applicants for new permits will be allocated points including taking into account previous convictions which may disadvantage them against other applicants.</p> <p>The sensitivity of The Wash as a site of multiple conservation designations necessitates the importance of compliance in ensuring the sustainability of the fishery into the future.</p>
<p><b>Beneficial ownership is not clear enough to legitimately define.</b></p>	<p>Eastern IFCA has sought legal advice on the issue of beneficial ownership and is confident that this can be enforced. It is important to note that the onus of proving beneficial ownership will be on the applicant who must demonstrate such to the satisfaction of the Authority to be eligible for a permit.</p> <p>Requiring proof of beneficial ownership ensures that those active in the fishery are directly responsible for their vessel and their activity.</p>
<p><b>It is not proportionate to suspend a vessel owner from being eligible for a permit for 12 months if the skipper of the vessel has committed an offence.</b></p>	<p>This matter is considered in relation to objections to the Wash Cockle and Mussel Byelaw as follows:</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 within 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 (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>With regards to the accountability of the vessel owner, the Marine and Coastal Access Act 2009 establishes accountability on the part of a vessel owner for any offence committed using that vessel, even where they are not on board. Therefore, it is considered proportionate that a resultant suspension would impact the vessel owner also as this is an established principle in law. It will also ensure that vessel owners make all reasonable efforts to ensure their skippers are fishing in accordance with the law.</p> <p>It is therefore considered proportionate to retain the provision, in the context that the Wash is a sensitive Marine protected Area which justifies a higher deterrent.</p>
<p><b>Any requirement to fish a certain amount within the cockle and mussel fisheries should be low enough that even if people holding on to a permit are then forced to fish, this will have a minimal impact on the rest of the fishery.</b></p>	<p>The 'consecutive permits' provisions within the draft policies include a requirement to fish a certain amount in order to retain a permit.</p> <p>The aim of this policy is not to force individuals into fishing, rather to ensure that those holding on to</p>

<p><b>Activity should be based on using a permit every three years.</b></p>	<p>their permits have genuine intent to use them without preventing others from access.</p>
<p><b>Activity should be 10 tonnes over two years.</b></p>	<p>The present version of the policies make reference to fishing for any species within the Wash and North Norfolk Coast rather than only in relation to cockle and mussel fisheries in The Wash. This will avoid instances where fishing activity is undertaken only to meet the requirement but still prioritise those activity participating in associated fisheries so as to generate turn-over (and prevent renting out) where the permit holder retires or stops fishing for other reasons.</p>
<p><b>Activity should be based on doing 50% of the tides, this would be more equitable across different vessels and business models.</b></p>	<p>The metric for measuring fishing activity is proposed as 'fishing occasions.' This is preferred to taking into account catch or uptake as a proportion of a Total Allowable Catch as it accounts for the varied productivity of fisheries and fishing methods.</p>
<p><b>Having a registered vessel should be enough to prove activity given the costs associated with this.</b></p>	<p>Because permit holders may be active in other fisheries using the same vessel, having a registered vessel alone is not deemed sufficient to justify active participation in the fishery.</p> <p>The intent of this policy is not to be unfairly impacting permit holders, but to ensure that permits are allocated to active fishermen. This will ensure a healthy and sustainable fishery into the future, where permits become available as fishermen retire or decide to move on from fishing.</p> <p>Support for new entrants to the fishery consistently emerges as a concern amongst our stakeholders. Enabling some permit turn-over for new entrants is an objective of the <a href="#">aim and objectives</a> and this policy is intended achieve this.</p>
<p><b>Without an activity requirement there would be no need for a legacy permit as those in that category would be as eligible as</b></p>	<p>The draft policies now include reference to a wider range of fisheries within the Wash and North Norfolk Coast (i.e. not only the Wash cockle and mussel fisheries) to accommodate those who rely</p>

<p><b>others. The simpler the system the better.</b></p>	<p>on the cockle and mussel fisheries only in a limited capacity. This has removed the need for a 'legacy permit' as described.</p>
<p><b>It is important for a vessel owner to be able to replace their boat without risk of losing a permit.</b></p>	<p>Permit holders will be able to replace or repair their vessel without losing a permit, subject to the associated policies.</p>
<p><b>Being a member of a fishing society or association should be a consideration in the points system. This would identify them as keen fishermen participating in the fishing community.</b></p>	<p>It is understood that some associations are no longer functional and that not all fishermen are members. It would not be appropriate for Eastern IFCA to require membership of a society or association.</p>
<p><b>New entrants to the fishery are restricted by high upfront costs.</b></p>	<p>The cost of obtaining a vessel is not insignificant, however access for new entrants under the Byelaw is not considered to be greatly different to as it is currently under the WFO other than that there is intended to be greater opportunity for access through permit succession and better permit turnover.</p>
<p><b>The points system should have weighted criteria to assist where there are two applicants with the same number of points. This should not be randomly allocated (such as through a ballot).</b></p>	<p>Responses on this issue are understood and will be considered as the points system is developed to ensure the most equitable approach.</p>
<p><b>Priority should be given to those who have fished in the fishery already.</b></p>	<p>Experience within the cockle and mussel fisheries will be essential to being eligible for a permit as a new permit holder and this is reflected in the current draft policy.</p>
<p><b>Length of time on the list of registered interest should be given consideration in the allocation of a permit, but not as a key factor.</b></p>	<p>Wash fishermen will have further opportunities to comment on the content of the points system as it is developed further.</p>
<p><b>Fishermen that are active year-round and fish in other Wash fisheries should be prioritised in the points system.</b></p>	

<p><b>Practical experience in at least the cockle fishery in The Wash should be an access requirement.</b></p>	
<p><b>After an individual has been selected to be eligible for a permit, they should be given a period of time to acquire a vessel, otherwise it could be risky to acquire a vessel without the certainty of a permit.</b></p>	<p>This issue is understood, and it is intended that fishermen are given a reasonable amount of time to acquire a vessel once a permit is confirmed.</p>
<p><b>No points should be given for already having a vessel but there should be an expectation to obtain one within a reasonable timeframe.</b></p>	<p>Having a vessel ready however may mean that an individual is given priority for a permit in the points system. This element will be addressed further through further dialogue with industry and consideration of the impacts of the criteria.</p>
<p><b>More access opportunities need to be given to younger fishermen to enter the fishery in their own right.</b></p>	<p>The policies seek to provide reasonable opportunity for new entrants to access the fishery, through supporting turnover of permits, having a transparent points system for access, and enabling permit succession. Because the number of permits will be limited however, it may be the case that some may face a long wait for access. It is unlikely however that priority can be given to a person by virtue of their age.</p>
<p><b>A training course would be a better route to eligibility than experience requirements.</b></p>	<p>The training course is proposed alongside other eligibility requirements for new permit holders. The intent is that it is an opportunity for new permit holders to enhance their knowledge of the fisheries in the context of Eastern IFCA's duties and the conservation objectives of The Wash.</p>
<p><b>The exception for multiple vessel owners to not be onboard the vessel to enable their operation to continue is unfair and preventing the growth of smaller businesses.</b></p>	<p>The policy exempting multiple permit holders from being onboard and enabling them to have a nominated representative to fish on their behalf recognises the importance of the different business models that currently operate in The Wash across different scales of activity.</p>
<p><b>It is important to be equitable to the different business models in The Wash without being</b></p>	<p>Further consideration will be given to this issue to better accommodate the different business models</p>

<p><b>preferential or creating a distinct class for historic activity (through exempting multiple vessel owners).</b></p>	<p>in The Wash and ensure stewardship of the fishery.</p>
<p><b>Preventing single permit owners from having a nominated representative is unfair where it is still allowed for multiple vessel owners.</b></p>	<p>The current draft policy seeks to address this by adopting a different approach which would enable any person to be named on multiple permits as a vessel owner, up to a limit of 10. This is considered to represent a balanced approach to addressing this issue but will be informed by further dialogue. The matter is discussed in more detail in his paper.</p>
<p><b>Permit holders should be restricted in the number of permits that they can hold. A person should not be able to hold more than one permit.</b></p>	<p>The policy aims to accommodate the varying business models in The Wash, which include multiple vessel owners who do not fish themselves and those who own and operate a single vessel.</p>
<p><b>Being a nominated representative (i.e. a person named to fish under a licence who does not own a vessel) is a legitimate way for many to access the fishery.</b></p>	<p>It is recognised that a business model exists here the active participant is not the vessel owner, and the current draft of policy accommodate for this by enabling permits to be held jointly by the fishermen and the vessel owner.</p>
<p><b>The permit holder should be the skipper of the vessel. This would encourage better stewardship of the fisheries and responsibility in the fishery and be more equitable for skippers. It would also remove the necessity to be a vessel owner and remove the capacity for one individual to hold more than one permit.</b></p>	<p>This proposal is being further considered as an alternative approach and is included in the current draft policy. This would represent a significant change for the fishery will be fully assessed prior to making a final recommendation.</p> <p>Additional discussion on this point is set out in this paper.</p>
<p><b>A permit holder should be able to have multiple nominated representatives.</b></p> <p><b>If the skipper were to hold a permit, they should be allowed a nominated deputy who could</b></p>	<p>The intent of the policy preventing this is to limit opportunities for a permit to be rented out to another individual. It is recognised that in some cases, a permit holder may share the role of skipper with more than one other person.</p>

<p><b>stand in for a limited number of days per year.</b></p>	<p>The current draft of the policy accommodates this with a system of 'nominated deputies' which can fish under the permit in a limited capacity which is intended to provide the flexibility needed but limit the opportunity to 'rent out' the permit.</p>
<p><b>Something needs to be done about nominated representatives and bad compliance. The code of conduct is not observed by some fishermen, and it is difficult to advise other fishermen on their behaviour.</b></p>	<p>The current draft policy seek to address this through making the permit holder the person who fishes so as to invoke a stronger sense of ownership and stewardship.</p>
<p><b>In order to be granted a permit under 'permit succession' criteria, the applicant should have cockle and mussel experience between 3-5 years in the fishery.</b></p>	<p>It is recognised that permit succession is an important part of the permitting system to enable business continuity but that the general principles of prioritising active participants should also be included in this provision.</p> <p>The current draft policies include a reference period for having played an active role in the fisheries to be eligible to obtain a permit under the permit succession provisions.</p>