

Appendix 1

Wash Eligibility Policy and Limitation of the Number of Permits

Formal Consultation June 2022: Outcome Document

This document presents the outcome of the formal consultation on the proposed Wash Eligibility Policy and the limitation on the number of permits issued under the Wash Cockle and Mussel Byelaw 2021 ('the byelaw').

The consultation was open from 13 June to 26 August (following two extensions to receive further information). The consultation was intended to inform the development of our policy to manage access to Wash cockle and mussel fisheries and was undertaken in accordance with Schedules 4 and 5 of the byelaw.

We asked

We consulted on our proposed Eligibility Policy and the limit to the number of permits issued under the byelaw. The draft policy wording was provided along with summary information and a questionnaire.

Results of the Consultation

18 responses to the consultation were received, including 8 written responses, 6 via meetings (with a total of 26 people) and 5 via phone calls with individuals. One response relates to the views of 32 separate individuals which was provided by Peter Scott and Jim Andrews on behalf of the 'coalition of interests.' In addition, further dialogue with the representatives of the coalition of interests has taken place, including one meeting at the cost of the Authority to provide industry with every opportunity to relay responses to the consultation.

There were reports of some industry members using misinformation to dissuade stakeholders from attending meetings and responding which is in line with reports from previous consultations on the replacement of the Wash Fishery Order 1992 (WFO). This has been problematic during this and previous consultations because detailed consideration of fishing operations were required to test the Policy and to identify unintended impacts as a result of policy wording. It has led to people being less likely to respond and contribute to the work.

Responses also indicate that there are differing views amongst the industry and current WFO licence holders on some key issues (discussed below).

Overall, the response rate was good and there was general agreement with what the policy was seeking to achieve. The consultation highlighted several areas where revisions would enhance the effectiveness of the policy and some instances where the policy would have unintended impacts on industry. The key issues were identified, and revisions are proposed in this regard (below).

Addressing 'renting out'

The practice of 'renting out' a licence under the WFO is whereby a Licence holder obtains the majority of the registered shares in a vessel in order to name it, and its 'genuine' owner, on their licence to provide them access to the Wash cockle and mussel fisheries.

Historically this has been the key concern of WFO licence holders who feel that this prevents 'genuine fishermen' from gaining access to the fishery and has been the subject of complaint from industry.

In general, responses indicate that 'renting out' is considered to be a risk to the fishery and should be addressed under the Policy. However, there is concern that in addressing the issue, some business models within the Wash will be jeopardised unintentionally. This is primarily as a result of the policy restricting the issue of a permit to a person who is the registered and beneficial owner of a vessel.

The consultation identified that some established business models are not compatible with the wording of the Policy and would be at risk of not retaining access through the transition (from the WFO to the Byelaw). Furthermore, concern was raised that 'normal business transactions' could result in the cancellation of a permit under the policy which prevents 'renting out'.

It has also been suggested that addressing 'renting out' goes beyond the vires provided by MaCAA byelaw making powers (in particular, it is viewed as the Authority attempting to dictate what business arrangements are acceptable), would prevent 'investment' into the industry, and that some within industry will attempt to circumvent any such policy in any case.

Permits becoming a tradeable commodity

In accordance with the Aim and Objectives for the Policy, the Policy seeks to prevent the permit from becoming a tradable commodity.

In general, responses indicate agreement with this objective on the basis that this would prioritise Wash-based fishermen in obtaining access, succeeding current licence holders to the benefit of local businesses and the fishery's sustainability. It is also suggested that 'monopolisation' of the industry by a small number of larger companies would be to the detriment of the fishery and restrict a competitive market. Some responses suggest that fishermen operating on behalf of larger business models lack the investment in the fishery which promotes best practice and sustainable fishing.

In contrast, some responses indicate that allowing a permit to be 'sold' would increase the value of vessels which could be sold on retirement, providing the fishermen with 'a pension'. It was also suggested that this is normal business practice and would be of overall benefit to industry as it would enable investment.

Maintaining eligibility for permits

In general, there was a concern that the Policy would not provide enough surety that permits would be re-issued. This was however often based on an inaccurate

comparison to the current system under the WFO. Generally, there is an incorrect assumption that under the WFO, a licence to fish provides 'guaranteed access' for the lifetime of the Order, which is not the case.

In particular, there was concern about the six-year review period and the ability of the Authority to review access policy generally.

In addition, it was highlighted that the proposed policy for maintaining eligibility includes fishing activity requirements (i.e. a number of fishing trips per year) which were too high for certain business models and that the annual 'eligibility fee' (of £758 per year) may be too high for some business models to maintain eligibility.

Concern was also raised that excessive evidence of vessel ownership was required which was disproportionately burdensome.

Prioritising Wash-based fishermen

Responses generally favoured prioritising access to fishermen who were involved in the fishery already, for example, the points system for eligibility for a 'new permit' should provide more points to those fishing within the Wash cockle and mussel fisheries than other fisheries.

It was also suggested that permit succession policies, which enable access to effectively be 'passed on' to someone else, should be restricted to 'close family' who are also active within the fishery.

We did (proposals)

Consideration of the responses has identified the following revisions (proposals) to the Policy.

Addressing 'renting out'

Addressing the practice of renting out is considered important for three reasons:

1. It is identified as a key concern of industry.
2. Someone who has gained access to the fishery through 'renting out' is financially dependent on access to the fishery but not 'protected' by policy which enables continued access which is not in keeping with the objective to 'prioritise the continuity of active participants in the fishery'; and
3. The Authority should be responsible for allocating fishing opportunity under powers afforded by MaCAA, for the purpose of meeting its main duties and to ensure fair and equitable access.

The wording of the policy consulted on was identified as likely to cause unintentional impacts on businesses which currently operate WFO Licences. This is primarily as a result of the policy seeking to restrict a permit to being issued to the 'genuine' owner of a vessel, i.e. the registered and beneficial owner of the vessel but that in reality, this is not simple to determine nor is it necessarily the best indicator of a licence / permit being rented out.

Therefore, the policy wording has been revised to be more permissible in this regard, with a permit holder determined as someone who is at least legally and practically responsible for the vessel named on the permit. The intention is to ensure that the permit holder is at least the 'manager' of the vessel and has some (if not the majority) legal interest in the vessel.

The effect is that the policy that impacts on current business models are less likely to be disrupted. In addition, this reduces the 'evidence' requirement / burden on applicants to provide evidence of vessel ownership as wording is aligned with requirements under for vessel ownership documentation (MSF 4728 – declaration of vessel eligibility).

The policy is not intended to preclude or prioritise any particular business model to operate within the fisheries, but only to ensure that the permit holder is the 'vessel owner'. The revised policy is less prescriptive and therefore less likely to inadvertently exclude certain business models or go beyond its *vires*.

The revisions will also enable investment into existing business models to the effect that the beneficial owner has changed provided that the permit holder is still responsible for the vessel in a practical sense and has some legal responsibility for the vessel.

To further mitigate impacts on business models reliant on access to the fisheries an appeal process is also included. This includes a ground for appeal whereby a person loses access as a result of the transition policy which has an impact on business continuity.

Permits being a tradeable commodity

It is considered crucial to the management of the fishery that the issuing of fishing opportunities is at the discretion of the Authority. This will ensure that permits are issued in a manner that meets the Authority's duties under MaCAA and general duty to undertake functions in a fair and equitable way.

Many stakeholders consider the ability to buy and sell fishing opportunities (including generally in relation to Defra licences and quotas) to have impacted inshore fishing businesses in particular as these tend to be less able to 'buy in' access.

Therefore, policy has not been revised in this regard.

Maintaining eligibility for permits

The policy is intended to provide an appropriate level of surety to permit holders of continued access to the fishery. It sets out a clear and predictable framework for businesses to operate under and which also seeks to acknowledge the commercial realities of fishing industry.

Significant safeguards have been inserted into the byelaw, under which the policy is issued and reviewed. These safeguards require the Authority to consult and consider the impact of any changes to policy given specific regard to impacts on business continuity as a result of any changes. Permit holders and the fishing

industry in general will therefore be better represented under policy issued via the byelaw compared to the same issued under the WFO.

The Authority cannot, and has not under the WFO, guarantee access to a fishery over a period of 30 years. This would not be appropriate in these fisheries given that they operate within Marine Protected Areas (MPAs) and the ability to review access policy would be required under an Order which manages fisheries within this area in any case. In addition, inshore fisheries are dynamic and change over relatively short timescales. Therefore, the Authority requires some flexibility, albeit with appropriate safeguards to industry, to ensure that policy which manages access is fit for purpose and effective over time.

However, the following amendments are intended to ensure the requirements to maintain eligibility for a permit are reasonable and reduce the burden of annual applications for permits:

1. The number of days fishing required to meet activity requirements outside of the Wash cockle and mussel fishery has been reduced and includes fishing other than from a licenced vessel.
2. The eligible fee has been changed from an annual, to a bi-annual requirement to reduce the cost to businesses which rely on less frequent access to the fisheries.
3. Vessel ownership documents will not ordinarily be required after the first year a permit is issued but may be checked at any time.

Prioritising Wash-based fishermen

Point systems for allocating permits have been amended to provide additional points for fishermen with experience fishing in The Wash cockle and mussel fisheries and as a nominated deputy of a permit. This recognises that these fishermen will have more experience fishing in the Wash and be more likely to undertake fishing activity in accordance with best practice and relevant regulations to protect the features of the MPAs concurrent with the fishery.

Permit succession policy has also been amended with the effect that to be eligible to be issued with a permit you must have participated in the fishery for at least 5 years. This also recognises the importance of experience when fishing in The Wash to protect the site.

Other amendments

Other feedback from the consultation has also led to minor amendments to enhance the clarity of the Policy and to ensure it will achieve its intended effect.

Support for the proposals

There appears to be general support for the proposals and particularly their intention. However, the issue of replacing the WFO with a byelaw (instead of an Order under the Sea Fisheries (Shellfish) Act 1967), which is not the subject of this consultation, has continued to remain the focal point for some industry members and detract from their meaningful engagement with the policy.

It is noteworthy that several respondents indicated that they would support the policy if it had been put into effect via an Order.

It is also noteworthy that some have felt unable to express support for the Policy as a result of peer pressure and concern that doing so would lead to ill feeling amongst others.

Appendix 1 – Detailed consideration of consultation responses

The following table sets out the key points from the consultation and our consideration of these.

<i>Table 1. objections / comments summaries are paraphrased from responses to the formal consultation on the Wash Cockle and Mussel Byelaw 2021: Eligibility Policy and Permit Limit; June to August 2022. The table is divided into sections on each key theme</i>	
Objection / Comment	Consideration and amendments (if applicable)
Number of permits	
Summary: <i>There was general consensus that the number of permits issued should be limited, but little consensus on what the level of access should be, with representations calling for reductions and increases along with maintaining the status quo.</i>	
There is a fundamental error in the statement about the number of permits in the guidance document – Eastern IFCA say the limit is 61 but in reality, it is 183 because there are three types of permit.	<p>The guidance referred to the limit on the number of permits as 61 because it was felt this was the clearest way to express the limit on access and because in effect, the limit will be 61 different vessels / permit holders which are provided access.</p> <p>It is noted that this could have caused confusion and it is correct to say that 183 permits is the maximum (because there are three different permits) but eligibility relates to all three types of permit and this is described in the wording of the policy for clarity.</p> <p>The intention however is to get across that the maximum issued will be the same level as is the case in the WFO.</p>
The number of permits should be reduced to 59 as two are thought to be inactive.	<p>It is acknowledged that issuing permits in the place of inactive licences would effectively reduce individual fishing opportunity proportionately. It is thought that the number of 'inactive' WFO licences is small and the relative impact on fishing opportunity to those currently fishing would be similarly small in scale.</p> <p>We intend to balance that with the impact of excluding people who would benefit from access.</p>
The Policy has no vision for the future i.e. how many vessels should be in the fishery in 20 years time.	<p>The flexibility provided under the byelaw will enable changes to be made to the number of permits should circumstances change and it is appropriate to do so. The policy is intended to cater for the current situation and the Wash Fisheries Economic Assessment 2021¹ indicated that the fishery was currently viable for the number of participants.</p>

¹ The Wash Fisheries Economic Assessment was undertaken by MarFishEco and commissioned by Eastern IFCA. The report is available here: https://www.eastern-ifca.gov.uk/wp-content/uploads/2022/06/2022_06_09_Wash_Economic_Assessment.pdf

<p>The number of permits issued needs to be reduced (potentially over time) to keep the fishery sustainable – 50 permits is more sustainable</p>	<p>Limiting the number of permits to below the current number of WFO Licence holders would remove access from some individuals. Typically, those who participate in the Wash cockle fisheries rely on these either solely, or to a very large extent for their income and so impacts on individuals would be high.</p>
<p>The daily quota should be reduced to 1 tonne to allow younger fishermen enter into the fishery</p>	<p>Reducing the Daily Catch restriction is outside the scope of this Policy, but it is intended that ‘new entrants can gain access to the fishery via the ‘new permits’ policy when such become available.</p>
<p>The number of permits should increase to 68 as the impact on each individual permit holder would be limited</p>	<p>Increasing the number of permits is less likely to impact each individual than reducing the number of licences and removing some individuals from the fishery.</p> <p>However, this needs to be balanced against the proportional reduction in earnings likely to each individual where the number of participants is increase and the recent cost of living increases and fuel price increases which are likely to have increased the overheads of fishing businesses.</p>
<p>There should be no review of the number of permits after the transition. The uncertainty caused by the current review has impacted industry viability and the potential for additional permits extends this threat</p>	<p>It is acknowledged that any increase in the number of permits will effectively reduce individual fishing opportunity proportionately.</p> <p>It is important that the Authority can review and revise the number of permits issued under the byelaw to ensure that the fishery does not impact the Wash MPAs and remains sustainable and viable over time.</p> <p>Any review and proposals for change will have the safeguards set out in process under Schedule 5 of the Byelaw inasmuch as industry consultation will be a key element and business continuity an important consideration.</p>
<p><i>Renting Out</i></p>	
<p><i>Summary:</i> <i>The prevailing general view is that ‘renting out’² limits the ability for new entrants and in particular, does not provide local, experienced fishermen with the opportunity to enter into the fishery. Whilst there is a prevailing view that the matter should be addressed, some responses highlight the concern that doing so will inadvertently impact ‘legitimate’ business models.</i></p>	
<p>Renting out has been a key issue for all the</p>	<p>The Policy intends to address the issue of ‘renting out’ in the following ways:</p>

² ‘Renting out’ is where a WFO Licence Holder obtains the majority of the registered shares in a vessel to provide the beneficial owner (i.e. the person financially responsible for and dependant on the vessel and who typically held all the shares originally) with access to the fishery. This practice has been the subject of complaints from industry for many years

<p>fishermen for years and should be stopped</p> <p>Renting out prevents new entrants into the fishery as they can be maintained by letting someone else use it</p> <p>Renting out means that fishermen from other areas can enter the fishery at the expense of fishermen who have been working in the Wash their whole lives</p> <p>If there was an effective way of people getting new Licences / Licences would be re-issued, fewer Licence holders would have rented out</p> <p>Some people renting out have been fishermen their whole lives and should be able to get their own permit</p>	<ul style="list-style-type: none"> • During the transition, any WFO Licences which are rented out will not be considered for issue of a Permit in Phase 1 • During phase 2, these permits will be available via a points system which will prioritise applicants who were the beneficial owner of a vessel named on a WFO licence • After the transition, permits will only be issued to persons who have some legal and practical responsibility for a vessel • Any changes to vessels named on permits or the ownership of such vessels will be investigated to ensure that the permit holder is the registered and beneficial owner. <p>In addressing renting out, the Policy intends to ensure that where a person no longer requires a permit to participate in a fishery, that access can be reissued in accordance with a fair and objective system which will prioritise those with experience and knowledge of Wash-based fisheries.</p>
<p>Those renting a permit from someone else need a permit in their own right to carry on their business</p>	<p>It is recognised that established business models rely on 'renting' their access from WFO Licence holders and removal of access would have significant impacts on their business models. Therefore, where this is the case, the policy intends to prioritise these in getting a permit in their own right.</p> <p>It is important for effective business planning that those who rely on access to finance the vessel used to fish and carry on a fishing business are the permit holder and therefore able to 'maintain eligibility' over time. The policy intends to prevent the situation, which persists under the WFO, whereby the person reliant on access is not 'protected' by the policy.</p>
<p>Attempts to prevent 'renting out' will have adverse and unintended consequences, particularly on family companies.</p>	<p>The policy intends to ensure that the permit holder is legally and practically responsible for the vessel named on the permit. It is not intended to prescribe or prevent certain business models.</p>

<p>Preventing renting out should not impact genuine partnerships / LLPs etc.</p> <p>Renting out is not an issue as it enables investment</p> <p>Attempts to prevent renting out are to give Eastern IFCA “more control of the fishing industry”</p> <p>Fishermen will find a loophole which allows them to ‘rent out’ a permit</p>	<p>The wording of associated policy has been the subject of significant consideration to ensure that the business models of WFO licence holders are not unintentionally impacted.</p> <p>Wording is revised in the ‘Permit Holder’ and ‘Transition’ sections to reduce the likelihood of unintended impacts and to accommodate known business models which are not ‘renting out’. The potential for impacts is further reduced with the introduction of an ‘Appeals Process’ which provides grounds for appeal specifically in relation to where access is lost via the ‘Transition’.</p> <p>In addition, wording is included in the Policy which specifically refers to cancellation of permits where permit holders attempt to enable another person to use the permit as a vessel owner / permit holder and policy wording can be revised (in accordance with the process set out in Schedule 5 of the Byelaw) to address and ‘loopholes’ exploited over time.</p>
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Eligibility Fee

Summary: *Understandably, the fees associated with maintaining eligibility are not favoured by industry. In general, objection is raised in relation to paying a fee where a person does not use the access provided in any given year, rather than the level of the fee itself. Some who rely on access to the mussel fisheries (which are much less frequent than cockle fisheries) believe that the cost will be too high to maintain eligibility.*

<p>Paying an eligibility where there is no fishery is unaffordable for some (particularly smaller) business models.</p> <p>£100 is suggested as appropriate.</p> <p>Eligibility fee is too high for people who only rely on less regular mussel fisheries</p> <p>Eligibility fee should be refunded if there is no fishery</p>	<p>The policy has been revised to require bi-annual, rather than annual, payment of the eligibility fee to reduce the impact on permit holders who do not participate in the fishery each year or where the fishery is not open. This effectively reduces the minimum annual fee requirement by 50%, to £378.87.</p> <p>This will reduce the likelihood of achieving the 50% cost recovery which was previously agreed by the Authority but is considered a reasonable balance to prevent undue impacts on industry.</p> <p>It is considered appropriate that maintaining eligibility to access the fishery requires a contribution to the costs incurred annually by the Authority even where a fishery is not opened (i.e. the survey costs) because that access is provided at the expense of other potential applicants.</p> <p>A fee of £100 is not considered appropriate given that it would be a significant reduction and diminish the ability to recover appropriate costs.</p>
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<p>The Eligibility fee is 'not a problem' as it enables a survey of the fishery each year</p>	<p>The contribution of each permit holder to the costs of managing the fishery is a relatively small proportion (161 of 50% of the costs) and it is likely that this can be recovered by most business models after 1 or 2 days access into the fishery.</p> <p>The revised fee is intended to balance the recovery of costs by the Authority with the potential impact, particularly on smaller business models or those who rely on less frequent mussel fisheries.</p>
<p>The Eligibility fee should be based on the standard price of a cockle / mussel survey and Eastern IFCA should tender the survey to other companies to ensure value for money</p>	<p>The cost of managing the fishery was considered in 2018, and cost savings were found via revised survey methodology. Importantly, only 50% of actual costs are recovered and as such the survey costs to licence/permit holders are competitive.</p> <p>Because surveys are undertaken by Eastern IFCA they provide a reliable and credible evidence set to inform stock assessments and Habitat Regulation assessments annually and are considered good value for money.</p>
<p>Appeals Process</p>	
<p>Summary: <i>No Appeals Process was included in the Policy put to consultation however, several responses indicated a preference for such. In general, this is seen as a means of ensuring objective and transparent decision making and is considered to enhance 'trust' in the process.</i></p>	
<p>There should be an 'independent' appeals process to consider decisions made under the Policy</p>	<p>An 'Appeals Process' has been added to the policy which may consider appeals where there are grounds to do so, which include where there is a procedural error or mistake of law or the application of the policy or new information to support an application becomes available. In addition, grounds specifically relating to the transition are included to mitigate impacts on business continuity as a result of the loss of access.</p>
<p>Officers will not act fairly when considering applications if they do not like the applicant</p>	<p>The appeals process is intended enhance trust in the application of the policy through a transparent and objective process for reconsidering applications where there are grounds to do so. However, the Authority and its officers are expected to act with integrity and objectivity in carrying out their duties and are already held to account via internal and external processes.</p>
<p>The appeals process should include independent (non-IFCA) decision makers and a panel of local fishermen to help inform decisions.</p>	<p>The process for decision making has been designed to provide objectivity and integrity. Officers will collate evidence to support individual applications and decisions will be taken by Authority members who do not have a pecuniary interest in the Wash fisheries in a sub-committee. The appeals process will enable further consideration of an application where there are grounds to justify this. Such cases will be considered by an appeals sub-committee that comprises</p>

	<p>members who were not involved in decision making with regards to the original application and who do not have a pecuniary interest in the Wash fisheries. This sub-committee will include the Chair and Vice-Chair of the Authority.</p> <p>It is not considered appropriate to include non-members as the sub-committee structure is used to ensure that decision making is clear and transparent (i.e. duties are undertaken in accordance with the constitution and standing orders). In addition, involving industry members may reveal personal or commercial information to those with a financial interest in the fishery and as such, Authority members are best placed to ensure that there is no perception of bias.</p> <p>Any decision made by the Authority can ultimately be challenged (including for example via judicial review). This means that all decisions made by the Authority subject to independent scrutiny.</p>
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Section 2 – Issuing permits

Summary: *Key concerns raised relate to the wording of provisions which define ‘vessel ownership’, with the intention being to ensure that permit holders are legally and practically responsible for the vessel. In particular, the wording was considered to unintentionally exclude certain people from holding permits by virtue of their business and ownership arrangements including where they were not ‘renting out’ a Licence.*

In addition, there appears to be no consensus with regards to whether a company or business should be able to hold a permit and / or whether these should be a ‘tradeable commodity’. In general, there appears to be a concern amongst most that this would be to the detriment of most business models in The Wash and particular smaller fishing operations.

<p>Permits should be issued to natural persons only – not companies.</p> <p>The intention of the Order was that the Licence / Entitlement was on the person, not the vessel or company</p> <p>The fishermen should be in ‘control’, not the companies</p> <p>Large companies owning permits / having access causes monopolisation</p>	<p>The Policy intends to enable the full range of business models established within The Wash recognising the benefit these have to the industry overall. It does not intend to prioritise or favour any particular business model.</p> <p>Consideration has been given to the Policy’s effect on markets and competition and particularly with regards to mitigating the risk of monopolisation through a cap on the number of permits a business or person can have a financial interest in.</p>
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<p>including on prices (of catch)</p> <p>Fishermen earn less money if they work for a company vs owning their own vessel</p> <p>Processors should not be allowed to hold multiple permits as they control the price</p> <p>Fishermen, rather than companies, should be prioritised</p>	
<p>Companies take fishing opportunities / jobs away from local fishermen / families</p> <p>Companies taking over will mean fewer smaller business models</p> <p>Fishermen behave more responsibly when they are invested in the vessel rather than work for someone else – if they are invested in the permit they are more likely to fish sustainability as they need the fishery to continue to pay for the vessel</p>	<p>The 'new permit' policy is intended to prioritise applicants who are active fishermen and who do not already have access or have less access than other applicants. This in part recognises the industry's views that 'genuine' fishermen who are themselves invested in the industry are more likely to act responsibly to ensure a sustainable fishery.</p> <p>However, it is not considered appropriate to prevent existing companies from gaining access by virtue of their size.</p>
<p>Section 4 – Transition</p>	
<p>Summary: <i>Generally, responses appear to support this policy - note that addressing 'renting out' is a key element of the transition which is considered separately (above).</i></p>	
<p>Phase 2 (transitional provisions)</p> <ul style="list-style-type: none"> • There should be no cap on criterion 2 of 10 points • The time period for accruing points is shorter for fishing in WFO fisheries than fishing generally, 	<p>The transitional provisions are intended to have two phases:</p> <ol style="list-style-type: none"> 1. Phase 1 will provide access to WFO Licence holders where that Licence is not being 'rented out' and is being actively used. 2. Where there are permits available after Phase 1, these will be allocated to applicants under a points system. An applicant will get more points if they were the beneficial owner of a

<p>these should be aligned</p> <ul style="list-style-type: none"> • The term “participation” in fisheries should be defined • Convictions (criterion 5 & 6) should have time limits • Criterion 7 (which includes a points penalty for having an interest in permits already granted) should be subject to <i>de minimis</i> and clarified (e.g. how does it relate to permits held on behalf of a family company?). 	<p>vessel named on a WFO licence which did not result in an associated permit under phase 1, if they have participated in WFO fisheries or other Wash and N. Norfolk Coast based fisheries, have not been convicted of relevant fisheries offences and have no permits issued to them already.</p> <p>Following consideration of feedback on the points system, the following revisions have been made:</p> <ul style="list-style-type: none"> • The cap on criterion 2 has been increased to 20 points with the effect that fishing under a WFO licence will provide more points than fishing in other areas. • The time period for fishing activity which can result in allocation of points is removed. • The term ‘participation’ is removed and replaced with “fishing”. • A time limit of 3 years has been added in relation to convictions. • The wording of Criterion 7 (now 6) is revised to from clarity. A <i>de minimis</i> is not considered appropriate because such would diminish the effect of policy to prevent ‘renting out’, noting that some responses have indicated an intention to circumvent the policy in this regard.
<p>The current waiting list should be considered during the transition</p>	<p>Active participation in Wash fisheries is prioritised (where evidence of such can be provided) and this is considered the most appropriate means of ensuring those who would benefit the most from gaining access are prioritised.</p>
<p>For the beneficial owner to be eligible for a permit under phase 2, they will need to obtain the registered shares in the vessel which has a cost implication</p>	<p>Wording is revised (to section 2) which means that the permit holder does not need to hold the majority shares in the vessel but will require nomination from the majority shareholder (of the vessel) to meet the criteria. This is intended to have the effect of enabling vessel ownership arrangements to persist even where the permit holder changes because of the transition but where the owners are in a genuine partnership.</p>
<p>Section 5 – Maintaining eligibility</p>	
<p>Summary: <i>The issue of maintaining access over time appears to remain the central concern of stakeholders. Many of the concerns raised arise from an inaccurate comparison to the system under the WFO whereby many mistakenly hold the view that access was ‘guaranteed’ for the lifetime of the Order. Overall, responses highlight the importance of a clear and predictable framework for maintaining access to the fisheries which can accommodate changes to business models.</i></p>	
<p>Should be able to retain a permit if the fishery is not opened or accessed at</p>	<p>The Policy requires that the permit holder or vessel named on the permit is active within Wash and North Norfolk Coast fisheries. However, criteria do not</p>

<p>the preference of the permit holder in any given year</p> <p>Fishing every year is not responsible or sustainable</p> <p>Activity requirements are too high – 30 days fishing per year (outside of the Wash cockle and mussel fisheries)</p>	<p>require participation in cockle and mussel fisheries every year and include exceptions where a fishery is not opened or performing poorly. In addition, the requirements have been lowered to reflect that some business models fish at sea less often.</p> <p>Wording has been revised to accommodate fishermen who do not ordinarily use a registered fishing vessel as they are tending to private fisheries or work on other larger vessels when not using their own permit.</p>
<p>The additional evidence required for proving vessel ownership is burdensome.</p> <p>There is too much 'red-tape'.</p>	<p>The policy is intended to ensure that permit holders remain eligible over time and do not sell or otherwise allocate the access afforded by a permit. Therefore, evidence of vessel ownership is required however, these will primarily relate to vessel registration documents which are already in existence (e.g. a 'declaration of eligibility' which is generated as a result of vessel registration) to minimise burdens on applicants.</p> <p>Wording has been amended to set out that evidence requirements in this regard will not ordinarily be required for annual applications with the intention of reducing the burden on permit holders.</p>
<p>IFCA should send out reminder letters to all Permit holders to remind them of the need to apply each year</p>	<p>The Authority will write annual reminders to permit holders.</p>
<p>The term 'entitlement' should be used instead of 'eligibility' as it will be of reassurance to the industry.</p>	<p>The term 'entitlement' has been used under the WFO since its coming into effect in 1992 and its popular meaning has, over time, deviated from that which was intended (from our understanding) within the WFO. The term 'eligibility' is preferred as it does not carry with it these historical and sometimes incorrect perceptions.</p> <p>The intention is for permit holders to be able to maintain eligibility in a predictable and transparent way and we have included wording in the policy which will have the intended effect.</p>
<p>No one should be penalised for paying the entitlement fee too early.</p>	<p>The policy does not intend to penalise anyone for paying fees 'too early' and associated wording has been revised to make this clearer.</p>

<p>A person should not lose their eligibility to a permit for late payment of the associated fee.</p>	<p>It is considered necessary to have in place a form of deadline for the eligibility fee to prevent licences being maintained without contributing the cost recovery for managing the fishery (which is intended to recover 50% of the costs to the Authority).</p> <p>This has however been revised to align with the requirements in place under the WFO (i.e. it is required to be paid at least every-other year).</p>
<p>The permit should be viewed as a means of managing the fishery and not a guarantee of access</p>	<p>This is the intention of the policy and byelaw and this aligns with the WFO.</p>
<p>The Policy should guarantee 30 years of access to the fishery</p>	<p>It is not considered appropriate to ‘guarantee’ access for 30 years. Defra guidance to IFCA’s includes reference of regular review of management to ensure it is fit for purpose and is in keeping with IFCA’s main duties.</p> <p>In the context of the fishery occurring within several MPA designations and variability of inshore fisheries over relatively short time periods, the IFCA requires the ability to revise access to policy to ensure sustainability, viability and the prevention of impacts to MPAs.</p> <p>The WFO included provisions to reduce or increase the number of licences issued and for the IFCA to issue licences to ‘such persons as it considered appropriate’.</p>
<p>Section 6 - New Permits</p>	
<p>Summary: <i>The ‘new permits’ policy is generally well received and has been developed in consultation with stakeholders and aligns with the general values of current licence holders.</i></p>	
<p>The loss of 11 points for previous convictions is disproportionate</p>	<p>The cockle and mussel fisheries operate within several MPA designations and best practice is required to ensure the fishery can continue whilst maintaining site integrity. Convictions are rare and generally constitute non-compliance of a serious nature and therefore it is considered appropriate for these to be reflected in an objective way when issuing access.</p>
<p>Points system should prioritise wash cockle and mussel fishermen</p>	<p>The points available to those with experience of wash cockle and mussel fisheries have been increased and now outweighs the points available in relation to other fisheries.</p>
<p>Section 7 – Permit Succession</p>	
<p>Summary: <i>Responses indicate that there is a polarised view within industry on this matter, with some in favour of enabling permits to be sold and become a tradeable commodity and others considering such as being a risk to the fishery.</i></p>	

Many of those in favour of the policy also had concerns about companies holding permits and were fearful of a fishery monopolised by a few larger business interests.

<p>Permit holders should be able to pass access on to family members</p> <p>Only close family who are active within the fishery should be eligible for a permit under succession policy.</p>	<p>Permit succession policy includes the ability to pass on access to a family member. Wording has been revised to require that the family member is an active participant in the fishery.</p>
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<p>Buying and selling access (including in other fisheries) has been to the detriment of industry.</p> <p>Larger companies can take away access from local families.</p> <p>Concern that companies can buy all the access from independent and control the fishery.</p>	<p>The policy is intended to prevent the permit becoming a tradeable commodity such that the Authority can exercise its discretion in determining who to issue permits to in line with the 'new permits' policy.</p>
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<p>A permit should stay with the vessel / company / nominated deputy</p> <p>Permits should be a tradeable commodity to enable investment.</p> <p>Selling a permit provides a pension and some 'dignity' to retiring fishermen</p>	<p>The ability to trade permits or transfer them as the result of a vessel sale would mean that the Authority cannot use its discretion to issue fishing opportunities. The 'New Permits' policy is intended to objectively and fairly determine who can have access after a permit becomes available and was developed taking into account what the fishing industry thought were important considerations.</p>
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<p>In the event of the death of a permit holder, they cannot be notified in writing</p>	<p>The policy does not require notification in exceptional circumstances, but this section has been amended to make this clearer.</p>
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<p>The Authority does not need a permit holder to surrender a permit for it to be succeeded by another, it can be cancelled.</p>	<p>Our intention is to ensure that the cancellation of a permit under the permit succession policy is fair and transparent, and this is required to ensure that it is the will of the permit holder to surrender the permit.</p>
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Section 8 – Change of Vessel / Ownership

Summary: *The key concerns about this section relate to the loss of continued access as a result of selling shares in a vessel or business associated with a*

permit. There was a concern that fishermen would inadvertently lose access as a result of transactions which were not attempts to 'rent out'.

Section 8 is unsatisfactory because:

- It will prevent businesses from obtaining investment in them through selling the majority shares in their vessels to an investor.
- The byelaw prohibits the transfer of permits to other vessels which is inconsistent with the policy and needs to be changed.
- Reference to the 'intentions of the policy' is not clear and subject to interpretation.
- There should be an appeals process where appeals are subject to consideration by an impartial and independent review.

Each point considered as follows:

- The Policy is not intended to be a disincentive for investment into the fishery. The wording has been revised to enable the permit holder to sell the majority ownership of their vessel to another provided they retain some registered interest in the vessel and are practically responsible for the vessel in all its operations.
- The intention of the provision in the byelaw is to prevent the automatic transfer of a permit to a new vessel (for example when it is sold). It is not intended to prevent us from naming a different vessel on a permit.
- The reference to the 'intentions' of the policy has been clarified.
- An appeals process has been included in the policy.

Section 7 and 8 taken together are 'entirely negative' and a disincentive to invest in the industry, key elements being:

- Under the Order, the licence holders can sell this licence along with the vessel which provides an 'exit' from the fishery
- The policy blocks off the normal modes of investment which is for a major or controlling share of a family business to be obtained by an investor in a family company

The intention of this section is to ensure that changes to vessels named on permits is not to enable someone else to use that permit (i.e. the genuine owner of the new vessel named on the permit). The Authority considers and investigates applications for the same under the WFO to detect attempts to circumvent the rules and the approach in the policy is consistent with this. In addition, the Authority also intends to consider where a vessel named on a permit changes ownership to ensure that the permit holder remains the owner of the vessel.

This is not considered likely to hinder investment in industry as a clear and predictable framework is provided, which can be used to inform investment decisions. Ultimately, the policy is not intended to prevent investment but to prevent a permit holder from effectively transferring the permit to someone else via buying or selling a vessel named on a permit.

Each bullet point considered in turn:

<ul style="list-style-type: none"> • The nominated representative should be able to obtain the permit but there is no mention of this in the policy • The policies do not provide enough assurance that access is assured to incentivise investment • The current models which fishermen operate under are at risk from the policy and could result in the loss of fishing businesses. 	<ul style="list-style-type: none"> • The current Policy (under the WFO) does not permit a vessel to be sold with its licence and therefore the licence has no value in this sense. It is common practice to prevent permits from having their own value or becoming a tradeable commodity and this is understood as being one of the industry's main concerns and is reflected in the aim and objectives. Enabling permits to be 'sold' or carried over as a result of the transfer of ownership of a vessel would prevent new entrants being provided access under the points system which is intended to prioritise issuing of permits in accordance with the preferences of the fishing industry (i.e. they operate in local fisheries, they have good compliance etc.). • The Policy has been revised to accommodate investment, including through the purchasing of the controlling stake in a vessel or business associated with a permit, provided that the permit holder remains eligible by having some legal and practical interest in the vessel named on the permit. • The nominated deputy can obtain a permit under the succession section (7) if they are eligible to do so. • The Policy provides a clear and predictable framework for businesses to operate in and a way a person can remain eligible to hold a permit. Changes to policy require consultation and consideration of impacts and the reasons for reviewing them are restricted by Schedule 5 (which includes elements added having been suggested through consultation). By contrast, most policy which deals with permit allocation or business licences are reviewed entirely at the discretion of the relevant authority and do not require consultation. • The intention of the Policy is set out in the aim and objectives and includes reference to continuity of business models in The Wash. In order to address 'renting out' and ensure permits are issued in a fair and equitable way, the transitional provisions may result in some changes with regards to who holds a permit (vs a WFO Licence) but it is likely that those engaged in fishing and ultimately reliant on access to the WFO fisheries will be issued permits under phase 2 of the transition. Dialogue with industry has been extensively undertaken to identify any unintended consequences which may arise, and which have resulted in several revisions to the policy. Therefore, the policy should not result in
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	the loss of businesses and will ultimately better protect those who rely on access to finance their business particularly as a result of the transitional provisions. An appeals process is available which will mitigate impacts on business continuity as a result of the transition.
There should be 'emergency provisions' to allow the replacement of a vessel in unforeseen circumstances	There are provisions which cater for vessel replacement in 'exceptional circumstances' including, but not limited to, the total loss of a vessel etc.
Section 9 – Nominated deputies	
Experience requirements to skipper a vessel are too restrictive – can we revise to enable others to enter into the fishery?	The experience requirements are considered important mitigation against potential for impacts to the MPAs concurrent with the cockle and mussel fisheries particularly in the context of the unique fishing method ('prop-washing'). The requirement is also in line with the situation under the WFO.
Skippers should have experience of wash cockle and mussel fisheries to be a skipper.	As above
Only one person should be named as a nominated deputy	Naming more than one nominated deputy provides resilience especially for business models where the permit holder is the owner of the vessel and not the skipper. It is considered appropriate that more than one suitably qualified person could fish under the authority of a permit.
Section 11 – Permit Penalties	
Section 11 (permit penalties) is disproportionate because it prevents a vessel owner from fishing under a permit – the effect should be limited to the permit used to commit the offence.	<p>The intention of the provision is to ensure personal accountability for non-compliance and act as a deterrent to such non-compliance noting that the fisheries are concurrent with several MPAs.</p> <p>The wording has been revised to remove the suspension applying to the vessel owner where they were not the master / skipper of the vessel involved in the commission of the offence.</p>
Section 14 – Policy Review	
Summary: Responses to this section often compare the review process in the policy with inaccurate perceptions of the review of WFO access policy and associated decisions. In particular, most WFO Licence holders are of the view that the Authority could not vary the number of licences issued under the WFO without the consent of the Minister, which is incorrect. There is however a general preference for longer 'guarantees' that policy will not change and some would prefer to insert additional checks and balances during review, including receiving the consent of the Minister.	
Notification that Eastern IFCA intends to undertake a review would	The process for review of the Eligibility Policy and permit limitation is set out in the Wash Cockle and Mussel Byelaw 2021 (Schedule 5 and 4 respectively).

<p>prevent financial losses to industry.</p> <p>Industry should be notified 1 year before a review is taking place.</p>	<p>It requires a review of the policy at least every 6 years but more often as necessary.</p> <p>Review of Eligibility policy must include consultation with industry and consideration of impacts. The Authority requires the ability to undertake reviews to ensure that the policy is effective and necessary and regular reviews ensure that this will be the case over time.</p> <p>Notification of a review would be required to advertise the associated consultation, however it may not always be possible to give 1 years' notice of such, for example, if a review is required as a result to changes in the fishery or the environment.</p>
<p>The ability for the Authority to change the policy 'overnight' is seen as a threat to all business models. There should be a clause inserted that Ministerial approval is needed to change the eligibility criteria (within the Byelaw) as pr 7(1) of the WFO</p>	<p>There is significantly more process involved in reviewing and changing this policy than is the case in most other similar policies we have considered. This includes a requirement to consult for at least 4 weeks, to undertake an impact assessment of any changes including in relation to the continuity of business models as a result and a requirement for any decisions on such to be made by the Authority or a relevant sub-committee (i.e. not delegated to officers). As a result of these provisions (which are within the byelaw rather than the policy itself) industry will have a greater degree of representation than in most cases including in relation to policy decisions made under the WFO.</p> <p>Ministerial consent to revise the policy is not appropriate given that the Marine and Coastal Access Act 2009 provides an IFCA with the ability to determine access to permitted fisheries.</p>
<p>The review period should be longer than 6 years.</p> <p>Six years is not long enough to make good an investment into the fishery (e.g. buying a vessel) and this will mean no one will invest into the industry because of the risk they could have their access removed.</p>	<p>A review period of six years is in keeping with review periods for Eastern IFCA's other byelaws. This will ensure that changes to the fishery, environment and inshore fishing practices can be accommodated and considered over time.</p> <p>A review of the policy does not mean that a change in the policy is necessary, and the impacts of any changes will be considered in any case. The aim and objectives for the policy set out an intention to maintain business continuity or active participants.</p>
<p>Miscellaneous</p>	
<p>The 'at a glance' guide and text of the policy do not include sufficiently</p>	<p>The 'at a glance' information is intended to assist in stakeholders understanding of the key parts of the policy and the intended effects of it without providing</p>

<p>precise information to ascertain what the Policy means.</p>	<p>detailed wording, which some can find inaccessible. The full wording of the draft policy was provided along with the guides, and we offered the opportunity for people to call or arrange meetings with us to explain anything about the draft policy.</p> <p>We will continue to listen to any feedback on how to make our consultation materials clear and accessible to assist people in engaging with us.</p>
<p>No vessels from outside of The Wash should be allowed into the fishery unless there is a high TAC</p>	<p>Industry preference is that the policy enables consistent access to the fishery to enable effective business planning. The uncertainty relating to enabling access only when there is a high TAC is unlikely to support business models in the long term.</p>
<p>Eastern IFCA has done everything they can to get the policy right</p>	<p>The consultation and dialogue with industry on this matter has been significant over the last 2 ½ years as a reflection of the importance of the fisheries to the local industry. This has informed the policy development and led to refinements which will mean the policy is more effective and reduces the likelihood of unintended consequences.</p>
<p>Rumours and misinformation from some fishermen has caused anxiety amongst industry</p> <p>Fishermen have been actively discouraged to participate in consultations</p>	<p>It is recognised that the process of reviewing access to the cockle and mussel fisheries has generated some anxiety amongst industry.</p> <p>Reports to this effect have been received during several consultations on the matter and the Authority has sought to allay concerns through continued dialogue including with individuals.</p> <p>The approach to consultation has also sought to provide confidentiality and protect the rights of persons who engage with us to encourage fishermen to contribute to the process.</p>
<p>Historically, the issuing of licences has been viewed by industry as unfair.</p>	<p>The Eligibility Policy is intended to ensure that decisions about access to the fishery are transparent and fair.</p>
<p>Permit scheme will be 'a lot better' than the current system</p>	<p>The access policy under the WFO was developed and revised over the lifetime of the Order and various changes were made to address industry concern at different times. The Eligibility Policy intends to address the current concerns of industry and has a structured review process to ensure it remains fit for purpose in the future.</p>
<p>An Order would be the preferred legal mechanism – strong opposition to a byelaw</p>	<p>The legal mechanism is not within the scope of this consultation but the preference for an Order by some is noted.</p>

Everyone would agree with the policy if it was put into place under an Order	
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