

Title: Wash Cockle and Mussel Byelaw 2021: Eligibility Policy and Limitation on the number of permits IA No: WCMB01 RPC Reference No: N/A Lead department or agency: Eastern Inshore Fisheries and Conservation Authority Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 28/08/2022		
	Stage: Final Stage		
	Source of intervention: Domestic		
	Type of measure: Other		
Contact for enquiries: CEO, Eastern IFCA			

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£m0	£m0	£m0	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

Access to cockle and mussel fisheries in The Wash is currently managed under the Wash Fishery Order 1992 and associated policy. The Order expires on 3 January 2023 and is to be replaced with a permit scheme under an IFCA byelaw under the Marine and Coastal Access Act (c.23).

Intervention is necessary to ensure the fishery is managed in accordance with Eastern IFCA's main duties and to redress market failures which increase risks to fisheries sustainability, industry viability and the conservation objectives of the Marine Protected Areas concurrent with the fisheries.

What are the policy objectives of the action or intervention and the intended effects?

Access to fisheries under the Wash Cockle and Mussel Byelaw is managed to ensure sustainable and viable fisheries which do not impact site integrity of concurrent Marine Protected Areas. The policy and limitation on the number of permits issued will provide a clear and predictable framework for businesses who rely on access and the fair and equitable allocation of fishing opportunities.

It is intended that the Eligibility Policy will ensure continuity of access to businesses operating under the authority of a Wash Fishery Order 1992 Licence whilst addressing key issues identified by stakeholders.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The preferred option is to limit access to the fisheries to 61 vessels prioritising access to persons who have established a reliance on access under the Wash Fishery Order 1992.

Other options considered include having no limit on the number of permits issued, the continuation of policy under the Wash Fishery Order 1992 and the 'do nothing' option.

The preferred option is considered the most likely to enable the Authority to manage access to the fisheries in a manner consistent with its duties and to address the concerns of stakeholders.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2028 (latest)				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0	£0	£0

Description and scale of key monetised costs by 'main affected groups'

No costs can be 'monetised' as they cannot be quantified but Financial impacts are expected and explored in more detail in the 'non-monetised' section.

Other key non-monetised costs by 'main affected groups'

The Policy may remove access for some licence holders but which is provided to the person actively using the Licence to prosecute the fishery (transition). Additional vessels may be permitted access compared to the current number which may reduce an individual's income proportionately but there will be no impact to the industry overall (i.e. the value of the fishery will not change).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0	£0	£0

Description and scale of key monetised benefits by 'main affected groups'

None identified

Other key non-monetised benefits by 'main affected groups'

The policy will provide access to persons who presently rely on such to finance their businesses through fishing providing more surety of continued access. It provides a clear and predictable framework for permit holders to manage their businesses.

Key assumptions/sensitivities/risks

Discount rate (%)

Under the Wash Fishery Order 1992, licence holders held the perception that access to associated fisheries was guaranteed for the lifetime of the Order, but this is incorrect. This has led to a strong concern (and objection) from fishery stakeholders on the basis that management under a byelaw will provide less surety of continued access. The Authority has sought to reduce the risk of unintended impacts to stakeholders through extensive consultation.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: n/a
Costs: 0	Benefits: 0	Net: 0	n/a

Evidence Base

Problem under consideration and rationale for intervention

The Wash is part of a heavily designated Marine Protected Area (MPA) and holds the following designations: Special Area of Conservation (SAC) Special Protection Area (SPA), Site of Special Scientific Interest (SSSI), Ramsar site and national nature reserves.

The Wash also hosts important cockle (*Cerastoderma edule*) and mussel (*mytilus edulis*) stocks. The cockle fishery has an estimated average annual market value circa £2.5 million¹. Mussel stocks within the Wash have been in decline for the past decade and have resulted in only limited mussel relaying fisheries (where juvenile mussel is removed and then set within private aquaculture), however this does constitute an important source of income for several fishers within the District. Cockles are processed at three separate processing factories within the District, supporting the wider local economy.

Eastern IFCA currently manages the Wash cockle and mussel fisheries under the Wash Fishery Order 1992 (WFO) and limits access to the fishery under using the provisions of the WFO and Eastern IFCA policies². The current limit on the number of vessels able to access the fishery each year is 61. The majority of the licence holders rely heavily or entirely on access to the cockle fishery in particular.

The WFO has enabled flexible management of the Wash fisheries to mitigate potential impacts on site integrity of the MPAs concurrent with the fisheries and to ensure fisheries are sustainable. This includes setting annual management measures as informed by an annual stock assessment and an annual Habitat Regulations Assessment (HRA). It also provides for the Authority to issue licences to such persons, and in such numbers as the Authority considers appropriate. The matter of access to the fishery is also considered the key concern of stakeholders.

The WFO expires on 3 January 2023 and has given cause to review the access policy (including the appropriate number of permits to issue and the manner in which they are issued).

IFCAs have a duty to ensure that fish stocks are exploited in a sustainable manner, to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources and to ensure that any impacts from that exploitation on designated features in the marine environment are reduced or suitably mitigated, by implementing appropriate management measures.

Fishing activities can potentially cause negative outcomes as a result of market failures. These failures can be described as:

1. Public goods and services – a number of goods and services provided by the marine environment such as biological diversity are ‘public goods’ (no-one can be excluded from benefiting from them, but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.
2. Negative externalities – negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices

¹ Estimate based on Eastern IFCA catch return data from 2015 to 2021

² https://www.eastern-ifca.gov.uk/wp-content/uploads/2016/03/2017_02_15_WFO_Interim_Policy.pdf

often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

3. Common goods - a number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods does diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long-term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort, an impact on the economic viability of the fishery and unsustainable exploitation.

Without management of access to the fishery, it is likely that these market failures will lead to impacts on fisheries sustainability, industry viability and the associated MPAs. In particular, the key future harms being tackled are:

- Potential for increases in the number of participants which, in the context of a finite resource (i.e. annual Total Allowable Catch), will reduce the economic viability of those with established reliance on the fishery;
- Inequity of access as a result of permits being used in unintended ways, including being sub-leased, rented or otherwise reallocated outside of the Authority's discretion to generate an income from holding the permit;
- Instability and uncertainty of access leading to inefficient (excessive) effort. The policy intends to provide a clear and predictable framework under which business can operate including providing a means to retaining access over-time to enable effective business planning and a sense of ownership which incentivises good practice and sustainable fishing;
- Impacts to fisheries sustainability and site integrity of associated MPAs as a result of market failures which encourage poor practice and over-exploitation.

The Authority is best placed resolve these issues because it can provide a fair and objective framework for allocating access uninfluenced by the factors leading to market failures using an evidence-based approach.

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

This impact assessment considers evidence from three structured consultations and ongoing dialogue since March of 2020 and an economic assessment³ of the cockle and mussel fisheries in The Wash. The three consultations were as follows:

- Consultation on the Aim and objectives of the Policy: 5 November 2020 to 18 December 2020
- Informal consultation on the wording of Eligibility Policy: 9 September 2021 to 11 October 2021
- Formal consultation on the wording of Eligibility Policy and Permit limitation: 13 June 2022 to 26 August 2022

³ The 2021 Wash Fisheries Economic Assessment was carried out by MarFishEco, commissioned by Eastern IFCA and is available here: https://www.eastern-ifca.gov.uk/wp-content/uploads/2022/06/2022_06_09_Wash_Economic_Assessment.pdf Eastern IFCA consideration of the findings and how they have influenced the development of the policy manage access is set out here: https://www.eastern-ifca.gov.uk/wp-content/uploads/2022/06/2022_05_16_MarFishEco_consideration.pdf

Consultation has been used to identify and address the key concerns of stakeholder and to ensure that the wording of the policy achieves the intended effects.

The following aspects have been given specific consideration in accordance with the Wash Cockle and Mussel Byelaw 2021 as they are considered to be of specific importance to fishery stakeholders (as determined through the associated consultation):

- the stability, continuity and succession of businesses of the permit holders; and
- the continuing ability of permit holders to finance their businesses.

The evidence gathered from consultations is primarily qualitative and does not support the estimation of monetised costs. The economic assessment addresses viability of the Wash based fisheries but does not lend itself to estimating monetary costs for the purpose of this impact assessment. Despite this, the evidence base (particularly in relation to the extensive consultation) is considered to be of high confidence as a reflection of the amount of consultation and opportunity provided to stakeholders to indicate their concerns and potential impacts. In addition, the effect of the preferred option is most likely to be that those who currently fish under the authority of a WFO Licence will still be permitted to do so, and therefore the impacts will be minimal.

Description of options considered

1. The “do nothing” option

The WFO expires and it is intended that it will be replaced by the Wash Cockle and Mussel Byelaw 2021. The “do nothing” option would effectively be to not limit access to the fishery or specify how a permit can be obtained or maintained over time. This option would not address the potential future harms as a result of market failures and would not be in keeping with the Authority’s main duties and would likely result in the fishery being over prescribed with the effect of being unviable for each participant until market forces cause the fishery to reach equilibrium. This would be particularly impactful to existing business models.

2. Maintain the “status quo”

Management of access under the WFO requires review as a result of the expiry of the WFO (3 January 2023). Continuation of access management policy under the WFO would not address the concerns raised by stakeholders during its lifetime and is unlikely to address market failures leading to inequalities of access. In particular, the existing policy does not enable new entrants into the fishery, provides a mechanism (unintentionally) for access to be ‘rented’ or otherwise allocated outside of the Authority’s discretion.

3. Voluntary / non-regulatory measures

This option would essentially result in a “do nothing” option and incentives to manage access in a fair and equitable way which meets the Authority’s duties under MaCAA will be unlikely as a consequence of the market failures described above.

4. Proposed Eligibility Policy and Limitation on the number of Permits

The preferred option is to adopt the proposed Eligibility Policy and permit limitation (resulting in access to 61 vessels). These have been developed in consultation with fishery stakeholders and informed in part by an economic assessment of the Wash cockle and mussel fisheries.

This option is the most likely to deliver the desired outcomes as it addresses the fishing industry’s concerns with the existing access policy (under the WFO) and mitigates the

risks of market failures likely to lead to impacts on fisheries sustainability, industry viability and the site integrity of the MPAs concurrent with the fisheries.

The Policy and permit limitation is intended to be issued under the Wash Cockle and Mussel Byelaw 2021 (for which ministerial confirmation is pending) and have been developed in accordance with the process set out in the schedules of that byelaw.

Policy objective

An aim and objectives to guide the development of the Policy were developed in consultation with stakeholders and agreed by the Authority at the 44th Eastern IFCA meeting⁴.

Aim: 'To achieve a level of access to the fishery that is equitable, and which supports the viability of varying business models, the conservation objectives of The Wash, and stock sustainability'

Objectives:

1. To limit access to the fishery to a number of persons which will meet the aim.
2. To support effective business planning and continuity.
3. To enable a range of business models to operate within the fishery.
4. To prioritise the continuity of active participants in the fishery.
5. To enable appropriate permit turnover to create opportunity for suitably qualified new permit holders.
6. To prevent the permit from having its own value or becoming a tradable commodity.

The Eligibility Policy and Permit limitation is intended to replace that in place and used to manage access within the WFO.

The level of access potential access to the fishery will not change given that the permit limitation is aligned with the current number of 'entitlement' to fish under the WFO. It will potentially increase in effect however, as a small number (thought to be 1 or 2) permits will be issued in place of inactive WFO Licence which, if used, would increase participation proportionally. However environmental and sustainability of fisheries are managed in such a way that the number of participants are unlikely to directly impact these.

The Eligibility Policy will change the following key elements compared to the Policy in place under the WFO⁵:

- Vessel ownership is defined in the Eligibility Policy to provide clarity on its meaning for the purpose of holding a permit. It will change the requirement from being the 'Registered' owner of the vessel (i.e. holding the majority of shares in the vessel) to being a registered owner of the vessel (i.e. holding at least 1 registered share in the vessel) and being the beneficial owner or person practically responsible for the vessel. The intention is to ensure that the permit is held by the 'genuine' owner of a vessel or person who effectively manages the vessels' activity and to prevent permits being allocated to another person outside of the 'new permits' or 'permit succession' policy by means of changing registered ownership in a vessel (addressing the key concern of stakeholders);

⁴ Minutes and papers for Action Item 13 of the 44th Eastern IFCA meeting, 9 June 2021

⁵ https://www.eastern-ifca.gov.uk/wp-content/uploads/2022/03/2022_03_09_Revised_WFO_Interim_Policy.pdf

- Permits will be cancelled where a person seeks to circumvent the Policy by enabling another to use the permit through changes to vessel ownership or as a result of fraudulent applications;
- ‘New permits’ will be issued up to the maximum (61 vessels) when available in accordance with a points system which prioritises those active in Wash-based fisheries (so as to reduce reliance on a single or limited number of species or fishery) who have good compliance, do not already have access to the fishery and are capable of using the permit in the near future;
- The eligibility policy will limit the number of permits a person or business can have an interest in to 10 if allocated under the transition and 8 for any new permits;
- ‘Permit succession’ policy enables access to be succeeded by a person practically involved in fishing from the vessel and who would otherwise lose access under the permit where the permit holder retires or otherwise surrenders the permit;
- ‘Permit succession’ also caters for ‘exceptional circumstances’ by issuing temporary permits to enable a business to carry on using the permit whilst a permanent successor is considered;
- In order to maintain access to the fishery, the permit, or vessel or person named on the permit, must continue to be active in the fishery or other Wash and North Norfolk Coast-based fisheries.

The Eligibility Policy and limitation on the number of permits will be reviewed at least every six years in order to measure the success of these measures in delivering the aim and objective and in accordance with Defra guidance to IFCA’s to ensure evidence-based fisheries management⁶ and byelaw making powers⁷. This will in part be measurable through consultation with industry to inform a review and through consideration of the sustainability and viability of the associated fisheries and the impacts on the concurrent MPAs.

Summary and preferred option with description of implementation plan

The preferred option will be given effect via the Wash Cockle and Mussel Byelaw 2021 (if confirmed) after the expiry of the WFO via Eligibility Policy and a limit on the number of permits issued thereunder.

The Eligibility Policy will lead to the achievement of the Policy objective by:

- Limiting the number of participants to 61 which will enable adequate resource is available to all participants (as determined through the economic assessment and consultation with industry).
- Providing a clear and predictable framework for fishing businesses to operate in including through the ‘maintaining eligibility’ policy which sets out how eligibility for a permit can be maintained annually.
- Providing stakeholder representation during the review of the Eligibility Policy and limit on the number of permits issued.
- Addressing the key concerns of industry expressed through consultation including:
 - Preventing Permits becoming a tradeable commodity.
 - Providing a mechanism for ‘new entrants’ to the fishery which prioritises persons with experience in the Wash based fishery and who do not already have access to the fishery.

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182346/2011-ifca-guide-marinemanager.pdf

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182343/ifca-byelaw-guidance.pdf

- Preventing access being allocated to another person by a permit holder outside of the 'new permits' policy.
- Prioritising access to persons who presently rely on such and enabling business continuity through 'permit succession' policy.
- Enabling normal business transactions (such as investment into businesses which carry on using access provided by a permit) and vessel replacements without losing access to the fishery via a clarification on what is meant by 'vessel ownership' for the purpose of holding a permit.

The Authority will be responsible for the enforcement of the Eligibility Policy and permit limitation.

The approach enables sufficient flexibility to ensure that it remains effective over time but also ensures appropriate stakeholder representation to inform any review or changes to the Policy, including consideration of impacts. A degree of flexibility is required to account from changes to Government policy on environmental or fisheries management and to reflect the dynamic nature of the marine environment and businesses which exploit it in accordance with Defra guidance to IFCA⁸.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Overall, the costs and impacts of the Policy and limitation on the number of permits is considered to be negligible as they effectively maintain the status quo established under the WFO, with the exception of addressing the issue of 'renting out' (more information below). The effect of addressing this issue will be of benefit to the industry and particularly the individuals who are 'renting' access from someone else as the most likely outcome is that they will have access in their own right.

The policy and permit limitation were developed in conjunction with the industry and all concerns have been given due consideration resulting in either amendments to the policy or rationale as to why a change is not appropriate. The Policy been the subject of three separate consultations and considered by the Authority. Full consideration of the responses to these consultations can be found at the following:

- Consultation on the Aim and objectives of the Policy: 5 November 2020 to 18 December 2020, considered at the 43rd Eastern IFCA meeting, 10 March 2021 (Action Item 10) and 44th Eastern IFCA Meeting, 9 June 2021 (Action Item 13)
- Informal consultation on the wording of Eligibility Policy: 9 September 2021 to 11 October 2021, considered at the 45th Eastern IFCA Meeting, 8 September 2021 (Action Item 12), the 46th Eastern IFCA Meeting, 8 December 2021 (Action Item 7) and the 47th Eastern IFCA Meeting, 9 March 2022 (Action Item 11).
- Formal consultation on the wording of Eligibility Policy and Permit limitation: 13 June 2022 to 26 August 2022 considered at he 49th Eastern IFCA meeting, 14 September 2022 (Action Item 9).

The benefit of the proposal is that it will provide a clear and predictable framework for operating a fishing business within the Wash cockle and mussel fisheries which accounts for the commercial realities of such and is fair and equitable.

Costs and impacts

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182346/2011-ifca-guide-marine-manage.pdf

Key costs and impacts identified including through consultation are set out below. No monetised costs can be estimated.

Limitation on the number of permits

The limit on the number of permits (participants) can impact the viability of the businesses which participate because the fisheries are managed through a total allowable catch (i.e. there is a finite resource) which is available to all permit holders. If the number of participants increases, this would reduce the proportion available to each, potentially impacting industry viability. The number of permits issued will not impact the overall value of the fishery or result in a monetised impact as ultimately this is influenced by the available Total Allowable catch. Rather, its distribution amongst individuals may change (reduce) where additional permits are issued.

The current limit on the number of vessels issued licences under the WFO and its associated policy is 61, and this limit is carried over in the new limit. There is at least however thought to be some inactive licences which would be reallocated under the transitional provisions of the Eligibility Policy. Assuming that the permit is then actively used within the fishery, this would in effect increase the number of 'active participants' in the fishery, with a proportional reduction in the resource being available to each individual (i.e. a reduction of 1/61 for each participant for each inactive permit reissued). This impact is not considered of significant scale to each individual to risk business continuity.

An appeals process has been included in the Eligibility Policy which may result in the issuing of additional permits (i.e. more than 61). This is intended to cater for the transition in particular where it is likely that there will be some dispute over vessel ownership and to cater for where removal of access as a result of the current holder 'renting out' (effectively not using the licence) results in an unforeseen impact on business continuity. The impact associated with this would be reductions in the earnings of each individual permit holder proportional to the number of additional permits issued, with potential impacts on the viability of the fishery to each individual.

Some responses from the consultation suggested that the fishery is not viable as a result of the number of participants in addition to the daily catch restriction of 2-tonnes per day. The daily catch restriction is not within the scope of this assessment, but the number of permits is currently thought to be appropriate (as indicated through the general view of respondents and the economic assessment) and, given that the number of permits would effectively maintain the access already afforded under the WFO, the effect of reducing the limit would be an impact on individuals who previously had access.

On balance, it is considered appropriate to provide some additional permits where not doing so would result in an effect on business continuity (as per the grounds for appeal, section 13) as the impact on that individual is potentially high whereas the impact on other participants is relatively small.

Ultimately, impacts resulting from the number of permits issued is mitigated because such can be revised if necessary (subject to consultation and consideration of the impacts under schedule 4 of the Wash Cockle and Mussel Byelaw 2021) and must be reviewed within six years in any case.

Addressing 'renting out'

The practice of 'renting out' is whereby a WFO licence holder becomes the registered owner of a vessel for the purpose of naming it on a licence to provide the 'genuine owner' (i.e. the beneficial owner of the vessel who is financially responsible for the vessel and themselves rely on fishing from the vessel for their income) access to the fishery. This practice is potentially fraudulent in some cases and has been the subject of concern of stakeholders historically and is considered to be the key issue faced by the industry under the WFO access policy. The key impacts of this practice are:

1. Someone who has gained access to the fishery through 'renting out' is ordinarily 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

2. The Authority must be responsible (and accountable) for allocating fishing opportunity under powers afforded by MaCAA and for the purpose of meeting its main duties⁹ and to ensure fair and equitable which including balancing the different needs of those engaged in exploiting sea fisheries resources.

The policy seeks to address this issue by ensuring that the permit holder is legally and practically responsible for the vessel, rather than only being the majority 'registered owner'. In effect, the policy is only a clarification and strengthening of the existing access provisions under the WFO and the associated policy which requires the Licence holder to be the 'vessel owner' but which was not defined within the Order. The policy clarifies who the 'vessel owner' is for the purpose and basis this on existing registration requirements e.g. Part 2 of requirements to register on the UK Ship Register¹⁰.

The effect of this policy being that during the transition a number of WFO licence holders will not be allocated permits on the basis that the Licence is being 'rented out'. Where this is the case, a permit will be made available to be applied for and issued in accordance with a points system. The points system prioritises those who were the 'beneficial owner' of a vessel named on a WFO licence or are otherwise practically responsible for the vessel and so, in effect, the most likely outcome is that a permit will be issued to the active participant who relied on the access afforded them by renting out.

The impact of this policy will therefore depend on the arrangements between current licence holders and the person(s) they are 'renting out' to. It is reasonable to assume that, in some cases, access is provided via 'renting out' on the basis of a financial incentive to the Licence Holder, which will be lost. This cannot be monetised, but consultation identified that some business models may be impacted by this and for which further detail cannot be provided without breaching confidentiality of the responded. However, such arrangements are considered to be outside the purview of the Authority and permitting such would not be in keeping with the aim or objectives or the intention of a permitting scheme which is to provide access to a fishing resource rather than a means of generating income by allocating such access to another. Overall, the impact is considered of low scale because the most likely outcome is that the person afforded access to the fishery under the WFO and is presently reliant on access to fish for cockle and mussel for the continuation of their livelihood will retain access via the transitional arrangements.

The development of the 'renting out' provisions has been the subject of particular attention during consultation to ensure that in addressing the issue, existing business models are not disrupted and to enable 'normal business transactions', such as the changing of the majority shareholding of a vessel which is associated with a permit, as may be required for business continuity. It is not the intention of the policy to dictate which business models are 'acceptable' but only to ensure that a permit is issued to the person who relies on fishing using the permit to carry on their fishing business, rather than to generate an income from only holding the permit.

Suspending permits

The Policy includes provisions which suspend access (in relation to the permit and the master skipper) for 14 days per relevant offence resulting in a conviction, up to a maximum of 42 days (Permit Penalty – section 11). Relevant offences include non-compliance with the Byelaw, s.292 of the Marine and Coastal Access Act 2009 (so far as it related to enforcement of the Byelaw), contravention of the Conservation of Habitats and Species Regulations 2017 and contravention of the Wildlife and Countryside Act 1981 (so far as such relate to Wash MPAs). This is intended

⁹ S.153 of the Marine and Coastal Access Act 2009
¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790792/MSF_4727_Rev_0319_Dec_of_Eligibility_to_register_a_vessel_on_Pt_1.pdf

to replace provisions in the WFO which removed an entitlement after 2 relevant convictions within 24 months, which effectively meant permanent removal from the fishery.

The measures are likely to cause a financial impact on any effected persons but are considered to be proportionate given that the fisheries are concurrent with several MPA designations and good practice is crucial to ensuring the fisheries can continue in this context. The policy has been the subject of consultation and industry are generally in support of the policy. The wording has been revised as a result of the recent formal consultation to remove the penalty applying to the owner of a vessel who was not the master / skipper of the vessel noting that under the Marine and Coastal Access Act 2009, the vessel owner is also liable to any effect.

The cost of the measure cannot be monetised because non-compliance cannot be estimated. However, the cost per offence would be circa £14,000 per offence in lost fishing opportunity (at approximate first sale value of cockles and a 2-tonne daily catch restriction).

The stability, continuity and succession of businesses of the permit holders

The policy supports the above factors in the following ways:

- The limitation on the number of permits is considered to enable viable fishing activity by the participants (as indicated by the economic assessment and responses to the consultation).
- It provides a clear and predictable framework for maintaining eligibility for permits over time.
- Measures which require the permit holder to be 'legally and practically responsible' for vessels named on permits have been amended as a result of the consultation (and legal advice) to enable permits holders to maintain their permit where they are no longer the 'majority owner' of a vessel as may be required for the purpose of securing investment for the continuation of a business for example.
- Permit succession policy enables the continuation of businesses in exceptional circumstances (for example, the death of a permit holder) by providing for a permit to be issued to enable continued access to others associated with the permit and ultimately a nominated permit successor.
- Permit succession enables application for a family member or nominated deputy to receive a permit on the retirement of the permit holder.
- The policy enables vessel replacement.
- Permits are not transferable between persons and cannot be held in the name of a business (i.e. a permit holder can be natural person only) to prevent them from becoming a tradeable commodity. This maintains the *status quo* under the WFO but would impact any person intending to 'sell' their access in the future. Consultation with industry however indicates that generally it is the preference of stakeholders that permits are not tradeable commodities and permits are issued at the discretion of the Authority and in accordance with 'new permit' policy.
- An appeals process will consider cases where the loss of access as a result of the transition has caused an impact on business continuity.

The continuing ability of permit holders to finance their businesses

The policy supports the above factors in the following ways:

- The permit holder is able to maintain access to the fishery under this policy and a clear and predictable framework is provided to achieve this which takes into account the commercial realities of fishing businesses.
- The limitation on the number of permits ensures that there is sufficient resource (Total Allowable Catch) over time to support business which relies on access.

Other key costs and impacts

- The byelaw requires a fee to be issued a permit and the policy requires bi-annual payment of an 'eligibility fee' of £758.78 to maintain eligibility. This was reduced from an annual requirement to pay the eligibility fee proposed originally to reduce the impacts on persons who do not use the permit on an annual basis, and it now aligns with the requirements under the WFO, therefore no additional costs are anticipated.
- The policy must be reviewed at least every six years, or more frequently if there is an urgent and compelling reason to do so (Schedule 5, Wash Cockle and Mussel Byelaw 2021). This is seen as a risk to business continuity by some stakeholders who incorrectly perceive that the WFO provided 'guaranteed access' for the lifetime of the Order (i.e. 30 years). In particular, stakeholders consider that 6-yearly reviews will prevent investors or banks from providing finance to procure vessels etc. The ability to review and revise the Eligibility Policy and permit limitation is not considered to be a cost to the industry as suggested in consultation responses and Schedule 5 provides significant representation on the part of industry to mitigate this risk in any case. The 'flexibility' of the measures will ultimately benefit the effective management of the resource in accordance with the IFCA's main duties.
- The policy limits the number of permits with which a business interest can be associated with to 10 for existing permits and 8 in relation to any 'new' permits issued. This is intended to prevent monopolisation by a single or few business interests and preserve the diversity of business models within the Wash and prevent impacts on markets and competitions. This is consistent with the views of many stakeholders, who are fearful of monopolisation of the industry impacting their smaller / family business models as a result of reducing the competitiveness of the market, particularly in relation to businesses which buy and sell cockles holding permits themselves as is the case in the Wash. No impacts are anticipated as a result of this through the transition and responses to the view provided by some stakeholders is that generally, smaller business models are less impactful to the environment and the fishery as they (the fishermen) are directly invested in the sustainability of the fishery to a greater extent than a skipper employed on behalf of a larger business model. The policy does not intend to make a judgment on this, but it is considered appropriate to limit the number of permits a single business interest can have in relation to permits to ensure that it limits the impacts on micro and small business models and does not impact on the competitiveness of the associated market.

Benefits

No monetised benefits can be estimated in relation to the policy.

Key non-monetised benefits are:

- Participation in the fishery is limited to a level which provides each individual with an economically viable share of the available resource.
- Transitional provisions enable the continuation of business models established under the existing management of the fishery which rely on access and use of the permit in order to take catch to finance their vessel and business.
- There is a clear and predictable framework for maintaining access to the fishery including in relation to succession and exceptional circumstances to enable business continuity.
- The Eligibility Policy and Permit Limitation must be reviewed so as to ensure it is effective and meeting the duties of the Authority including through consultation with stakeholders and consideration of the impacts on them.

Direct costs and benefits to business calculations

None identified

Risks and assumptions

Limitation on the number of permits

The current limit on the number of permits is considered to be appropriate to ensure each individual active within the fishery can remain viable and this is based on consultation with the fishing industry and an economic assessment. However, fisheries are dynamic and the Wash cockle fishery performed poorly in 2022. In addition, increased fuel costs and the 'cost of living crisis' has increased costs associated with operating a fishing business. Both of these factors may have the effect of reducing the viability of operating in the fishery on the basis of receiving a 1/61 share of the available Total allowable Catch over time.

This risk will be mitigated through review of the limitation on the number of Permits issued in accordance with the process in Schedule 4 of the Wash Cockle and Mussel Byelaw 2021 and in particular, through consultation with industry on any changes to the limit in addition to consideration of the impacts of such.

Eligibility Policy

Responses from the consultations highlighted that there is no consensus from industry on the key issues addressed by this policy. In particular, the manner in which 'renting out' is addressed and whether the policy provides sufficient surety of access to enable investment and attract new entrants. The consultations in particular have sought to identify and address any wording which inadvertently impacts existing business models whilst still addressing 'renting out'.

Determining if there is a general view or consensus is difficult on the basis that many respondents have represented themselves as individuals and as part of a wider 'coalition of interests' with views expressed by each case sometimes being in conflict.

Ultimately, the potential risks and assumptions highlighted are mitigated through the ability of the Authority to review and revise the policy to ensure that their effects are in keeping with the intentions and the Aim and Objectives including as a result of changes to the fishery over time.

Impact on small and micro businesses

The Eligibility Policy and permit limitation will impact small and micro businesses which cannot be scoped out or exempted because these are the only business models active within the fishery.

Wider impacts (consider the impacts of your proposals)

The policy seeks to establish a fair and equitable system for the allocation of fishing opportunities with the effect of enhancing transparency and trust in the decision making in this regard. It is intended that this will promote more effective and productive relationships with stakeholders including those presently excluded from the fishery under the WFO.

The Eligibility Policy will enable the allocation of 'new permits' when available and within the permit limitation. WFO policy has not enabled new entrants for some time and previously allocated Licences on the basis of the position of a waiting list which was not able to prioritise providing fishing opportunities in a fair and equitable way (for example, many of those in line for Licences already held multiple licences or were not active fishermen). This will benefit the industry overall with new entrants being able to gain access and practise those who are reliant on the very limited Wash and north Norfolk Coast based fisheries. It is intended that this will reduce the reliance on these limited fisheries (primarily shrimp and whelk) and provide for more resilient business models and more sustainable fisheries.

The consultation has highlighted that some hold the perception that fishing practices are improved whereby the permit holder's business model is reliant on the fishery to a greater extent. This is likely to invoke a sense of ownership and responsibility the likes of which is often associated with the use of an Order. It is intended that the rules to address 'renting out' and

limiting the number of permits a single business interest can be associated with will mitigate to an extent the market failures relating to 'public good and services' and common goods' (as described above) and this is consistent with the views of some stakeholders.

A summary of the potential trade implications of measure

The measures do not create different requirements for domestic or foreign businesses, or differing requirements for businesses from different countries. Therefore, trade implications are scoped out of the assessment, and it is not considered likely that the measures will be inconsistent with the UK's international obligations.

Monitoring and Evaluation

The impact and effectiveness of the Eligibility Policy and permit limitation will be considered as part of a review at least every six years or more frequently where there is a need to do so, including if there is an urgent and compelling need in relation to eligibility policy. These reviews will assess whether the Aim and Objectives are being met.

The key external factors which may impact success are the productivity of the Wash cockle and mussel fisheries, the market value of catch from these fisheries and the overheads and costs associated with carrying on a fishing business. Material changes in these may impact the viability of the fishery, and in particular require consideration of review of the permit limitation.

It has been recommended (from the economic assessment) that the Authority gathers additional financial information from permit holders to enable continued monitoring and evaluation of the economic viability of the Wash fisheries and is a consideration going forward which may provide better evidence to consider the effectiveness of the measures.