

Annex C

NWIFCA request for legal advice on ways to manage the Ribble cockle fishery

The recent Ribble cockle fishery has shown up some enforcement issues which we must try to resolve urgently.

These relate firstly to making the fishery safer by requiring fishers to adopt safety measures and secondly to plugging a loophole in byelaw 5. I am seeking advice on both these issues as set out in detail below.

Safety measures

1. The Ribble fishery led to more than 25 calls to emergency services in the 2 months September – October and widespread concern in national and local media. As a result of this, the NWIFCA closed the fishery on 7 November 2011 so that safety measures could be addressed. The fishery was closed under an emergency byelaw attached at Annex B. It was explicitly stated that the purpose of the byelaw was to address safety concerns.
2. The fishing industry and others such as the MP, Councillors and the local authority want to see the fishery reopened. In order to do this, stronger safety measures must be introduced. Byelaw 5 already includes a requirement for holders to have completed a 1 day safety course. We have advice from Defra that IFCA can make byelaws for safety reasons. This is attached at Annex A. I do not know if there is actual legal advice behind the report.
3. We now must attach further safety measures to the permits relating to the use of boats. I am meeting with HSE and MCA this week to consider exactly what is required to make operation of this fishery safer. The ideas I will present are:
4. To require all boats to have been inspected by the MCA and to be registered and workboat coded. This would define how many people each boat could carry and how much safety equipment is required.
5. If MCA will not go that far and cannot resource the many inspections which might be required, I would propose that all boat users must wear life jackets and carry other safety equipment as defined by MCA. The list of equipment would be a schedule to Byelaw 5 or a new emergency byelaw.
6. Place a requirement for all boat users to have completed appropriate safety courses as required for registered fishermen. These would include: a health certificate, sea survival, first aid, radio operators and possibly other qualifications as well.
7. Please could you advise on how such measures could be best applied to the fishery? HSE/ MCA may not want to take on the task of inspections but may be willing to define what is required. I may be able to amend the existing Byelaw 5 under an emergency byelaw or introduce an entirely new emergency byelaw to do the job.

Loophole in Byelaw 5. The current byelaw is attached at Annex C:

1. The provision for anyone to gather up to 5kg of cockles per day for personal consumption without requiring a permit. This provision, arising from the public right to fish, makes the byelaw largely unenforceable on the beach where large numbers

of fishers access the shellfish beds and claim to be gathering small quantities for their own use while Fishery officers are present and continue working commercially when out of sight of Officers.

2. We have been aware of the problem since the byelaw was first made in 2007. It has become particularly acute in 2011 on the Ribble because fishers do not remove their cockles from the beach themselves. The common practice has been to fill bags on the beach and sell to buyers who collect the bags on the beach and transport them to 3-5 larger fishing vessels for onward transport in bulk. Gatherers then leave the beach without any cockles and without watching every individual throughout the fishery Officers cannot tell how much each has gathered.
3. The loophole has allowed fishers to ridicule Officers and has led to a major loss of morale. Somehow we need to suspend or override that clause in the byelaw in certain circumstances. It should be noted that the clause makes the byelaw internally contradictory. It first prohibits anyone from carrying cockle fishery equipment in paragraph 3 and then allows fishing for 5kg per day in paragraph 4. Officers are left with the question of what to do about people who carry cockling equipment but say they gather only 5kg.
4. I am asking for advice on how to plug this loophole perhaps by amending Byelaw 5 directly or through an emergency byelaw drafted to achieve one of the ideas below which we have developed:
 - a. Allow the NWIFCA to designate an area of shellfish as a commercial work area for a defined period within which anyone is deemed to be fishing commercially and require a permit. I should emphasize that cockle beds tend to be in extremely remote areas rarely if ever visited for leisure.
 - b. Allow the NWIFCA to designate the disembarkation area for the fishery such as the slipway onto the beach which all fishers must use as a control point and deem that anyone in that area or crossing that line and travelling to the beds is deemed to be part of a commercial fishery and require a permit.
 - c. Remove the clause from the byelaw temporarily or permanently for a defined area and a defined period. In fact we do not believe the clause is needed at this time. NWIFCA Officers encounter few if anyone who gathers small amounts for their own use regularly and the IFCA could operate an informal 'de minimus' standard in case anyone did behave that way in isolated incidents.