

**REMOVAL OF MUSSELS FROM THE MORECAMBE BAY OYSTER FARM
AN URGENT REPORT TO BE TABLED**

Aim of the paper: To propose that a new NWIFCA Byelaw 3 authorisation is prepared which would be used if necessary to ensure Byelaw 3 permit holders cannot be instructed to fish illegally in the area of the oyster farm.

Recommendations:

1. That the Authority should seek a barrister's written legal opinion on the ownership of fishery rights in Morecambe Bay, particularly in respect of land owned by Boughton estate but also in respect of other areas of the Bay where claims of fishery rights have been advanced.
2. That the Authority confirm the TSB resolution to issue an authorisation to Byelaw 3 permit holders to fish for seed in the area of the oyster farm if required.

Background

1. At the beginning of October an authorisation was issued to Seasalter Ltd to permit them or their agents to remove undersize mussels from the seabed area around the oyster farm and the trestles. Mussels foul the oyster trestles preventing oyster cultivation.



Fig. 1. Location of oyster trestle areas. Original trestle area Area 1 and newer lease area shown as black outlines. The access route is shown in red. All boundaries based on co-ordinates provided by Seasalter (Walney) Ltd. Courtesy of Natural England

2. The oyster fishery is on land owned by Boughton Estate and leased to Seasalter (fig 1). There is no fishery order in place to protect the oyster farm. The seabed area of the oyster farm is part of the North Morecambe Bay public fishery so if hand gathering is permitted, then fishermen must be Byelaw 3 permit holders. Shellfish not on the seabed are considered to be outside the public fishery. Therefore oysters and mussels on trestles are

assumed to be owned by Seasalter Ltd and mussels fouling the trestles may be removed without a NWIFCA permit.

3. The authorisation followed previous IFCA practice by allowing seed to be gathered by hand or removed by mechanical means from the seabed. The authorisation applied to a defined area around the oyster farm as shown on fig 1. The difference this year compared with the past is that there is now a significant market for the seed mussel such that the removal of seed has become a commercial operation with buyers competing on price and gatherers able to earn a living.
4. Complaints were received by NWIFCA in October that Kingfisher Seafoods acting as agents for Seasalter were discriminating against some Byelaw 3 permit holders by not allowing them to work in the fishery. The NWIFCA has a responsibility to ensure that its authorisations are fair to all permit holders and are non-discriminatory. The way the Seasalter authorisation was being used was agreed by the TSB to be unacceptable and the authorisation was withdrawn at the meeting on 1 November 2013.
5. TSB further agreed that a new authorisation could be issued which would more explicitly permit all Byelaw 3 permit holders to work in the oyster farm fishery under the management of Seasalter. However, this offer was declined by Seasalter, who feared the risk of a much larger number of fishermen working and damage or theft from the oyster farm.
6. NWIFCA officers consider that the risk of significantly increased numbers of fishermen is low. Numbers of byelaw 3 permit holders are much reduced to less than 120 and many live outside the District. The value of mussels makes travel to mussel fisheries uneconomic. Therefore the risk of damage or theft would not be significantly increased from the current position. IFCOS's would also be available to observe, report and collect evidence of damage to the oyster farm although NWIFCA could not be held responsible for any damage which occurred.

Update since TSB 1 November meeting

7. During November, the operators of the oyster farm attempted removal of mussels from the seabed without a NWIFCA authorisation on a number of occasions. Enforcement action was taken by IFCOs. Seasalter and Boughton Estate have asserted that the oyster farm has a right to remove fouling mussels from the seabed without an IFCA byelaw permit and have repeatedly stated their intention to continue mussel removal without an IFCA Byelaw 3 authorisation.
8. The legal position has become further complicated because Seasalter as owner/occupier of land forming part of an SSSI have renewed their consent from Natural England to remove fouling mussels from the oyster trestles and from the seabed around the trestles. While the NE consent makes clear that holders must obtain any other permissions which may be required, the NE consent has been used to claim that no other permission is needed.
9. A further meeting with Seasalter and other parties was proposed by NWIFCA for 21 November but refused by Seasalter stating that NWIFCA must adapt to their requirements and that there is nothing further to discuss.
10. This dispute has now been escalated by a letter received by NWIFCA from solicitors acting for Seasalter asserting that their clients claim a right to remove fouling mussels from the seabed around the oyster farm. The letter has been referred to NWIFCA solicitors.

Urgent requirement for NWIFCA action

11. There is an immediate risk that Seasalter having refused the offer to meet IFCOs for discussion will attempt to restart mussel clearance from the seabed without a NWIFCA authorisation and without opening the fishery to all Byelaw 3 permit holders. Both Seasalter and Kingfisher have stated that they do not need an IFCA authorisation and that they will restart mussel fishing without a NWIFCA authorisation.
12. Such fishing would immediately result in further complaints from the fishing industry in North Morecambe Bay. Extensive poaching of seed from other mussel areas around Foulney Island would also be expected leading to an unacceptably high demand on IFCA enforcement resources. It could also lead to disputes which could become violent on the beach at night both between groups of fishermen or between fishermen and IFCOs.
13. On 19 November, the Head of Enforcement while patrolling and attempting to inspect a catch was threatened on the beach with a knife by a fisherman. Police were called to deal with the alleged offence which is being investigated. Although this is considered to be an isolated case involving an individual with a history of violence, it illustrates the difficult situations which IFCOs can become involved in without warning. While IFCOs are instructed to avoid and withdraw from confrontational situations that could result in attacks against their person, NWIFCA must act to reduce these risks wherever possible.
14. Of wider concern to the IFCA is the problem that such fishing attempts create justifiable confusion about the legal position among fishermen who are unclear about whether or not they can fish around the oyster farm or in the wider Foulney mussel beds. They may receive instructions from IFCOs, which are contradicted by shellfish buyers.
15. Up to now NWIFCA has not felt it to be necessary to attempt to clarify the unsupported claims by Boughton Estate to own fishery rights on their land in North Morecambe Bay. NWIFCA is also confident that whether or not Boughton Estate does have fishery rights, the MACCA (s158) gives IFCA byelaws primacy over fishery rights on protected areas and Morecambe Bay is such a protected area. Therefore byelaws apply over the oyster farm area and NWIFCA has a duty to enforce such byelaws whatever the legal position over fishery rights. However in the context of the current dispute with Seasalter, the claim of fishery rights are being using to create an unacceptable level of legal confusion over the legality of seed mussel fishing and should be clarified.
16. Another factor is the expansion of the oyster farm over public fishery land in North Morecambe Bay. There has been no consultation over the expansion with other fishing interests and despite letters to Boughton Estate from Morecambe Bay fishing associations and NWIFCA, no clarification has been received over the details of the plans or the impacts on the public fishery which may be expected. This suggests that Boughton and Seasalter consider that they can expand the fishery without consultation on the basis of their claimed rights of fisheries.
17. Clarification of fishery rights will make a significant contribution to the legal basis for the proposed Morecambe Bay Fishery Order. Recent events over Boughton land show that it is not a viable option to enter into a long term Order without legal certainty over this important area. There are other areas of Morecambe Bay where fishery rights are claimed which should also be investigated.

Proposed actions for NWIFCA

18. Firstly, Officers consider that it is now an appropriate time to attempt to clarify the legal position over fishery rights in Morecambe Bay. The most obvious way of doing this would be to instruct NWIFCA solicitors to seek a formal written legal opinion from a suitably

experienced Barrister on the fishery rights in Morecambe Bay. There will be a significant cost to this work and I do not yet have figures but would intend to meet the costs from the 2013-14 budget.

19. Secondly, Three options for dealing with the likelihood of further illegal fishing have been identified:
 - I. Option 1: Do nothing and withdraw from any enforcement of the oyster farm area (fig 1). This would allow Seasalter to act without hindrance clearing the area of mussels and generating income for a group of fishermen and Kingfisher Seafoods. However, this would be illegal under NWIFCA Byelaw 3 and seen by the rest of the industry as the IFCA failing to enforce its byelaws. It would lead at best to a severe loss of credibility. Widespread poaching in other areas would be expected in response to perceived unfairness in this policy.
 - II. Option 2: Enforce restrictions in the oyster farm area allowing fishing only on the trestles. This would carry a high enforcement cost and could lead to the fishery becoming out of control with extensive poaching in the wider Foulney area. NWIFCA would be accused of being inconsistent and of failing to properly enforce its byelaws with associated loss of credibility.
 - III. **Option 3: Recommended option.** Prepare a new Byelaw 3 authorisation to allow all permit holders to fish for mussel seed in the vicinity of the oyster farm. This authorisation would be issued either if Seasalter request such an authorisation or if Seasalter make further attempts to remove undersize mussel from the farm without a NWIFCA authorisation.
20. The main purpose of this authorisation would be to ensure that fishermen are not placed in a difficult position of being asked to fish by Seasalter or its agents without a valid NWIFCA authorisation being in place.

Chief Executive
4-December 2013