

ANNEX B

AGENDA ITEM 10 ((NWIFCA BYELAW 3: COCKLE AND MUSSEL MANAGEMENT)

INDUSTRY COMMENTS RECEIVED

From Paul Garnett (by email)

Re draft Byelaw No.3 for cockle and mussel permits. I can see that a substantial amount of thought and work has gone into this, and that it has incorporated very much of the feedback from the fishermen to the IFCA about the management of the fishery. It is a good piece of work, is generally pitched with about right balance for enforcement, management, and pragmatics of the fishermen's operations, and the IFCA officers are to be commended for it.

In terms of feedback upon the draft byelaw:

- I believe that the fee for a permit (£500 per annum) is about right;
- It is good that permits are not transferable;
- Paragraph 3 about closure of cockle or mussel beds on the advice of scientists, should qualify the nature of the scientific advice somewhat better: as currently drafted it allows a particle physicist with an anti-fishing bias to recommend the closure of the beds. Further such advice should be tempered with consultation with the fishing industry who might be in a position to provide contrary advice/evidence with good justification (I have seen this with individuals reading offshore survey reports which by their nature only consider a few features/species in a limited area and make those features/species appear more threatened or vulnerable than is really the case : supposedly rare pink sea fans in Lyme Bay affecting the scallop fishery there, and later being found to be more common, is a good example).
- The new entrant paragraph 18i), Health and Safety at Sea certificate, should be either that or a Safety Awareness certificate, because the two are equivalent alternates accepted by Seafish and MCA.
- You should be aware that "valid" for these certificates just means that the individual successfully completed the relevant course at some time in the past: many older certificates have no expiry date, and even when newer ones have such it is not considered by MCA at the present time. This might be something to go in guidance notes accompanying the byelaw, rather than in the byelaw itself.
- In paragraph 20 "Support worker permit" there are points about transporting shellfish, weighing shellfish and actions ancillary to shellfish harvesting: these are all activities undertaken by individual fishermen working independently or in small independent groups not under the umbrella of some other gangmaster. Please ensure, and be explicit that any fisherman with a cockle or mussel gathering permit is able to do the activities listed as requiring a "support worker permit" without having to also have a "support worker permit" : I am sure this was the intention but it should be explicit within the provisions of this paragraph of the byelaw.
- Paragraphs 21 and 22 "Use of boats" are about right in terms of meeting safety considerations whilst being pragmatic. You might have guidance notes which reference the relevant small open fishing boat MCA requirements. An "adequate anchor" should include the anchor rope/cable as well as the anchor itself: whilst working on Foulnaze I saw a few boats with inadequate rope used for the anchor, and insufficient length of rope for the local conditions.
- In terms of the minimum landing size for cockles, please allow that the fishery officers may make a derogation from the conditions of paragraph 10 where circumstances suggest this is appropriate. The situation on Foulnaze last autumn (large bed partly sizeable, partly just undersize, exposed location liable to loss in the coming winter) is one in which example: if

the whole bed had remained closed for another year until all of the cockles on the bed reached size, would have resulted in the complete loss (waste) of the entire fishery.

- As you propose to charge a significant annual fee for permits, you should also be more pro-active in communicating (and consulting) with permit holders about cockle and mussel fishery prospects and management than has been the case to date (e.g. no timely communication with permit holders about the opening of the Leasowe beds in November 2010; likewise for the Southport beds last year; I understand that Foulnaze was unknown until circa early August 2011, so is not an example).

In terms of other related feedback:

- I am concerned that the Sub-Committee meeting tomorrow is to be closed to the public. So far as I can see, there are no matters on the agenda which by their nature would lead to exclusion of the public; indeed all of the agenda items naturally lend themselves to a meeting which the public may attend (but obviously not normally participate in). Is such an exclusion really in order in this case?
- The Marine and Coastal Access Act requires that relevant parties be consulted when formulating new or amended byelaws, particularly when as with the cockle fishery, this occurs following an emergency byelaw. I am a cockle and mussel permit holder, and I have also provided some feedback in relation to the management of the cockle fishery following the events last autumn. I have not been consulted regarding the proposed draft byelaw, I have not seen anything in the draft byelaw of the report upon it suggesting such a consultation with cockle and mussel permit holders (indeed there is every suggestion that the intention is to pass this byelaw at a full Committee meeting mid-March). I am only aware of this proposed new byelaw at all because I have been vigilant in checking the IFCA website, and have seen it appear in the papers for the meeting just a week before that meeting is due to occur. I do not like to give the IFCA officers more work, however if I am right, then not carrying out such a consultation leaves the risk that any new byelaw open to challenge upon those grounds, so you get back to the situation of the current un-enforceable byelaw no. 5.
- Consultation with the fishing industry should include all permit holders, not just the buyers and processors.
- I note that Agenda Item No. 10 is a verbal update on the Ribble Cockle fishery. Since this is a closed meeting, could the IFCA please aid dissemination of that information, e.g. by posting a transcript of that verbal update on their website, as soon as reasonably practicable after the meeting (morning of Monday 20th should be time enough and reasonable).

To conclude, I think that the draft byelaw no 3 appears to be pretty close to right, and I personally would think it okay if all of the points I listed above are remedied appropriately, however the IFCA officers need to learn to actively consult more extensively than they have perhaps been used to (my perception from handling of cockle fisheries in recent years) -- this is one of the changes coming out of the terms of reference for IFCA's in the Marine and Coastal Access Act.

Further comment by email 16 March

Just reading the draft byelaw for this morning's meeting (16th March). One omitted word in para 14 in case nobody else has spotted it.

... shall be advertised widely as such by notices ...

I've read the byelaw text so far, now getting on to the Explanatory Notes. Looks very good so far. Nice job. Well done.

Please keep the explanatory Notes with the byelaw so that committee and officers in 10 or 20 (or more) years' time can know what was done and why (have seen that Eastern SFC/IFCA tend to

forget anything over 10-15 years old due to staff turnover – expect this is typical of SFCs and IFCAs, and hard to do much about).

Wayne Craig (by telephone)

I have seen the report on the website for Byelaw 3 (Cockle and Mussel Management) and want to make the following comments.

1. I agree with the proposal to charge for permits and think £500 is reasonable.
2. I have spoken to other fishermen about the proposed number of 500 permits and all feel this figure is too high.

Douglas Alder (by post)

I read in Fishing News about new cockling regulations consulting etc.

I am not at all in favour of paying a fee for a permit, as how do we know you will open the beds or do any good.

I know fishing is a gamble, 24 years has taught me that, however I do agree with training and local fishermen having a permit for that area.

A course every 4 or 5 years just to bring you up to date with new safety ideas at “modest fee” like Seafish Safety Courses or funded as health and safety is important. To help pay, maybe a fee on each day’s work, i.e. bag you land “at least that way you have gathered it”. I would think a course ran in summer each year for a month or two would give us all the chance to do it within the 4 or 5 year span as your time permits again like a MCA inspection on a boat.

P.S. I mention every year because “like myself” I work on a bigger boat as well as my own, so one year I might be at sea when courses are on or do a course or two every month so we can all get on one. Rather than a stick to a carrot so you can plan when to go on a training course and as long as you keep up with training within say 5 years it would benefit us all again like a MCA boat inspection does.

Comments from Carl Harmes and Brian Faulkner at Meeting with SA, DD, SB, MD 16-2-12
Carnforth Office

Industry requested:

Continuation of restrictive permit scheme and reduction in numbers below present levels. 500 is too many. Do not want addition of 40 new entrants per year.

Rigid riddles should be a legal requirement.

Agree with concept of support worker permits.

Support the inclusion of additional safety courses as a means of promoting the ideal of making all permit holders professional fishers.

Support a common mussel size of 45mm throughout the District.

Seasonal closure in line with Dee and/or South Wales but would like some flexibility to allow for changes in cockle life cycles from year to year.

Support charging to remove ‘amateur’ fishers. £500 is acceptable annual charge.

From Joe Morrissey (by email)

I'm not against a fee, but am going to find it hard to pay for this since I've been made unemployed and not been able to work because of the closure, therefore going to find it hard to come up with this kind of money with no work to earn money. Is IFCA going to allow fishermen who have been stopped from working and earning a living, a roll on period where we can work for a month to get the funds together then pay for our permits?? We are full time fishermen and have had no other job to go to since the closure, not like the builders, plasterers, landscape gardeners and other people who jumped on the bandwagon who have gone back to their jobs earning money and therefore will be able to afford this fee. Would you pass this on to Dr Atkins and also the comment why? for us please.

From Terry Davies (by email)

Hi Bob just wanted to comment on the notice Stephen has put on the website in regards to spat being damaged July if the cockle bed was reopened. In my opinion it would not make any difference as the spat would be there September if there was any anyway and also there is spat on beds in other parts of the country, i.e. South Wales and the River Dee but these beds are open at this time of the year and it doesn't seem to cause any problems there. I just think if the beds are opened September all the reasons for closing it in November 2011 will have been a complete waste of time and the same problems could resurface once again.

From: Oliver Vardy, Maritime & Coastguard Agency (by email)

We are contacting you in order to help us alleviate the problematic situation that arises on the sands when the Southport / Lytham St. Anne's beds are open.

As you are well aware, as the government agency that coordinates and provides emergency response for the UK coastline we end up dealing with literally hundreds of calls each year with specific regard to these fisheries. This costs us a considerable amount of time, resources and money. The current situation is not sustainable from our point of view and unless we all take some action here we risk another 'Morecombe bay' style incident (we feel we are running on borrowed time again).

Given that the activities are mainly shore based we have no jurisdiction over those involved and as such we cannot force the people involved to ensure that they are taking basic precautions in order to a. look after themselves and b. mitigate some of the risks involved.

We have been seeking a way forward in this regard and on discussion with our mutual colleagues at DEFRA it has been suggested that the best way forward on this would be through the licences issued by yourselves.

We would be seeking to impose some form of qualification / training before an individual is allowed to fish the foreshore.

I have various colleagues who are far better equipped with local knowledge, and who have dealt with the area and the situations arising for many years. From MCA Fishing policy HQ we can help facilitate ideas and make policy happen but it would be best if you could liaise with my colleagues up in MCA Liverpool and discuss what you feel would be the best way forward in this regard.

I have two colleagues who are very much involved with the issues, Roger Harbourne and David Edmunds and it would perhaps be best if I leave you to further discuss.

RSPB Comments to draft byelaw 3: Cockle and Mussel Management

The RSPB are supportive of the NWIFCA's move towards embracing their greater byelaw making powers. Byelaw making powers under the Marine and Coastal Access Act (2009) are considerable and we welcome the consideration that the NWIFCA are taking with regards to their future use during this byelaw drafting process. In particular, we encourage the use of permits to authorise and limit activities under byelaw. We believe that the use of permits has the ability to transform the way that inshore fisheries are managed.

We feel that using the new byelaw making powers to their full extent should allow NWIFCA greater control over inshore fisheries within the district, and ultimately should give rise to more sustainable fisheries (both in terms of environmental sustainability and sustainability of stock).

With this in mind, we would welcome more reference to how NWIFCA plan to exercise their functions in a way that furthers the objectives of marine conservation, and the protection of important sites and species, within this byelaw.

Summary of Aims and Content of Byelaw 3

3 – Restrictive Permits. The RSPB welcomes the move towards the use of restrictive permits to authorise and limit activities under byelaw. It is not completely clear within this section whether the content of this byelaw is proposing further restrictions of permits beyond the restrictions already in place (requiring NI number, etc). The current permit system (free of charge but requiring NI number) certainly has merit, by both holding fishers accountable for their own actions, as well as deterring those who seek to defraud the Inland Revenue or commit benefit fraud. However, under this type of permit system, the ability to control fishery effort appears to us to be fairly limited. One only has to look at the number of fishers who turned up at the Ribble on the 1st September 2011 under this system to see that effort under a "free of charge" permit system is difficult to control. Restricting fishing effort by restricting the number of permits issued more tightly than simply permitting all those with eligibility to work in the UK would facilitate closer management of cockle and mussel fisheries, in line with environmental limits and requirements.

7. Seasonal and Management Closures. The RSPB welcomes the cockle seasonal closure being brought into line with the closed season currently in force on the Dee Estuary Cockle Fishery Order (1st January – 30th June).

February, March and early April is the most critical feeding time for wintering birds on UK estuaries as they are required to build up energy (i.e. fat reserves) to fuel a demanding migration back to summer breeding grounds. This need for increased feeding rate also coincides with the period when food stocks are at their lowest, with invertebrates not breeding since autumn. Any additional stress from disturbance or competition for bivalves during these three months (Feb, March, April) could therefore have huge implications for birds affected. Thus, we welcome the move to bring the cockle seasonal closure in line with the Dee Fishery Order and it should be recognised (within this byelaw) that in doing so this will also help to mitigate against competition and disturbance impacts on bivalve dependant waders.

8 – Closure of defined areas. We welcome technical control measures for shellfisheries according to what is regarded as sustainable and will bring about maximum benefits to the stock.

The RSPB urge the NWIFCA to also consider other space and time control measures within Byelaw 3 for sustainable stock management purposes, for instance rotational management, weekend fishery closures and time of day controls.

9 – Minimum landing sizes. We welcome technical control measures for shellfisheries according to what is regarded as sustainable and will bring about maximum benefits to the stock.

10 – Redeposit of shellfish. We welcome technical control measures for shellfisheries according to what is regarded as sustainable and will bring about maximum benefits to the stock.

11- Charging for permits. We recognise that the NWIFCA has begun to explore the possibility of charging for permits within the Byelaw 3 review document.

The RSPB believe that there are substantial benefits to charging for permits. It can help to restrict fishing effort, and allows this fee to be spent on management of the fishery itself. We appreciate that Authorities have limited resources for enforcement and monitoring and thus charging for permits would allow the IFCA to recover, in full, the cost of managing the fishery.

Further to this, charging for permits could also significantly increase the NW IFCA's ability to deliver conservation protection. It could give the NW IFCA the financial ability to contribute to the monitoring of stocks and other biotic factors on sites of international importance (namely SPA and SACs), on which nearly all cockle and mussel fisheries in the North West are to be found. Good survey data and a greater understanding of bird-fisheries relationships within an SPA would allow management decisions to be fully backed by sound science and biological information. It would increase the IFCA's and Natural England's ability to effectively pre-assess the anticipated level of fishing for potential impacts on designated site features.

Charging for permits is also an effective management tool for limiting fishing effort. With sound science and biological information, the amount of total allowable catch for a fishery can be pre-determined, and number of chargeable permits regulated seasonally.

Further Nature Conservation Considerations

The RSPB urge the NWIFCA to consider output control measures for stock management purposes. Total Allowable Catches, daily and weekly catch limits, and individual quotas can also limit effort and ensure that there is more provision made for spawning/brood stock, and SPA features, which can result in a more sustainable practising fishery. Some fisheries, as a rule of thumb, have a stock conservation rule of taking a third of the biomass of adult standing stock each year i.e. 33% to the fishermen (using a TAC system), 33% for feeding bivalve-dependent wading birds, and the remaining 33% to act as spawning stock, in order to sustain the fishery. We also refer you to Natural England draft paper (2011) 'Conservation objectives for oystercatchers and possible implications for management of cockle fisheries in the Ribble Estuary', whereby it is advised that up to 8x the amount of the shellfish biomass that will be consumed by oystercatchers must be available in autumn if most birds are to survive until spring. It is common conservation policy and practise in the management of shellfisheries elsewhere in the UK and Europe to allocate and reserve an amount or proportion of stock for bivalve-dependant waders. This policy and practise has not been adopted in NW England shellfisheries so far.