



**North Western
Inshore Fisheries and Conservation Authority
Annual Meeting: 17 May 2011
Copeland Borough Council Offices, 11.00 a.m.**

Agenda Item: 7

**BYELAW 5 – PERMIT TO FISH FOR COCKLES (*Cerastoderma edule*)
AND MUSSELS (*Mytilus edulis*)**

Purpose

To present evidence and justification for the extension of the current Byelaw 5 to cover the period 1st September 2011 to 31st August 2013.

Recommendation

1. **That the Authority 'makes' the draft Byelaw 5 (Annex A)**

Introduction and background

1. Cockle and mussel fisheries in North Western England were regulated under SFC byelaws prior to 1 April 2011. All SFC byelaws were transferred to IFCA byelaws on 1 April under SI No 603 (Fisheries. The Marine and Coastal Access Act 2009 (Transitional and Savings Provisions Order 2011). Any byelaws made or remade by IFCA must be made under the new legislation.
2. Byelaw 5 (copy attached at Annex A) was introduced in 2007 following several years when the number of cockle fishers in Morecambe Bay had increased to unacceptable levels. The fishery caused excessive disturbance to local communities and damage to sensitive coastal habitats. High levels of illegal activity such as benefit and tax fraud, unsafe working practices, traffic and vehicle offences and immigration offences associated with the fishery were detected.
3. Byelaw 5 requires all fishers to hold a permit issued upon production of evidence of identity, the previous year's permit and a training certificate. The only other way to procure a permit is to be allocated 1 of 40 new permits each year according to a waiting list. Thus the byelaw limits the numbers of fishers who can exploit cockle fisheries in the District. It also requires all fishers to have a right to work in the UK as evidenced by a National Insurance number and to have completed a specified 1 day training course on safe working on the shores of NW England.
4. Defra required this byelaw to be made with a 2 year expiry date because it sets out a precise schedule for operation of the permit scheme for each year of operation. The byelaw was first created in 2007 for 2 years and renewed in 2009 for a further 2 years. This byelaw expires on 31 August and must be remade to come into force in time for the end of the seasonal cockle closure on 1 September 2011.

5. Time is short to remake Byelaw 5, have it confirmed and implemented by 1 September. At the first opportunity after vesting of the NWIFCA on 1 April 2011, the remaking of the Byelaw was approved by the NWIFCA Technical, Scientific and Byelaws Sub-Committee on 6 April. As recommended by Officers, the Sub-Committee considered that in order to complete the byelaw by 1 September, only the minimum essential changes should be made.
6. Officers met with MMO and Defra on 11 April to review the need for the byelaw and consider how the guidance to IFCA on making byelaws should be applied in this case. The group concluded that an evidence statement based on the history and background to the byelaw should be prepared. An impact assessment should also be but as the byelaw had been in place for the previous 4 years and had been relatively successful additional research to complete these documents should not be required.
7. A schedule for the remaking of the byelaw was prepared following the meeting as set out in Table 1.

The Requirement for Byelaw 5

8. There is an urgent priority to remake Byelaw 5 which expires on 31 August 2011. The byelaw is needed to:
 - i. define an entitlement to fish for cockles and mussels in the NWIFCA District,
 - ii. provide a cap on numbers of fishers entitled to fish,
 - iii. ensure all fishers operating legally are properly identified, have the right to work in the UK with a National Insurance number and have completed a 1 day training course on safe working in intertidal areas,
 - iv. reduce illegal activity in the fishery in areas such as gangmaster working, benefit fraud, vehicle offences, tax evasion, unsafe working practices, illegal immigration, false identity.

The Objectives of the Byelaw

9. The following are the main objectives of Byelaw 5:
 - i. To limit the numbers of cockle and mussel fishers in NW England.
 - ii. To improve safety and reduce risk for cockle and mussel fishers.
 - iii. To list with identity evidence all cockle and mussel fishers operating commercially in the District.
 - iv. To gather evidence of catch when resources allow for collection of this data.
 - v. To establish track record of fishing and eligibility for future cockle and mussel permits.
 - vi. To provide other regulatory authorities with data to reduce illegal activity associated with cockle fisheries.

The Options considered

10. The IFCA has 3 options:
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- i. Do not renew the byelaw.
- ii. Renew the byelaw without certain provisions such as the cap on numbers, the training course and the requirement to submit catch returns.
- iii. Renew the byelaw unchanged for the NWSFC part of the NWIFCA District, i.e Hilbre Island on the Wirral to Haverigg Point in Cumbria. This requires the addition of a new paragraph 1 to define the area to which the byelaw will apply.

Option 1 appraisal

- 11. If the byelaw is not remade, the following consequences would be expected:
 - i. The cockle fishery will proceed with much reduced regulation;
 - ii. NWIFCA will not have a permit scheme in place to manage cockle fisheries;
 - iii. Anyone would be able to harvest this public fishery without registration or identification so the NWIFCA will have no record of who is fishing legally;
 - iv. Enforcement of other cockle fishing regulations such as the minimum landing size would be more difficult;
 - v. Other Departments including Local Authorities, Gangmaster Licensing Authority, Health and Safety Executive, Police, Department of Work and Pensions, Immigration Service, Inland Revenue and other regulatory authorities would be less able to enforce illegal activity associated with the cockle fisheries.
- 12. These consequences make this option unacceptable and it is dismissed.

Option 2 Appraisal

- 13. Officers and members agreed at the sub-committee meeting on 7 April that certain changes to the byelaw could make it more effective. These could include reducing the number of new permit holders allowed each year from 40 to (say 20), requiring hobby fishermen collecting 5kg or less per day not to use motorized transport and setting up a separate permit system for dredging.
- 14. The difficulty faced by the Authority is that any such changes would be expected to generate considerable discussion and objections at the consultation stage of the byelaw. There is now insufficient time to fully address the questions which are likely to be raised if the Authority attempted to introduce any of the changes suggested above. There would be a high risk that changes would delay the introduction of the byelaw. The sub-committee agreed that Byelaw 5 should be replaced by a NWIFCA District-wide shellfish permit scheme as soon as possible as part of the review of byelaws required under the Authority's success criteria. This option is not practical in the time available.

Option 3 Appraisal

- 15. This option continues delivery of the objectives of the byelaw as in the past 4 years.

Effectiveness of byelaw 5 and difficulties caused

- 16. The byelaw has to a large extent been successful in its aims of reducing fishing effort on cockle and mussel fisheries and ensuring that all fishers have had some basic training in appropriate field craft before they commence fishing. There are now approximately 450 Byelaw 5 permit holders in 2010-11 compared with over 1500 permit holders in 2007-8.

17. The byelaw creates significant enforcement problems. Some UK residents who would expect to be able to get a permit for a public fishery in England are unable to do so because of this byelaw. In the past if the SFC was provided with correct identification details a permit would be issued and a fisher could commence fishing. Under this byelaw, permits are not generally available and the incentive to fish without a permit is significantly increased. When cockles are abundant as they were on the Wirral in November 2010 there are significant numbers of fishers on the beach without permits. In the case of the Wirral there may have been as many as 300 fishers without permits and the IFCA does not have sufficient Fishery Officers to fully and safely enforce this byelaw by checking that all fishers have valid permits. The recent Wirral fishery has focused attention on this problem.
18. A further difficulty is the bylaw provision for hobby fishing without a permit. Because cockle fisheries are public, Defra required that a non-commercial level of fishing should be permitted under the byelaw without a permit. Therefore the byelaw permits 5kg to be taken per day and Fishery Officers are faced with having to judge if each individual is fishing commercially. This is a major enforcement loophole which limits the opportunities to bring prosecutions under this byelaw.
19. The byelaw is a major administrative burden to operate. The SFC now holds the individual records including photographs of 2-3000 thousand permit holders who have participated in cockle and mussel fisheries in the NWNWSFC District since permits were introduced in 2003. Although numbers have reduced there are still between 400 and 500 permit holders who must reapply each year and whose details must be checked, logged onto the database and to whom new permits must be issued.

Stage	Deadline	Action
1	End April.	NWIFCA will draft an IA and Evidence statement to be sent to Defra as soon as possible for comment and approval.
2	End April.	NWIFCA will consult MMO on media for advertising the byelaw as we have consulted Defra in the past. The new guidance appears not to require this? An information mailshot to all permit holders should be considered.
3	17 May	NWIFCA will remake the Byelaw.
4	End June	NWIFCA will advertise the byelaw for 2 weeks as in the guidance and give 28 days for objections.
5	1 July	Application process for 2011-12 permits starts as in the byelaw.
6	End July	Objections to be resolved.
7	Mid-August	Defra to sign off Byelaw
8	Mid-August	After sign off, permits issued to commence 1 September 2011.
9	1 September	(Legal) Fishing commences.

Table 1: Schedule for remaking NWIFCA Byelaw 5

Table 2 History of the main events and reports leading to the making and remaking of Byelaw 5

Date	
11-06-2004	Interagency meeting Chair Geraldine Smith MP
16-08-2004	Meeting Elms Hotel
17-08-2004	Colin Penny (Defra) note of meeting with Geraldine Smith MP. Called for (amongst other things) other Departments to address illegal aspects of fishing, for amendments to the 1966 Act to enable SFC to limit numbers of permits.
24-08-2004	Warton Sands cockle fishery Environmental bodies meeting
24-09-2004	NWNWSFC Scientific and Byelaws Sub-Committee Minute 225 and Officer's report. Proposal to introduce District wide permit scheme under Byelaw 13A. Scheme approved by Fisheries Minister
16-12-2004	Notice to English Nature of intention to introduce the Byelaw 13A permit scheme and EN reply dated 5-1-2005
31-01-2005	Proposal to introduce Byelaw 13 A permit scheme Appropriate Assessment
01-04-2005	NWNWSFC meeting Minute 312 Byelaw 13A permit scheme, effectiveness, bed closures and problems with the scheme.
20-05-2005	NWNWSFC Scientific and Byelaws Sub-Committee Minute 280 Byelaw 13A permit scheme effectiveness and difficulties.
30-09-2005	NWNWSFC Scientific and Byelaws Sub-Committee minute 16 and Officer's report on management of shellfisheries. Meeting approved the continuation of Byelaw 13A permit scheme; a report on low Morecambe Bay stocks; closure of fisheries for conservation, and joint agency working to manage shellfisheries. Concern was expressed that Byelaw 13 permit could not limit numbers and the need for SFC to gain modernised powers. Meeting with Minister Ben Bradshaw proposed.
03-02-2006	NWNWSFC meeting Minute 65, Officers report and draft Byelaw 5 stating the enforcement problem of cockle fisheries, the limitations of SFC powers, the proposal for Byelaw 5 and discussing the measures to be included in the byelaw.
March 2006	Report on aims and rationale for Byelaw 5 and amended draft byelaw.
23-03-2006	Email letter to Defra stating intention to make Byelaw 5 and timescale.
02-05-2006	Notice of NWNWSFC meeting on 19-5-2006 to Defra and WAG stating intention to make Byelaw 5
08-09-2006	Minute to NWNWSFC and Officer's report revoking and remaking Byelaw 5 after the version made in May 06 was amended to take into account Defra advice
12-09-2006	Letters to Defra and WAG reporting the making of Byelaw 5 and the publications in which the byelaw will be advertised
19-09-2006	Application to DWP to require permit applicants to provide their National Insurance Number.
19-09-2006	Email from WAG approving publications for advertising Byelaw 5
22-09-2006	Email from Defra approving publications for advertising Byelaw 5
01-12-2006	Byelaw 5 papers to Defra for confirmation

08-12-2006	NWNWSFC meeting. Minute 152 and officer's report on how objections were handled. Explanatory note to Byelaw 5 approved.
22-12 2006	Byelaw 5 signed by Defra
Jan 2007	DWP approval received for applicants to provide National Insurance Number
25-04-08	NWNWSFC Scientific and Byelaws Sub-Committee Minute 33 and Officer's report. Meeting recommended that September Joint Committee meeting be asked to approve continuation of the current Byelaw 5. Numbers of new entrants to be looked into.
12-09-08	NWNWSFC Minute 329 and Officer's Report seeking approval to extend current Byelaw 5 to 31 August 2011. Confirmation received from Defra that they were happy with wording of proposed byelaw. Byelaw made.
16-09-08	Letters to Defra.WAG reporting the making of Byelaw 5 and seeking approval of the publications in which the byelaw would be advertised.
22-10-08	Letter from WAG approving publications for advertising Byelaw 5
12-02-09	Byelaw 5 papers to Defra/WAG for confirmation
15-07-09	Byelaw 5 signed by Defra/WAG
08-02-11	NWIFCA Minute 29 and Officer's report. Members agreed to renewal of Byelaw 5 with effect from 1 st September 2011
06-04-11	NWIFCA Technical, Scientific and Byelaws Sub-Committee Note 7. Members agreed that Officers should prepare a byelaw to be made at 17 th May NWIFCA meeting.

Chief Executive
North Western Inshore Fisheries and Conservation Authority
27th April 2011