

NWIFCA Technical, Science and Byelaw Sub-Committee

17 May 2013: 10:00am

AGENDA

ITEM NO

9

NWIFCA NOTE ON NEW NWIFCA NETTING BYELAW

Recommendations for proposed new netting regime

1. Simplified use of EU standard maximum and minimum mesh sizes for intertidal fishing across the whole district.
2. Introduce a small scale permit scheme to distinguish commercial and amateur fishermen and gather information on fishing effort and catches in the district and to aid in net identification.
3. Set a maximum permitted total net length for recreational fishermen rather than a bag limit.
4. Retain legacy gear marking requirements with extra identification requirements linked to the permit scheme.
5. Retain EA legacy provisions as drafted in current byelaws for the protection of salmonids.

Issues to be Addressed:

The drafting of a new byelaw to regulate both boat-set sea netting and shore-set intertidal netting in the District provides an opportunity to attempt to address a number of issues with the current system. The primary goals are as follows:

1. To apply standard minimum mesh sizes for nets district wide for the protection of undersize and immature sea fish. At present the EU minimum sizes do not apply to shore-set nets and so there is a need to standardise the different measures inherited under legacy byelaws. A standard maximum length of nets would also be desirable.
2. To ensure the ongoing protection of salmonid species during their annual breeding runs. It is arguable that this is no longer within the remit of the IFCA but Defra and MMO have expressed the opinion we can continue to protect these species in our byelaws as part of our general duties towards the marine environment. On the other hand, it is no longer necessary to retain exactly the requirements previously dictated by the EA into our byelaws where they may be causing under or over protection.
3. To address various practical difficulties with the enforcement of the measures, and introduce a new permit scheme for netting. In theory gear marking requirements should make it possible to identify who has placed what nets and so identify any offenders, however in practice gear often is not and possibly cannot be properly marked. In addition, fish caught by intertidal netting are not subject to the Registration of Buyers and Sellers Regulations and so there is an issue with unknown quantities of 'grey' fish being sold in the district and in certain areas 'black' fish caught by netting from unregistered vessels.

As an overarching goal it would also be desirable to simplify the regulatory regime as far as possible and make restrictions as consistent as possible throughout the district.

Proposals to Address these Issues:

1. Issue 1 - net mesh sizes and limits is simple to address. The size of mesh for intertidal netting will be set at the EU level of a minimum mesh size of 90mm for the larger sea fish and a maximum mesh size of 70mm when fishing for shrimp and small fish. It is also

proposed to limit the maximum length of nets to 275m, with a spacing of 150m between nets, in accordance with current restrictions. It is also proposed to limit recreational net fishermen to a maximum total length of net of 275m anywhere in the District. These measures are intended to provide a simple standard regime with minimal impact on the current practice of fishermen. The use of a maximum total net length permits a small amount of hobby fishing without using a crude bag limit that may simply result in fish wastage.

The net mesh sizes are derived from the technical measures in Directive 850/98 Annex VI. They preserve the most significant prohibited mesh range of 71-89mm which is seen as most likely to damage undersize fish while allowing the fishing in the industry to exploit the stocks of the diverse species that are found in the district. The minimum size of 90mm is that which is specified for Sea Bass and Grey Mullet in the Directive. In the EU regime some other fish species, such as Haddock and various flat fish, require a minimum mesh size of 100mm and the minimum size for Cod is 120mm. However, legacy byelaws have not adopted this regime in full for intertidal netting and have use a simple system of a single maximum and minimum mesh size close to that of the EU. There is no legal requirement to incorporate the more complicated EU system and it is thought likely that attempting to enforce the full table of species specific mesh sizes would be impossible in intertidal areas and likely lead to increased non-compliance and fish wastage. At present there is no scientific data to illuminate whether intertidal fishing is resulting in the taking of undersized fish and so it is proposed to maintain the status quo, which is believed to be effective, unless there is found to be a problem.

The proposal to use a maximum length of net to limit amateur fishing rather than a per diem limit on fish that can be taken was suggested by Fisheries Officer Steve Brown and has the support of other officers. Their experience suggests netting is extremely unpredictable and most fishermen will catch very few fish on most tides and then a larger number at once conditions are correct. To impose a so called 'bag limit' would more than likely be extremely hard to enforce and require fishermen to return dead fish.

2. The second issue - protection of salmonids, could be the source of a far greater amount of difficulty. The solution which has been adopted in the first draft is to maintain the restrictions as they are now in NWSFC Byelaws 26 and 27, CSFC Byelaw 10 and EA Dee Byelaw 5. There are 2 possible alternatives for how this can be drafted. The first is copy and paste of exactly the restrictions as they exist now with 3 sections - 1 for the old Cumbrian district, 1 for the old NWSFC district and 1 for the old Dee district. The second is to attempt to incorporate all of the specific requirements into one district wide regime, which still maintains all of the existing prohibitions.

The reason for the 2 drafting alternatives is that the Cumbrian Byelaw 10 and Dee byelaw 5 require significant redrafting work to incorporate with the NWSFC byelaws as they were drafted in a permissive manner while the NWSFC byelaws 26 and 27 were drafted to be restrictive. In Cumbria and the Dee all netting was banned with permissions whereas in the NWSFC district it was generally permitted with specific restrictions. Why this difference occurred is not clear but incorporating them into a single regime requires altering them so all adopt the same style of drafting. I personally prefer a restrictive approach as I believe it provides greater clarity to end users. A permissive regime in my view leads to a situation where a separate guidance booklet is required in order to set out what an end user actually can and can't do. A permissive regime prohibits a great deal by inference rather than spelling out clearly what is against the law and so I consider it less suitable for byelaws. However, the permissive approach can potentially provide neater drafting and has worked perfectly well in the Cumbrian area. If a permissive draft is required the current restrictive draft could be reversed. The simpler solution may be to simply maintain the distinction between the 3 old district areas in the byelaw. The flaw in this is that it makes the whole exercise feel rather futile and creates an extremely unwieldy piece of legislation. Since this is unlikely to create any practical enforcement difficulties it may be the best solution

however it arguably does not reflect as well on the NWIFCAs approach to meeting the high level objective of reviewing and updating the existing legacy byelaws.

In any case neither of the situations is completely satisfactory as both leave in place an extremely detailed, complicated and oddly specific regime. The regime was clearly thought necessary for ensure complete protection of salmonid species by the EA, but in the opinion of some of our fishery officers in the relevant areas the regime is more restrictive than is really required. In particular Steve Brown has said he would like to see a simplified regime in the old North Western and Dee parts of the district where areas in river mouths are closed all year except to very small scale traditional fisheries in exchange for wider areas with other half year closures being opened. Erik Thinnesen in the Cumbrian part of the district is largely happy with the regime as it stands as the fishermen understand its requirements. However, he does feel that the areas in which fishing is permitted could perhaps be larger as he has found that there can be large stretches of the foreshore, a long distance from any river mouth, where hobby fishermen will occasionally place a net without any reason to suspect they might be breaking the law.

The present legal responsibilities of the NWIFCA do not directly include the protection of salmonids or the management of those fisheries as those responsibilities are exclusively within the jurisdiction of the EA. Some had argued that this may actually make any byelaw provisions drafted with these goals in mind, such as the proposals here, ultra vires and unenforceable. However, DEFRA and the MMO have expressed the view that the IFCA can continue to make and enforce such byelaws in line with their general duties to protect the marine environment as a whole. What is certain is that the IFCA in general and the NWIFCA in this district no longer have a legal duty to defer exactly to EA opinion on the measures that are required. The legacy byelaws were drafted by the EA on the basis of their experience and research. If the Officers and Science team of the NWIFCA were to come to different conclusions on the best regime to protect the marine environment as a whole then the Authority is entitled to introduce its own preferred requirements. This may provide a opportunity to create a simpler legal regime if it is believed this would be of benefit and still provide adequate protection to salmonids. However, such a change would require significant research and consultation and will be a larger undertaking. It also may create practical difficulties if the EA are unhappy with changes being made to the regime they set up for the Sea Fisheries Committees in 2011. They do have wide reaching powers to make their own byelaws to prohibit fishing that might affect salmonids in our district. For these reasons at present the approach preferred is to continue with the rather complicated and unwieldy inherited regime.

3. The third issue - difficulties with practical enforcement, has led to the conclusion that a simple permit scheme could assist in regulating the netting fishery in the district. The scheme envisioned would charge a small administrative fee of around £50 to issue either a commercial or a recreational netting permit. Those wishing to sell any of the fish caught while netting would require a commercial permit. Obtaining a commercial permit would require demonstrating that the fisherman carries on a proper business as a fish seller and if they intend to use a boat, that it is a registered fishing vessel and the individual is registered on the Registration of Buyers and Sellers Scheme operated by the MMO. Recreational net fishermen would be limited to a maximum of 275m of net, the equivalent of a single net set up, anywhere in the district. All permit holders, especially commercial permit holders, will be required to submit returns of their catches and fishing effort and to provide specific details of the net types and numbers they are using. Gear marking will adopt the relatively simple regime currently in force in legacy byelaws as in practice reliable marking of gear is extremely difficult for fishermen and the enforcement of such provisions presents even greater challenges. Marking of nets will now have to include display of the owners netting permit number so officers can enforce the requirements of the scheme and maintain better records of the fishing effort.

According to the Fishery Officers the legacy byelaw regime had several enforcement difficulties. There is a concern that it does little to prevent the catching and selling of black

fish caught by netting from unregistered fishing vessels and that the loophole in national legislation which allows intertidal netters to fish without registering on the Registration of Buyers and Sellers scheme adds to this problem. It is also suggested that fishermen are at times flouting net length, mesh size and net location restrictions in the byelaws. However, the most significant non-compliance is apparently occurring in relation to gear marking. Many nets checked by officers bear no owners markings at all and often do not have the required buoys to mark their position. The lack of buoys may in part be due to sabotage by rival netters and anglers who are known to cut off buoys in an attempt to have our officers remove nets. It is also thought by some Officers to be incongruous with the Authority's management responsibilities that there are no proper records being kept by the IFCA of how many fish are being taken by intertidal netting in the district.

The proposed solution is to introduce the simple permit scheme outlined above. This will give the authority the means to at a minimum track the total number of legal net fishermen and nets being used in the district both on an amateur and a commercial level. It is also hoped that the scheme may also provide some useful information in returns on how many fish are being caught with nets to be sold in the district. It will discourage illegal netting as all nets will have to be personally identifiable by marking and can be cross referenced against a list of permit holders. Intertidal fishermen will also be required to state whether they also operate a registered fishing vessel to discourage fish blacking. However, it is recognised that the proposals will only partially address the enforcement difficulties that netting in the district presents. The area is very large and netting extremely intermittent and so the industry in this area will always be challenging. It has also been questioned whether a permit scheme is a sensible approach to a small scale and historic fishery, particularly whether it is practical to expect traditional subsistence fishermen to submit returns. For this reason, it is envisaged that any returns mandated under the byelaw will be as straightforward to complete and submit as possible. Ultimately, the fact that rather limited information is available on netting in the district and the resulting difficulty in making management decisions and enforcing byelaws is what most strongly recommends the use of a simple permit scheme. It is necessary to attempt to gather further information on the fishery before decisions can be taken on more nuanced management measures in a future byelaw review.

Conclusions

Overall the new byelaw will not greatly simplify the existing system. This is largely due to the difficulties which are presented by the intertidal netting fishery in the district and the problem of salmonids. Net fishing is perhaps the most sensitive fishery in the district to regional differences as demonstrated by the wide variety of different netting types which are incorporated into the legacy byelaws. It is also a type of fishing which is practiced by large and small scale fishing operations alike. It is hoped that the new byelaw will provide sufficient continuity in the fishery that its impact on enforcement burden will be small and at the same time provide greater information to the Authority for future decision making.

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