

NWIFCA Authority Meeting

18th September 2020; 11.00 a.m.

**AGENDA
ITEM NO.
5**

NWIFCA BYELAW 1 MINIMUM CONSERVATION REFERENCE SIZES

Purpose: To report amendments to the byelaw agreed by the August TSB

Recommendations: Make the byelaw at Annex A

Background

1. August 2020 TSB approved amendments to the draft Byelaw 1 as follows:
 - I. Provision for exceptions (paragraph 7) with written permission from the Authority.
 - II. Inclusion of paragraph 4 which provides an allowance by weight for undersize small pelagic species where the measurement of large numbers of fish is impractical, This amendment is further discussed below.
 - III. An increasing MCRS for whelks over 3 years to ensure the MCRS is consistent in this byelaw and the proposed Byelaw 4 Potting permit scheme now awaiting confirmation.

Allowance for undersize pelagic species Byelaw 1 Paragraph 4

2. MMO appointee Mr S Brown has submitted the comments on this question at Annex B. He is concerned about inclusion of this allowance in paragraph 4 of the byelaw. However, to remove this allowance would represent a significant departure from minimum fish size policy over recent decades. To remove the allowance would require more evidence for the regulatory impact assessment. It is not clear what form this evidence would take.
3. Mr Brown's comments were sent to the other 4 IFCA making MCRS byelaws all currently awaiting confirmation by the Minister. They are Northumberland, North Eastern, Eastern and Kent and Essex IFCA. These byelaws all include the pelagic allowance in line with previous minimum fish size byelaws in recent decades.
4. For these IFCA the MCRS byelaw is of great importance to provide legal authority to enforce an MCRS on non-commercial fishing and any fishing from the shore in their Districts. For these IFCA the repeal of EU850/98 created a major loophole as the powers for IFCA to be able to enforce MCRS on non-commercial fishers and those from the shore was also removed. Without EC 850/98, the four IFCA of Eastern England cannot limit the removal of undersize fish from their Districts. In NWIFCA the problem is also present that an important stock protection regime has been removed.

5. The comments received from officers of the above IFCA are recorded at Annex C. They all consider the allowance is needed and that their byelaws may not be confirmed by Defra if it is removed because more reasoning and evidence will be needed. They all consider the allowance has worked well in the past and should continue. Removing it now could have adverse consequences on this IFCA because the byelaw and associated RIA would require more evidence and work. It is clear from the comments received that other IFCA's would not be supportive of NWIFCA taking a contrary position and risking a delay to all the MCRS byelaws.
6. Removal of the allowance would disadvantage fishers in NWIFCA District compared to those fishing elsewhere who will have the catch allowance. Without the allowance in this District it will be necessary for NWIFCA officers to prove that any undersize pelagic fish detected were caught inside the NWIFCA District. This will be a significant increased enforcement challenge.
7. Therefore, the recommendation that the pelagic allowance is included and the byelaw is made as drafted is maintained.

CEO and HOE
September 2020

Annnex A

North Western Inshore Fisheries and Conservation Authority

Marine and Coastal Access Act 2009 (c.23)

NWIFCA BYELAW 1 – MINIMUM SIZES

The Authority for the North Western Inshore Fisheries and Conservation District, in exercise of the power conferred by section 155 and 156 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

Interpretation

- 1) In this byelaw-
 - a) "the Authority" means the North Western Inshore Fisheries and Conservation Authority as defined in articles 2 and 4 of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No. 2200);
 - b) "North Western IFC District" means the North Western Inshore Fisheries and Conservation District as defined in articles 2 and 3 of the North Western Inshore Fisheries and Conservation (Amendment) Order 2019 (S.I. 2010 No. 2200);

Catch Prohibitions and Restrictions

- 2) This byelaw does not apply where the landing obligation under Article 15 of Regulation (EU) 1380/2013, or any subsequent regulation that requires marine organisms to be landed, applies.
- 3) Subject to paragraphs 4, and 6, no person shall remove from the fishery, retain on board, tranship, land, transport, store, sell, display or offer for sale, any of the species named in paragraph 6 that measure less than the sizes specified but shall return them immediately to the sea.
- 4) Paragraph 3 shall not apply to: herring, horse mackerel and mackerel, within a limit of 10% by live weight of the total catches retained on board of each of these species. The percentage of undersized herring, horse mackerel or mackerel shall be calculated as the proportion by live weight of all marine organisms on board after sorting or on landing. The percentage may be calculated on the basis of one or more representative samples. The limit of 10% shall not be exceeded during transhipment, landing, transportation, storage, display or sale.
- 5) The marine organisms specified in paragraph 6 shall be measured in accordance with Schedule 1.
- 6) Species and specified minimum sizes
 - (a) Named Fish Species

Bass (<i>Dicentrarchus labrax</i>)	420 mm
Black Seabream	230mm
Blue Ling (<i>Molva dypterygia</i>)	700 mm
Bluefin tuna (<i>Thunnus thynnus</i>)	700 mm or 6.4kg
Brill (<i>Scophthalmus rhombus</i>)	300 mm
Cod (<i>Gadus morhua</i>)	350 mm
Conger eel (<i>Conger conger</i>)	580 mm
Dab (<i>Limanda limanda</i>)	150 mm
Flounder (<i>Platichthys flesus</i>)	250 mm
Grey mullet (<i>Chelon labrosus</i>)	200 mm
Hake (<i>Merluccius merluccius</i>)	270 mm
Haddock (<i>Melanogrammus aeglefinus</i>)	300 mm
Herring (<i>Clupea harengus</i>)	200 mm
Horse Mackerel (<i>Trachurus trachurus</i>)	150 mm
Lemon Sole (<i>Microstomus kitt</i>)	250 mm
Ling (<i>Molva molva</i>)	630 mm
Megrim (<i>Lepidorhombus</i> spp.)	200 mm
Mackerel (<i>Scomber scomber</i>)	200 mm
Plaice (<i>Pleuronectes platessa</i>)	270 mm
Pollack (<i>Pollachius pollachius</i>)	300 mm
Red Mullet (<i>Mullus surmuletus</i>)	150 mm
Red Seabream (<i>Pagellus bogaraveo</i>)	250 mm
Saithe (<i>Pollachius virens</i>)	350 mm
Any Skate or Ray	
Between wing tips	450 mm
Sole (<i>Solea solea</i>)	240 mm
Turbot (<i>Psetta maxima</i>)	300 mm
Whiting (<i>Merlangius merlangus</i>)	270 mm
Witch Flounder (<i>Glyptocephalus cynoglossus</i>)	280 mm

(b) Named Mollusc Species

Bean Solen (<i>Pharus legumen</i>)	65 mm
Carpet shell (<i>Venerupis corrugate</i>)	38 mm
Warty Venus (<i>Venus verrucosa</i>)	40 mm
Donax clam (<i>Donax</i> spp.)	25 mm
Hard clam (<i>Callista chione</i>)	60 mm
Queen scallop (<i>Aequipectenspp.</i>)	40 mm
Razor Clam (<i>Ensis</i> spp.)	100 mm
Scallop (<i>Pecten maximus</i>)	110 mm
Short necked clam (<i>Ruditapes phillipinarum</i>)	40 mm
Surf Clam (<i>Spisula solidissima</i>)	25 mm
Octopus (<i>Octopus vulgaris</i>)	750 grams

Winkle (*Littorina littorea*) must not pass through a gauge having a square aperture of 16mm on each side.

Whelk (*Buccinum undatum*)

Before 0059 on 31 March 2022 55 mm*

After 0001 1 April 2022 and before 0059 31 March 2023 65mm

After 0001 1 April 2023

75mm.

(c) Named Crustacea Species

Edible Crab (<i>Cancer pagurus</i>)	130 mm
European lobster (<i>Homarus gammarus</i>)	87 mm
Spider Crab (<i>Maja squinado</i>)	
Male	130 mm
Female	120 mm
Velvet swimming Crab (<i>Necora puber</i>)	65 mm
Crawfish (<i>Palinurus spp.</i>)	95mm
Norway Lobster (<i>Nephrops norvegicus</i>)	
Total length	70 mm
Carapace length	20 mm

Exceptions

- 7) This byelaw does not apply to a person performing an act which would otherwise constitute an offence against this byelaw, if that act was carried out in accordance with a written permission issued by the Authority permitting that act for scientific, stocking or breeding purposes.

Revocations

- 8) The Byelaw with the title “BYELAW 19 SPECIFIED FISH SIZES” made by North Western Sea Fisheries Committee on the 24th July 2009 and which was in force immediately before making this byelaw is revoked.
- 9) The byelaw with the title Byelaw 9 - Skate Fishery made by Cumbria Sea Fisheries Committee on the 16th April 1993 and which was in force immediately before making this byelaw is revoked.
- 10) Section 2 of the byelaw with the title Byelaw 7 Winkles – Method of Fishing and Minimum Size made by Cumbria Sea Fisheries Committee on 21st April 2004 and which was in force immediately before making this byelaw.

I hereby certify that Byelaw 1 MINIMUM SIZES 2020 was made by the North Western Inshore Fisheries and Conservation Authority at the meeting on 18th September 2020.

Dr Stephen Atkins
Chief Executive Officer
North Western Inshore Fisheries and Conservation Authority
1 Preston Street, Carnforth, Lancashire LA5 9BY

The Secretary of State for Environment, Food and Rural Affairs in exercise of the powers

conferred by section 155(3) and (4) of the Marine and Coastal Access Act 2009, confirms the Minimum Sizes Byelaw 2020 made by the North Western IFCA on 18th September 2020.

The said byelaw comes into force on:

Explanatory Note *(This note is not part of the Byelaw)*

This byelaw prohibits the removal from the fishery, retention on board, transshipping, landing, transporting, storing, selling, displaying or offering for sale specified marine organisms below specified sizes.

The byelaw also prohibits the retention on board or landing of crustaceans unless they are whole, with the exception of the Norway Lobster.

The byelaw provisions shall not apply to any catch that is subject to Article 15 of Regulation (EU) 1380/2013 or any subsequent regulation that requires fish to be retained and landed in order to prohibit discarding at sea.

The byelaw includes methods of measurement according to the anatomy of the named species.

The byelaw also contains provisions for retaining 10% undersize catch in relation to, herring, horse mackerel or mackerel.

*Minimum sizes for Cockle (*Cerastoderma edule*), Mussels (*Mytilus edulis*) can be found in NWIFCA Byelaw 3.*

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Schedule 1

Measurement of the size of a marine organism

1. The size of any fish shall be measured, as shown in Figure 1 for illustrative purposes, from the tip of the snout to the end of the tail fin.
2. The size of a Norway lobster shall be measured as shown in Figure 2 for illustrative purposes:
 - a. as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace, and/or,
 - b. as the total length, from the tip of the rostrum to the rear end of the telson, not including the setae, and/or,
 - c. in the case of detached Norway lobster tails: from the front edge of the first tail segment present to the rear end of the telson, not including the setae. The tail shall be measured flat, unstretched and on the dorsal side.
3. The size of a lobster shall be measured, as shown in Figure 3 for illustrative purposes, as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace.
4. The size of a spider crab shall be measured, as shown in Figure 4 for illustrative purposes, as the length of the carapace, along the midline, from the edge of the carapace between the rostrums to the posterior edge of the carapace.
5. The size of an edible crab or velvet swimming crab shall be measured, as shown in Figure 5 for illustrative purposes, as the maximum width of the carapace measured perpendicular to the antero-posterior midline of the carapace.
6. The size of a velvet swimming crab shall be measured, as shown in Figure 6 for illustrative purposes, as the maximum width of the carapace measured perpendicular to the antero-posterior midline of the carapace, excluding the spines.
7. The size of any bivalve mollusc shall be measured, as shown in Figure 6 for illustrative purposes, across the longest part of the shell.
8. The size of a whelk shall be measured, as shown in Figure 8 for illustrative purposes, as the length of the shell.
9. The size of a crawfish shall be measured, as shown in Figure 9 for illustrative purposes, as the length of the carapace from the tip of the rostrum to the midpoint of the distal edge of the carapace.

Figure 1

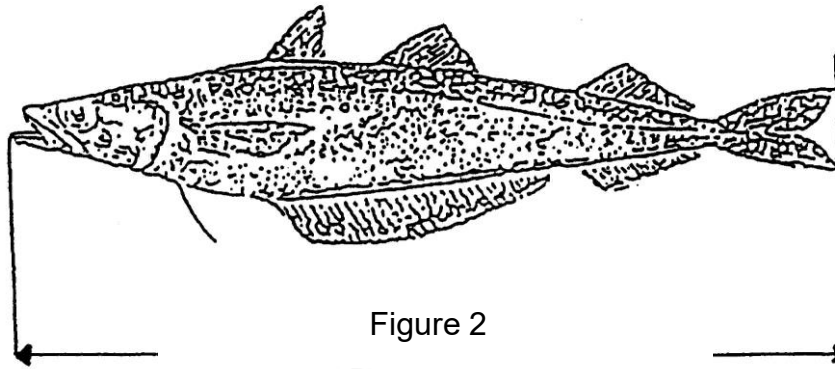


Figure 2

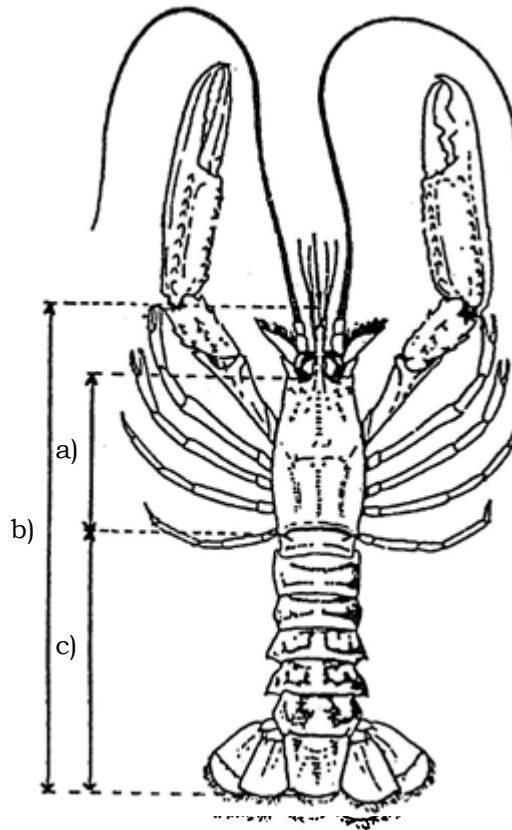


Figure 3

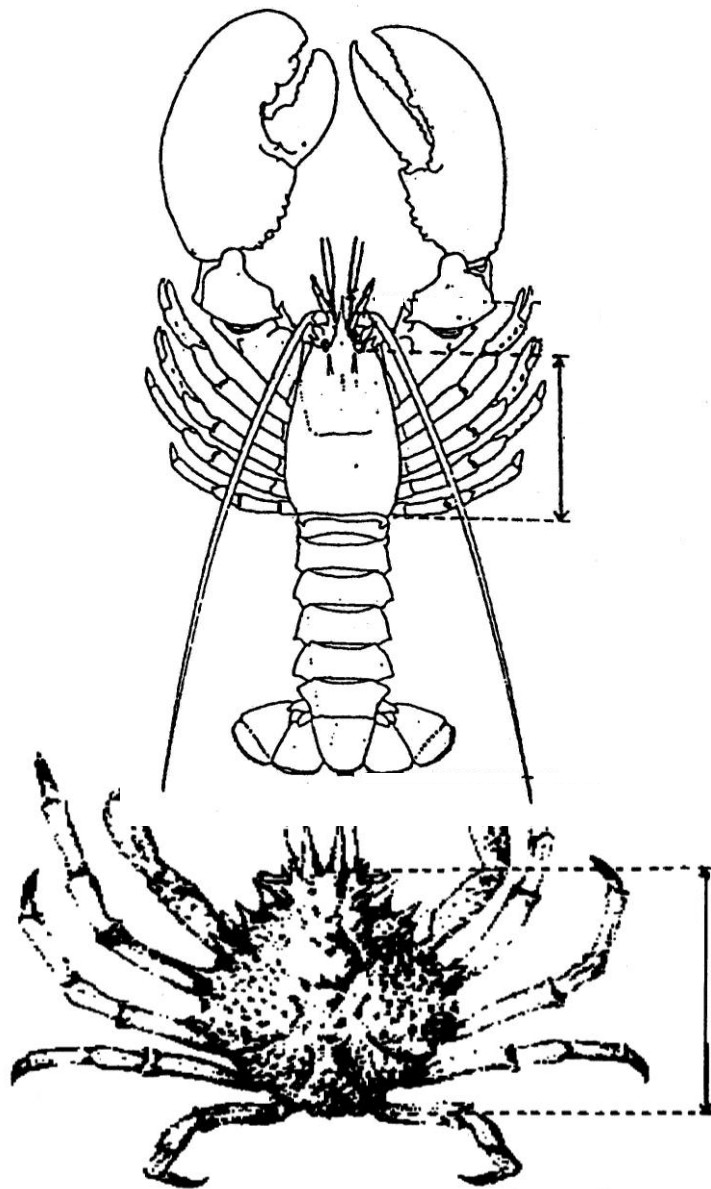


Figure 5

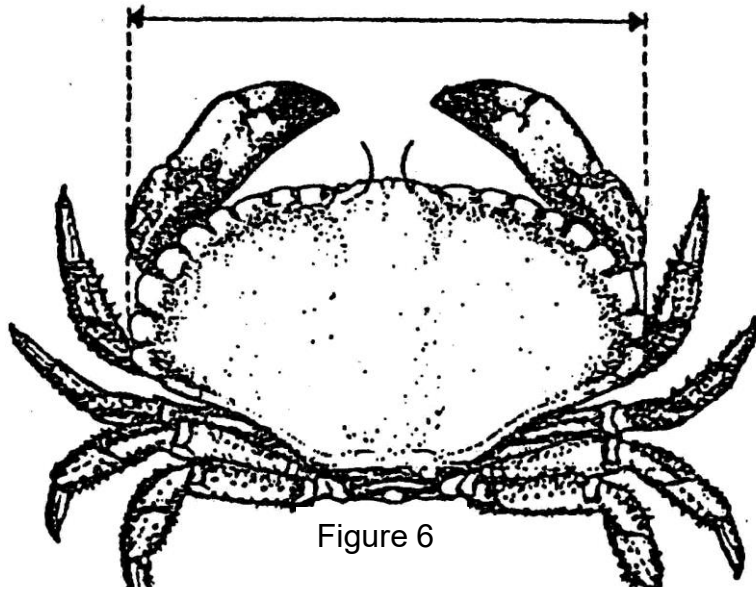


Figure 6

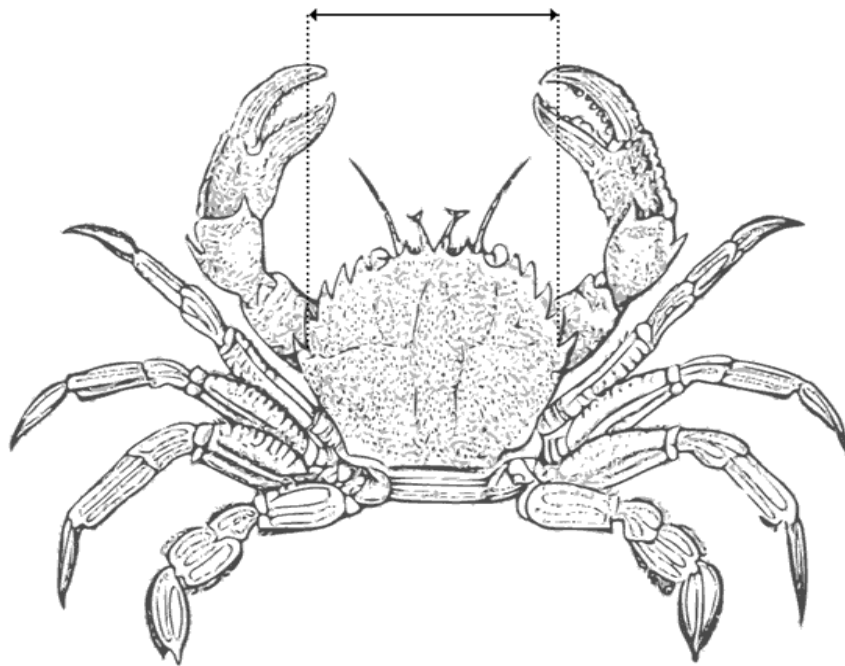
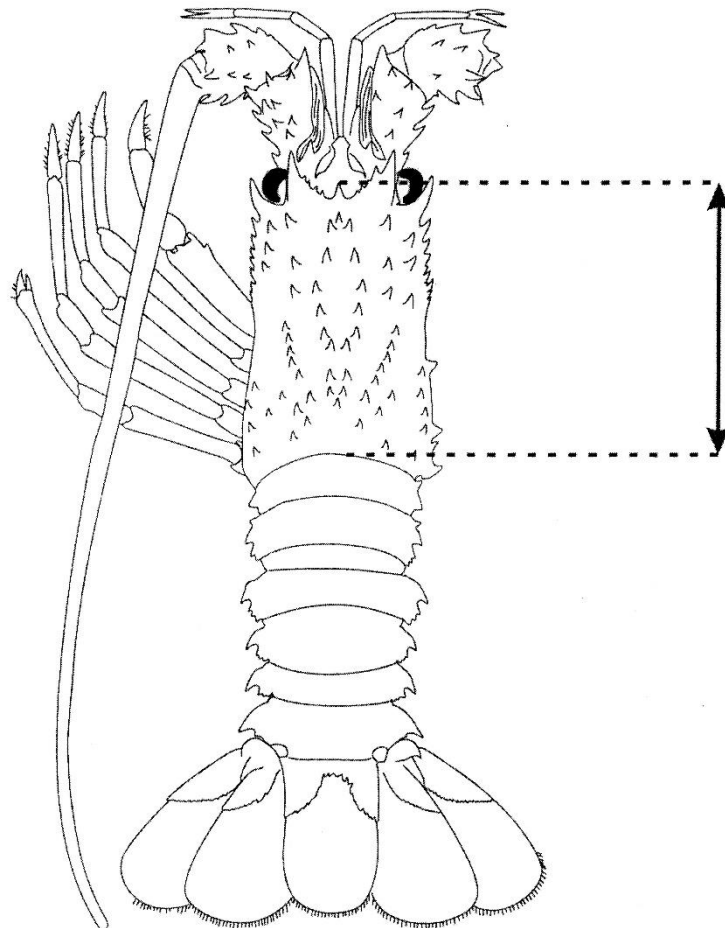
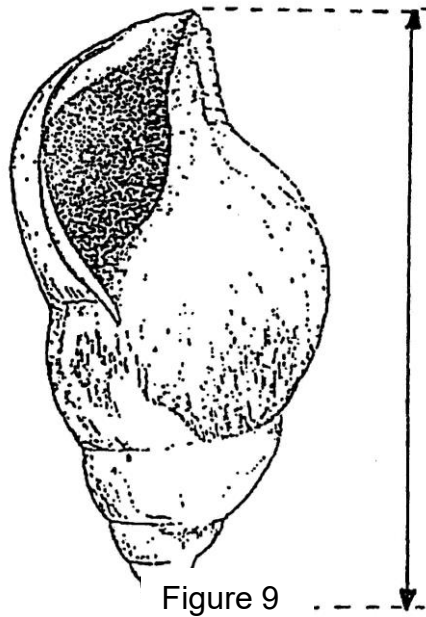


Figure 7



Figure 8



ANNEX B

Information received from NWIFCA MMO Appointee Mr Steve Brown by email **25th August 2020**

I am a former NWIFCA Officer with 29 years of “front line” experience. Members who have specialities in other fields often misunderstand or are confused by the maze of regulation that we have to deal with. So I have produced this document in question and answer format to help with the Draft MCRS Byelaw. From the briefing given in item 7d of the TSB held on 11th Aug 20 I am not sure our office bound Senior Officers fully understand the situation either.

What is the MCRS Byelaw?

Minimum Conservation Reference Size is “Euro speak” for a Minimum Fish Landing Size Byelaw a very simple and necessary tool of fisheries management.

Do we need a MCRS Byelaw?

The straight answer is yes and as quickly as possible. Regulation 2019/1241 is the overarching management tool for regulating the fishery, it primarily covers fishing from vessels both commercial and non-commercial.

Legal opinion fluctuates on the application of this regulation as to if it applies to shore fisheries or anglers fishing from the shore. I have written to Stephen Atkins asking for the latest legal opinion but have as yet received no reply.

It would seem that at present an angler fishing from a boat must adhere to MCRS but one from the shore does not.

In the past NW&NWSFC did successfully prosecute anglers who fished from the shore who had retained undersize fish under EU/National legislation. In one case that I will not forget we received information from (then MAFF) that the EU/National legislation did not apply to the shore very shortly after successful prosecutions.

Were the anglers prosecuted wrongly on a technicality, I do not know, but with legal opinion changing all the time this was not going to be allowed to happen again.

In 2009 NW&NWSFC brought in its own minimum fish size Byelaw (Byelaw 19) which removed any ambiguity from the matter. **There are no parallel Byelaws in the Cumbrian or Dee parts of the District.**

What is wrong with the Draft MCRS Byelaw as presented by Officers.

Three major faults were identified by members.

1. That the variable landing size for Whelk in the Potting Byelaw had to match the size for Whelk in the MCRS Byelaw. We could not have two vessels one a potting vessel and one a trawler landing alongside each other and landing Whelk of different sizes.
2. A full explanation of how fish were measured needed to be included, there are unfortunately a small number of fishermen who try to circumvent landing sizes by cutting the tails off fish.
3. That the Byelaw was a lift from the MCRS Annex in 2019/1241 and included a provision for the retention of up to 10% by live weight of undersized Mackerel, Horse Mackerel and Herring. This provision was brought in to EU/National legislation in 2013 to allow for the introduction of the “Landing Declaration” system of management of fishing quotas. This is wholly appropriate for the large scale commercial fishery but has absolutely no place in a Byelaw. Commercial vessels working under the terms of the “Landing Declaration” system of quota management are exempt from the terms of a MCRS Byelaw.

The first two of these problems have now been addressed however the third referred to in paragraph 4 of the Draft MCRS Byelaw has not. Both Members and Senior Officers seem to be confused as to why this is not appropriate for inclusion in a Byelaw.

OK so what is wrong with paragraph 4?

Firstly, it is a point of law that a byelaw must supplement the National Legislation. Next is

there a need for anglers or other shore fishermen to retain undersize Herring, Mackerel and Horse Mackerel? I believe there is not, this legislation was brought in to allow catch sampling on large commercial vessels not small scale and leisure fishing operations from the shore. Next this is not a simple 10% leeway by number on these three species it is 10% by live weight. That is a lot more than 10% by number and brings about a whole new set of enforcement problems.

How do you enforce 10% by Live Weight?

This is where it starts to get complicated. Our Officers carry out inspections following agreed procedures using gauges and callipers that have been tested and for which test certificates are held at our area offices.

To calculate live weight our Officers will also have to carry tested and calibrated scales to calculate the weights of fish sampled. A sample of the catch has to be taken then separated into size and undersized using the conventional gauge. Both parts of the sample sized and undersized must then be weighed, the two weights added together and the weight of the undersized worked out as a percentage of the total.

Officers have to work in pairs one keeping a record in their note book the other doing the measuring and weighing.

I will let the reader decide if this required process is appropriate for inspecting a catch of tonnes for which it was designed or a few Mackerel on a beach.

I would recommend that a simpler MCRS Byelaw with paragraph 4 removed is more appropriate and all our Officers would have to demonstrate is that undersized fish were retained.

What about "Whitebait"?

In the briefing to the TSB our Officers brought up the problem of the "Whitebait" fishery. Whitebait is a mixture of normally undersized Herring and Sprat. There is no MCRS on Sprat. Other than moored filter nets worked on the shore the taking of undersized pelagic fish in small mesh nets has been illegal under EU/National legislation for decades. It has been illegal within the NW&NWSFC part of the District since 2009 when the previously mention Byelaw 19 was introduced. The filter nets referred to which are almost certainly those operated on the Lune under NW&NWSFC Byelaws 8 and 26 can only be used to take either size Herring or Sprat.

Conclusion.

My conclusion is that getting a working MCRS Byelaw in place is a matter of priority but that the Draft Byelaw put before us is just not fit for purpose. Remove paragraph 4 and we have a Byelaw that is eminently fit for purpose. I will let the majority decide.

Further information received 27th August 2020 from Mr Brown by email

It was only after sourcing 2019/1241 that the issue of "live weight" struck me, up until then I was just opposing a very bad and totally unnecessary paragraph in a Draft Byelaw. Having realised that live weight was also specified in the Draft Byelaw the panic bells really did ring.

The inspection procedure that I have laid out is as I was taught on the Naval Boarding Course. It would be used in conjunction with catch estimation using vessel hold plans and known capacity. The tracking in 2019/1241 clearly indicates that the bycatch by weight was definitely brought in to allow sampling of very large commercial catches and part of the first stage of the introduction of the "Landing Declaration" system of fisheries management.

Having a bycatch "by weight" is a totally different ball game in law to having a bycatch by number (which I still oppose because it has no place in the wording of a Byelaw). This issue was previously considered with regards to fish bycatches in shrimp trawls some years ago. I know that some interesting conversations were had with Trading Standards with regards to the issue of and calibration of scales to Officers. I would politely recommend that you also add them to your list of consultees.

When we carried out EU/National inspections at sea it was a matter of law that the gauges we used had to be inspected and calibrated at regular intervals. It was my job to take them to Trading Standards at Preston. These days if we use the OMEGA gauge it must be calibrated first and the result recorded before use.

Under Byelaw it is slightly different because we only have to demonstrate that an offence has been committed if the means of measurement is not specified in the Byelaw. But if the Byelaw states that a the percentage of certain species of undersized fish is to be determined by weight then that is what must be done.

Personally I much prefer our Officers working under internal guidelines issued by the Head of Enforcement, that system works, is legal and allows for the discretion that is often needed in Byelaw enforcement to be used when necessary. For example we have been using 10% by number in cockle and mussel inspections for years but such lee way has no place actually in the Byelaw.

So I hope you now understand why I am so opposed to the inclusion of Paragraph 4 in the MCRS Byelaw. I want first rate and watertight Byelaws. I want to protect both the Authority and it's Officers. Having read 2019/1241 I am more convinced than ever for the need for an MCRS Byelaw, a Byelaw not a mish mash of EU/National and local needs.

Steven Brown.

Annex C. Comments from other IFCA on inclusion of the pelagic allowance

4 IFCAs are all making MCRS byelaws and all are including the allowance for 10% undersize of pelagic species which is in paragraph 4 of the NWIFCA draft byelaw. The IFCA are: Northumberland IFCA, North Eastern IFCA, Eastern IFCA, Kent and Essex IFCA.

In an attempt to resolve the debate over inclusion of the 10% allowance for pelagic species, Mr Browns' comments were sent to these 4 IFCA and comments invited. The following responses were received with names of the IFCA and Officers removed.

1. "I'm in agreement with the comments made by the others. We were simply wishing to replicate the provisions as far as possible and only altered some of the species in each based on legal advice. A lot of work went into ensuring consistency between the byelaws submitted. There could be a risk that any variation in approach leads to further review of all of the byelaws. As said any changes would also require additional evidence which would likely delay introduction of the measure and represent a greater risk to stocks. The RIAs are all written to state no impact given continuity with the old measures. Without trying to sound flippant (and without knowing the details of your fisheries), we are likely talking relatively trivial amounts. The argument regarding the landings obligation is also mute as we wrote in a provision to account for this."
2. "If you do not include the allowance then the byelaw will be more strict than the EU regulation. If that's what you want to do then fine but you'll need to include it in the impact assessment for the byelaw as it is a change from the previous situation. The whole point of the IFCA MCRS byelaw is that it simply carries over what was in place up to 850/98 being revoked."
3. "It is also worth noting that if you remove the allowance then you will be disadvantaging your own fishermen compared to fishermen who are fishing outside of your District. You will also have an increased enforcement challenge of proving where a vessel has fished or where they caught those particular fish."
4. "I am in agreement with what has previously been mentioned. The only thing I would add further is that having to gather evidence and amend the proposal would delay the intended protective effect coming into force with an associated level of risk to stocks etc. Could you suggest further consideration of the matter following the implementation of the byelaw ensure at least some protective effect consistent with the 'old' measures and other IFCAs?"
5. "I'm in agreement with what has been said. Also just to confirm our emergency byelaws were granted an additional 6 month extension to 13th February 2021."