

**NWIFCA Quarterly Meeting:
10th December 2020: 10.00 a.m.**

**AGENDA
ITEM NO.
6**

NWIFCA BYELAW 2 - NORTH WIRRAL FORESHORE BIVALVE MOLLUSCS

Purpose: to provide background and justifications for making a full byelaw prohibiting gathering of bivalve molluscan shellfish on the North Wirral Foreshore;

Recommendation: members make the byelaw.

1. The NWIFCA North Wirral Foreshore Bivalve Mollusc Emergency Byelaw 2020 is due to expire in June 2021. The Authority is required to consider management on running out of this byelaw.
2. At the meeting of the November TSB the Senior Scientist presented a full committee paper and scientific survey report (Annex C) on the issues of managing the gathering of bivalve molluscan shellfish along the North Wirral Foreshore.
3. A question was raised over the sightings figures in the table reported in the committee paper. This has been re-examined and an error in collating the statistics was revealed, whereby a misunderstanding over the combination of IFCO sightings reports had occurred. It was also uncovered that where recreational cockle gathering had been reported, this may also have included gathering of other bivalves at the same time by the same person, and thus omitted from the original calculations. A revised table providing more in-depth analysis of the sightings data has been incorporated into the original committee paper and provided at Annex B. The text of the original paper has minor changes to included reference to contacts from concerned members of the public observing the high numbers of people gathering on the beach.
4. As the reports describe in detail, there is now a complete lack of stock of all large clam species in the area of concern. This has implications not only for management but also for impacts on biodiversity and possibly protected bird feeding resource, the reasons for implementing the Emergency Byelaw in June 2020.
5. There were two options for NWIFCA to consider:
 - i. to maintain a permanent closure on all intertidal gathering (except cockle gathering permitted under NWIFCA byelaw 3, and mussel dredging if permitted under the 'Dredge' byelaw 2017);
 - ii. to regulate a sustainable fishery with set parameters.
6. The depleted stock results in an impossibility to regulate a sustainable fishery. There is no stock on which to gather data to assess sustainable levels of fishing. This option must now be ruled out until such time as populations return and can be quantified.
7. In accordance with EU environmental regulations a precautionary approach should now be adopted when risk has been identified but cannot be quantified in order to ensure no risk to protected features.
8. The Senior Scientist consulted with HoE and local IFCOs over a proposed prohibition under full byelaw. The issue of bait collection of razor clams along the extreme low water line was

discussed but considered not to be of major concern as bait collectors are mainly targeting worms there.

9. CEO, HoE, IFCOs and Science Officers were all consulted on the options and all agreed to the recommendations put forward to TSB.
10. At November TSB Mr Leigh asked whether bait collectors who gather razor clams (and other bivalves) that get washed up on to the beach would also be prohibited from doing so. It was confirmed that that was the case and perhaps an unfortunate consequence of the situation. As an irregular activity driven by weather events it would be problematic to account for and also create inconsistencies in enforcement if permitted.
11. Two recommendations were made to TSB:
 - i. to implement a permanent byelaw that prohibits the removal of any bivalves from the beach at Leasowe unless under a permit issued under NWIFCA Byelaw 3 or NWIFCA Restrictions on the use of a dredge byelaw 2017;
 - ii. that scientific survey should continue over the next three years to provide data on population recovery in order to inform the byelaw review after 3 years.
12. Both recommendations received approval by TSB.
13. Officers were instructed to draft a full byelaw for approval by TSB via email, to be tabled at the full Authority meeting in December for making. MMO were consulted over appropriate text relating to the revocation of the Emergency Byelaw.
14. Based on the provisions within the Emergency Byelaw, a draft byelaw was circulated by email to TSB. Comments were received from two Members:
 - i. Mr Andrews suggested some textual amendments to the interpretations section which have been incorporated into the final version;
 - ii. ii Mr Andrews also made a suggestion to use Lowest Astronomical Tide to define the low water line in the schedule to ensure full coverage of any drying areas. This was investigated with IFCOs and through mapping software but due to the convoluted nature of the drying areas and their likelihood to change during the life of the byelaw, it was agreed to extend the outward boundary line to ensure full coverage of all drying areas and a certain degree of 'future proofing' were the low water line to change;
 - iii. Mr Brown reiterated his points made at TSB, where he abstained on the vote to approve development of the byelaw. He asked that either the agreed review period of three years be written on the face of the byelaw, or to time limit the byelaw. Officers considered both options and have amended the byelaw to include a review, with wording informed by that of other IFCAs' existing byelaws (NIFCA - Crustacea Conservation 2019 and NEIFCA - FLAMBOROUGH HEAD NO TAKE ZONE byelaws).
15. Mr Brown also felt the byelaw was discriminatory against recreational gatherers when commercial cockle gathering would still be permitted under the cockle and mussel byelaw. To clarify, under the present NWIFCA Byelaw 3, recreational gatherers would be permitted to remove up to 5kg of cockle and mussel per person per day if the fishery were open. Under the new Cockle and Mussel byelaw, currently with the MMO for second Q&A, the main cockle bed at Leasowe will be classed as a commercial area and the right to gather cockles recreationally there will be removed. There will be areas of the foreshore not included in the commercial area where recreational gathering can occur.

16. The North Wirral Foreshore byelaw specifically removes the right for non-permitted cockle and mussel gathering right across the whole of the North Wirral Foreshore. Lengthy consideration had been given as to whether recreational cockle gathering could still be permitted. However this creates a significant enforcement issue and was considered to not be workable.
17. Ideally, and the potential aim for the future, would be to implement a per person daily allowance for all bivalve gathering (non-commercial) in order to support the right to the public fishery. As detailed in Annex B, this is not possible at the present time due to lack of stock. Surveys will be instigated to provide on-going data on recovery of stocks and allow the Authority to make a decision on the potential for implementing an allowance at a future date.
18. Following MMO advice the title of the byelaw has had a minor change to incorporate the numbering system. The full byelaw is attached as Annex A below, with a recommendation that the byelaw is made.
19. A draft of the Regulatory Impact Assessment is also provided at Annex D for comment. This will be finalised by Officers and signed by the CEO before submission of the byelaw package, following formal consultation, to the MMO for QA.
20. Members are asked to consider all the information provided here and in the annexes and approve the making of the byelaw so that it can be progressed as swiftly as possible to ensure consistency of regulation following the 12 month period of the Emergency Byelaw, or the further 6 month extension if granted by the Minister.

Mandy Knott
Senior Scientist
23rd November 2020

ANNEX A

North Western Inshore Fisheries and Conservation Authority

MARINE AND COASTAL ACCESS ACT 2009 (c.23)

NWIFCA BYELAW 2 - NORTH WIRRAL FORESHORE BIVALVE MOLLUSCS

The Authority for the North Western Inshore Fisheries and Conservation District in exercise of its powers under sections 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 (NWIFCA) as defined in articles 2 and 4 of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010/2200);
 - (b) “the District” means the North Western Inshore Fisheries and Conservation District as defined in articles 2 and 3 of S.I. 2010/2200;
 - (c) “fishery” means any area of sea, seabed, exposed estuary, seashore, or other marine environment in any part of the District;
 - (d) “bivalve molluscan shellfish” means any species of mollusc belonging to the class Bivalvia;
 - (e) “fish for or remove” and “fishing” includes all activities related to fishing by hand of bivalve molluscan shellfish including harvesting, taking, moving and transporting.

Prohibitions

2. A person must not fish for or remove any bivalve molluscan shellfish from within the area defined in the schedule.
3. A person must not have in their possession any article for use in the course or connection with fishing bivalve molluscan shellfish within or from a fishery in breach of this byelaw.

Exceptions

4. This byelaw does not apply to a person fishing for cockles or mussels under a permit issued pursuant to the North Western Inshore Fisheries and Conservation Authority Byelaw 3 - Permit to Fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*).
5. This byelaw does not apply to a person fishing for cockles or mussels under a permit issued pursuant to the North Western Inshore Fisheries and Conservation Authority “Restrictions on the use of a dredge byelaw 2017”.

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

Review

7. The Authority must review this byelaw no less than once every three years.

Revocation

8. The NORTH WIRRAL FORESHORE BIVALVE MOLLUSC EMERGENCY BYELAW 2020 made by the North Western Inshore Fisheries and Conservation Authority on 3rd June 2020 in exercise of its power under section 157 of the Marine and Coastal Access Act 2009 and in force immediately before the making of this byelaw is hereby revoked.

I hereby certify that the above byelaw was made by the Authority at its meeting on the XXXXXXXX

..... Date

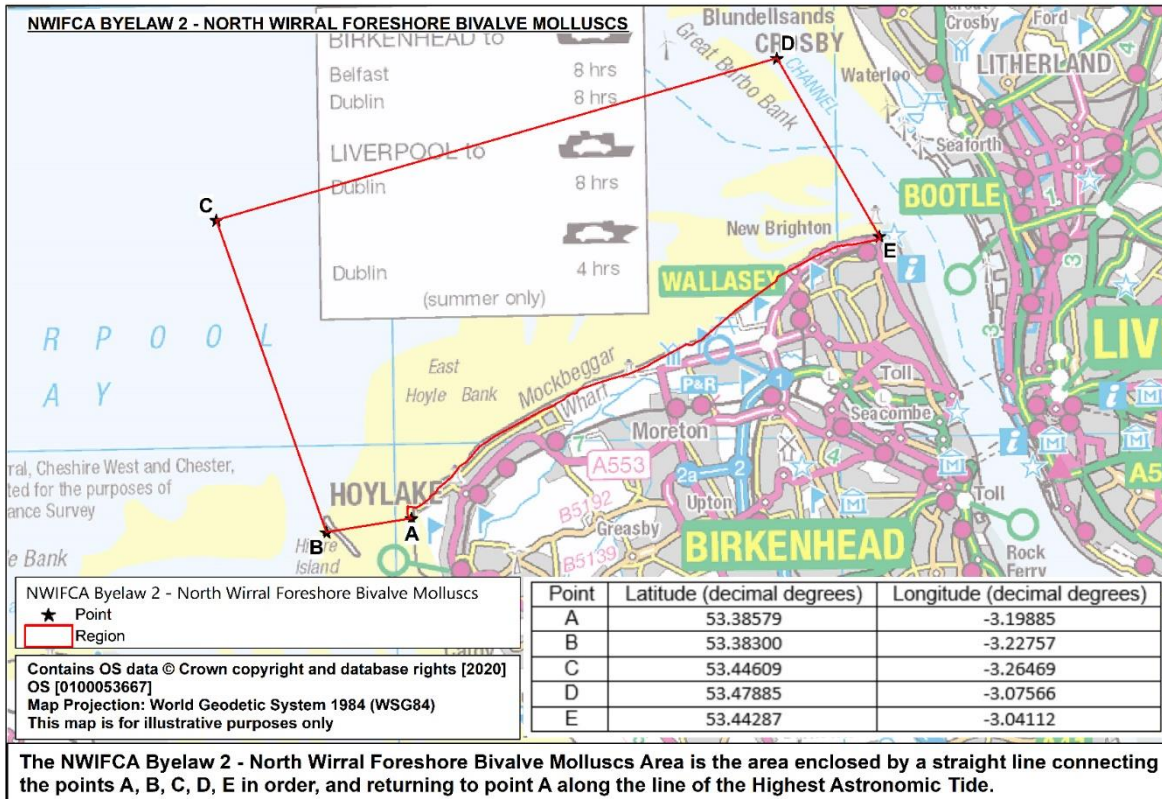
Dr Stephen Atkins; Chief Executive Officer; North Western Inshore Fisheries and Conservation Authority; 1 Preston Street, Carnforth, Lancashire, LA5 9BY

The Secretary of State for Environment, Food and Rural Affairs in exercise of the power conferred by section 155(4) of the Marine and Coastal Access Act 2009 confirms the North Wirral Foreshore Bivalve Mollusc Byelaw 2021 made by North Western Inshore Fisheries and Conservation Authority on XXXXXXXX

..... Date

A Senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs

Schedule



Explanatory Note

(This note does not form part of the byelaw)

The NWIFCA Byelaw 2 - North Wirral Foreshore Bivalve Molluscs prohibits any person from taking or removing any species of bivalve mollusc from a defined area of the foreshore along the north Wirral coast.

There are exemptions for persons fishing for cockles or mussels under regulations of two separate byelaws, or for a person with a written permission from the Authority removing bivalves for scientific, management, stocking or breeding purposes.