

North Western IFCA

Technical, Scientific and Byelaws Sub-Committee: 21 June 2011
Strathmore Hotel, Marine Road East, Morecambe: 10.30 a.m.

AGENDA
ITEM NO.
5

REVIEW OF BYELAWS

Recommendation:

That progress with the review of byelaws be noted and the draft byelaws attached be approved for development in phase 1.

Introduction and background.

1. Defra high level objectives and performance indicators for all IFCA include a requirement for all byelaws inherited from SFC's to be reviewed and remade as IFCA Byelaws to create a modern and uniform management framework throughout the District.
2. Staff have carried out a review of the Byelaws that have been inherited by the NWIFCA and new Byelaws are being prepared in order of priority. New IFCA byelaws will be made in a series of groups or phases over the next 4 years.
3. The highest priority Byelaws (those where there is a clear need for definition or where major contradictions are found within the existing inherited Byelaws) will be included in Phase 1 of the NWIFCA Byelaw review.
4. Each byelaw must be made in accordance with guidance published by Defra in 2011. This guidance specifies the documentation required to support each byelaw. This includes statements of evidence and justification for the byelaw as set out below and a Regulatory Impact Assessment (RIA) in a standard format which has been supplied by Defra and MMO. The RIAs will be prepared later.
5. Following approval of the byelaws to be made by the NWIFCA TSB Subcommittee, officers will finalise the draft wording of the proposed byelaws with legal advice and consultation with MMO byelaw team as required. RIA will be prepared for each byelaw for which MMO approval will be sought. Each byelaw will then be 'made' by the NWIFCA at a quarterly meeting and be subject to consultation and ministerial sign off according to the guidance.

Phase 1. To review and make NWIFCA Byelaws 1-4

1. Application of Byelaws.
2. Mechanically propelled Vessels Maximum Length.
3. Permit to fish for Cockles and Mussels.
4. Minimum Landing Size for Mussels.

EVIDENCE AND JUSTIFICATION STATEMENTS

Proposed NWIFCA Byelaw 1: Application of Byelaws

Purpose of the byelaw. To define the area to which the NWIFCA Byelaws apply and to make provision for the authority to issue consents to fish for scientific, restocking or breeding purposes.

History and Justification.

6. This Byelaw is intended to replace Cumbria SFC Byelaws 1 and 2, NWSFC Byelaw 1 and provisions inherited from Environment Agency (EA) Wales in the transfer of parts of the River Dee to the NWIFCA.
7. This Byelaw is necessary to define the limits of application for all new Byelaws for the NWIFCA District. It will replace with 1 Byelaw, the existing provisions contained in 4 separate pieces of legislation that have been inherited by NWIFCA from the NWSFC, CSFC and EA.
8. A copy of the proposed Byelaw is contained in Annex A of this document.

Proposed NWIFCA Byelaw 2: Mechanically Propelled Vessels maximum Length

Purpose of the byelaw: To restrict the size of mechanically propelled vessels that may be used within the District.

History of vessel size limits.

9. Byelaws restricting the maximum size of mechanically propelled vessels allowed to operate within coastal waters have since the introduction of the SFC system been recognised as a primary tool to prevent over exploitation of the inshore fishery. As a greater understanding of the coastal environment has developed this has re-enforced the necessity to have such Byelaws to protect important coastal habitats and nursery areas.
10. Prior to the extension of SFC responsibility out to the 6 mile limit in 1992 both the Cumbria SFC and the North Western and North Wales SFC (NW&NWSFC) had byelaws restricting the size of mechanically propelled vessels allowed to fish within the Districts to 45 feet registered length. These measures created a common management framework extending from Rhyl in North Wales to the Scottish border.
11. Following the extension of SFC responsibility out to 6 miles offshore in 1992, each Committee tailored their Byelaws to meet the developing requirements of their fisheries. Cumbria SFC restricted access to parts of the 3 to 6 mile zone to vessels of less than 21.34 meters whilst allowing larger vessels to continue to fish into the 3 mile limit in other parts of their District.
12. The NW&NWSFC elected to have a maximum overall length of 15 metres in the English part of the District north and east of Gt Ormes Head and 12 metres overall length in the Welsh parts of the District south and west of Gt Ormes Head. The changes were supported by a sunset clause for existing vessels.
13. In the part of the NWIFCA District within the Dee Estuary there is currently no restriction on the maximum length of vessel that may be used.

14. Clearly it is a matter of some urgency to introduce a single Byelaw tailored to meet the management and conservation needs of the new NWIFCA District.

Options considered.

15. Given the considerable restructuring of the inshore fishing fleet that has occurred during the last two decades there are three options that require consideration.

Option 1 Return to the pre 1992 situation and keep a limit of 13.7 metres (45ft) on the 3 mile limit. This option makes no account for the changes in vessel design that have evolved in recent years and would provide little protection for inshore grounds and none at all for the 3 to 6 mile belt. It is thought that the reintroduction of such a byelaw would be a retrograde step.

Option 2 Introduce a maximum vessel size of 15 metres overall length throughout the District with provisions for a suitable sunset clause and mussel dredgers. Again the ongoing development of the 15 metre class of vessel is a matter of serious concern and allowing such vessels "into the beach" could lead to excessive pressure on coastal nursery areas and other environmentally sensitive features.

Option 3 Introduce a two stage Byelaw allowing vessels of up to 15 metres overall length to work within the 3 to 6 mile belt, an area for which they are eminently suitable, and restrict access within the 3 mile limit to vessels of less than 10 metres overall length.

Such a byelaw would require a suitable sunset clause to protect the considerable number of almost obsolete vessels that have fishing entitlement to fish within various parts of the NWIFCA District. Provision will need to be made for mussel dredgers. This is not a simple option but it will provide a long term working framework for the future sustainable development of the coastal fisheries within the District.

Action for the consideration of the Committee.

16. To remake a new byelaw to restrict access to the NWIFCA District to fishing vessels of less than 10 metres overall length within the 3 mile limit and 15 metres overall length within the 3 to 6 limits.
17. A copy of the proposed Byelaw is enclosed in Annex B of this document.

Proposed NWIFCA Byelaw 3: Permit to Fish for Cockles (*Cerastoderma edule*) and Mussel (*Mytilus edulis*)

Purpose of the byelaw: To create a registration and permit scheme with conditions for cockle and mussel harvesters applying to the whole of the NWIFCA District.

The new byelaw will replace CSFC byelaws 21 and 23, NWSFC byelaw 5 and EA shellfish byelaws.

History of inherited Cockle and Mussel Permit Schemes.

18. Over the last two decades the development of the cockle and mussel fisheries from local activity into a high value, high profile and extremely sensitive/emotive issue has proceeded at quite an alarming pace. The tragic events in Morecambe Bay and more recent events on the Wirral have amply demonstrated the lengths a multi-national processing industry will go to in order to maintain supplies to the markets.
19. The NWIFCA has inherited 3 separate management regimes for the cockle and mussel fisheries and in addition the EA are the grantees of the cross-border Dee Estuary Cockle Fishery Order.

20. Most of the cockle and mussel management Byelaws transferred to NWIFCA from Cumbria SFC and NWSFC are if somewhat dated workable and compatible. The management measures for the River Dee mussel fishery inherited by NWIFCA have been in force for over a century and are in serious need of reassessment.
21. The Cumbria SFC Byelaws 21 and 23 require that a permit is required to remove any cockle or mussel. There are no exemptions for gathering small quantities for domestic purposes. Landing returns and details of fishing practices undertaken are required. The permit schemes are not restrictive and permits are available on demand.
22. NW&NWSFC introduced the concept of the restrictive permit scheme in response to the alarming number of people entering the Morecambe Bay fishery. The terms of the Byelaw are constrained by the requirements of national legislation and enforcement has proved very difficult when large numbers of fishers are present. The Byelaw makes provision for up to 5kg of cockles and up to 5kg of mussels to be gathered by any individual for personal use per calendar day. Landing returns may be required.
23. Cockle gathering within the River Dee is managed by the EA under the Dee Estuary Cockle Fishery Order. Again a small amount of cockles may be gathered for personal consumption. The mussel fishery within the River Dee remains a public fishery.

The requirement for NWIFCA Byelaw 3

24. The present situation is both complex and unsatisfactory, one Byelaw is needed to suit the needs of the entire NWIFCA District.
25. The NWIFCA must be able to identify persons commercially gathering cockles and mussels for the following reasons:-
 - a, Management of the fishery.
 - b, To assist the enforcement of the Molluscan Shellfish Hygiene Regulations.
 - c, To assist in the prevention of tax and benefit fraud.
 - d, To help prevent the exploitation of illegal immigrant labour.

Options for consideration.

Option 1: Maintain the present situation. This would require the maintenance of 3 separate permit schemes and an area for which no permit is required. This is clearly a totally impractical option; it is therefore recommended that it is dismissed by the Committee.

Option 2: A restrictive permit scheme for the NWIFCA District modeled on the NWSFC byelaw 5.

The NWSFC Byelaw 5 permit scheme cannot be expanded to meet the requirements of an IFCA Byelaw for the following reasons.

1. The original NW&NWSFC Byelaw 5 was transferred to the interim NWSFC. This permit scheme originally covered the old NW&NWSFC District; as a result there is now a considerable geographical bias of fishing entitlement held by fishermen from outside of the present District.
2. Restrictions on new entrants to the scheme within the existing Byelaw (the waiting list now exceeds 2 years) would prevent fishermen from the geographical majority of the new District from obtaining permissions to work their own local fisheries for years to come.

3. The shortcomings within the terms of the existing NWSFC Byelaw 5, required by national legislation particularly with regards to access to the fishery, render the Byelaw for all practical purpose unenforceable.
4. The high value of cockles makes the commercial gathering of quantities as low as 5kg a viable proposition. This is a particular problem in the southern parts of the District where significant numbers of itinerant harvesters are thought to be illicitly supplying the restaurant trade.
5. The 5kg limit for personal use in the NWSFC Byelaw 5 is inconsistent with the 2kg limit for personal use permitted in the adjacent Dee fishery. There is no limit for personal use allowed in the Cumbria SFC permit schemes.
6. The straightforward expansion of the NWSFC Byelaw 5 into an area wide scheme would as previously stated prevent local fishermen entering their own fisheries for some time. Such a move could be construed as prejudicial.
7. This option appears impractical and is not recommended for further development.

Option 3: A registration and permit scheme for commercial Cockle and Mussel harvesters within the NWIFCA District.

Permits would be available on demand and the NWIFCA can now charge an administration fee for this service.

As for current permit schemes, the registration scheme and identity information collected would be of great assistance to the IFCA and partner regulatory bodies. It would be set up to preclude persons not entitled to work in the UK.

A small allowance for personal use, probably 2kg to parallel the requirements of the River Dee Cockle Order, must be made to meet the needs of the significant numbers of visitors particularly to the southern areas who do gather small amounts for personal use, and the requirements of national legislation.

Terms of the permits would require landing returns, vital information if any future application for a fishery order is to be successful.

This option provides a practical and useful alternative to the existing schemes with the potential to be the starting point of the NWIFCA shellfish management regimes, it is therefore to be recommended for consideration by the committee.

Action for consideration of the Committee

26. To make a new Byelaw to introduce a permit scheme for cockle and mussel harvesters working within the NWIFCA District.
27. A draft byelaw has been prepared and is included in Annex C of this report.

Proposed NWIFCA Byelaw 4: minimum Removal Size for Mussels

Purpose of the byelaw: To establish a unified minimum landing size (MLS) for mussels throughout the NWIFCA District.

History

28. The minimum removal size for mussels in both the former Cumbria SFC and NWSFC areas is 45mm. This size also applies in the former NW&NWSFC area now managed by the Welsh Fisheries Authorities.
29. The minimum removal size for mussels in the area inherited within the River Dee is 2.25 inches. The EA were in the process of removing this inconsistency when the transfer of authority to Wales put proceedings on hold.
30. It is desirable that there is one MLS for mussels for the entire District; and that that size is consistent with the requirements in adjoining areas.

Actions for consideration of the Committee.

31. To make a new Byelaw to introduce a unified mussel removal size for the whole of the NWIFCA District.
32. A draft Byelaw has been prepared and is included in Annex D of his document.

IFCO Fleetwood
7 June 2011