

TSB NWIFCA Offices, Carnforth, 30 November 2012

Review of implementation of Byelaw 3 with discussion of amendments: Note of meeting

Present: C. Lumb (Chair), J. Butler, J. Clark, T. Jones, M. Owen, C. Woods,
Apologies: B. Crawford, C. Frid, R. Graham, A. Markley
Officers present: S. Atkins, H. Ake, A. Lindop, M. Knott, A. Leadbeater, J. Moulton, M. Burdekin, S. Brown.

1. This paper is not full meeting minutes, but a report of discussion points outcomes and further clarification added after the meeting.

Background.

2. This TSB meeting was proposed at the September NWIFCA to give Byelaw 3 extended discussion. A short report reviewed Byelaw 3's implementation so far, and offered suggestions for improvement.
3. The review noted that up to end of November 2012, around 280 permits were issued. The Authority approved two cockle fishery openings: Foulhaze Bank using boats from Lytham was opened for 2 weeks during October, and the Penfold and South Gut beds accessible overland from Southport for 4 days per week during November. A seed mussel fishery was open on Heysham Skear in September to October.
4. In general, the Byelaw has operated as the Authority intended, permit holder numbers have been halved compared with the 2011-12 season under Byelaw 5 and the fisheries that have been opened have been relatively well managed.
5. Enforcement of the regulations around cockle and mussel fisheries has been much improved in summer and autumn 2012 compared with previously. The combined work of the NWIFCA, GLA, MCGA, Mersey Port Health and other Local Authority Officers and Environmental Health Services have achieved much improved levels of compliance and transparency in this industry.

Comments on Byelaw 3

6. Officers of NWIFCA and other agencies have made suggestions for improvements to the regulatory regime created by Byelaw 3. A number of suggestions were presented for discussion.
7. An email from members of the North Morecambe Bay Fishermen's Association (NMBFA) was presented by Mrs Butler (Chair of NMBFA) and circulated. Key points were:-
 - a. Several of their members are reaching an age where they no longer want to travel to fish and feel that, with the Morecambe Bay cockle fishery having been closed for several years, the Byelaw 3 permit system is shutting them out as they don't want to pay £500 per year to wait until Morecambe Bay reopens.
 - b. They would like to see the closed season retained for spat survival.
 - c. They propose a retainer payment for the right of the permit for local fishermen in local areas.
 - d. They want to be able to sell catch to whoever they choose, as local fishermen have their own premises and do not need to load on the roadside.

8. Chris Woods stated that the point of the byelaw was to give a baseline for the committee to consider as a level of legitimate fishers and bring it to a sustainable level. He originally did not respond to the consultation as he was satisfied with its intent and an appropriate fee, but is concerned that the administration of permit applications may be against the agreed wording of the byelaw. He believes that some fishermen have obtained permits in a manner that does not comply with Byelaw 3 by not providing evidence that in previous years' tax has been paid on income from fishing. He has received allegations that permits are issued on submission of letters from accountants, with no tax information.
9. CEO stated that he was not aware that anyone had received a Byelaw 3 permit in a way which was outside the terms of Byelaw 3 but was aware of the rumours. No specific allegations against named individuals had been received any such allegations could and would be investigated, noting that the NWIFCA is bound to comply with regulations protecting personal data under the Data Protection Act.

Clarification added after the meeting

10. NWIFCA encountered difficulties in issuing permits. Many applicants who qualified as Byelaw 5 permit holders had evidently not previously registered with HMRC. There were claims this was because they were on benefits when not fishing and/or earnings were below the tax threshold. This resulted in a surge of applications to the HMRC to become registered and a 6 week delay in the issue of unique tax reference numbers (UTR). As a result of Byelaw 3 a significant number of fishermen are having to address their registration with and declarations to HRMC
11. HMRC contacted NWIFCA to report the UTR problem and also stated that HMRC did not routinely record the nature of a self-employed business. In many case the self-employed have various sources of income of which fishing may be a part. In general, HMRC are not able to confirm that individuals paid tax on fishing income.
12. In order to deal with these difficulties urgently, for this transitional year only, NWIFCA accepted as evidence that tax has been or will be paid, letters from Chartered Accountants stating that they act for individual named applicants.
13. HMRC stated that NWIFCA should in future ask for a person's UTR and tax statement (SA 302 form) as tax evidence to release permits. This policy will be implemented in future years. In future, when every applicant will have to provide their UTR and tax statement form, NWIFCA will be able to establish the veracity of the letters from Accountants received this year,

Suggestions of amendments for consideration

14. **Provision for mechanised fishing (Paragraph 7).** There is no clear provision for mechanised fishing in Byelaw 3. However, there is historical precedence for authorising specific shellfish dredge fisheries in the district, such as offshore cockle and mussel beds in the Solway and seed mussel fisheries in Morecambe Bay.
15. At present, seed mussel dredgers are authorised to dredge seed mussel under Byelaw 12, yet don't have to pay a permit fee which is inequitable. Byelaw 3 requires all fishing for cockles and mussels to have a Byelaw 3 permit but this has not been implemented for dredge fisheries and fishermen working on dredge vessels may not be on Byelaw 3 lists which are currently closed to new entrants. Suggestions offered were:
 - i. Issue limited Byelaw 3 permits for all crew, authorising cockle and mussel fishing from boats only. This could be done with no change to the byelaw.
 - ii. Amend the byelaw title and scope to hand fishing only and regulate dredging under a separate measure. In any case dredging will be addressed in Morecambe Bay under the proposed Morecambe Bay Hybrid Fishery Order (MBHFO).

- iii. Leave the issue until the MBHFO is introduced which might occur sooner than amendments to the Byelaw can be made.
 - iv. Attempt to use an emergency byelaw for 12 months, on grounds that dredging provision as in Byelaw 5 was overlooked in Byelaw 3. This could provide an interim solution but such an emergency byelaw could be challenged.
16. **TSB Recommendation:** For the short term, further consideration will be given to setting up a limited Byelaw 3 permit to authorise the crew of dredge fishing boats to fish for cockles and mussels on boats only. Options for amendments to Byelaw 3 to ensure shellfish dredging is properly authorised will be further reviewed and returned to TSB at a later date.
 17. **Provision for amending charges each year (Paragraph 8).** The unpredictable nature of shellfish stocks, particularly cockles in this district, means that a fee of £500 may be too much in lean years. Fishermen have variously proposed a variable fee depending on stock levels, a reduced fee for those that do not wish to travel throughout the District and, a reduced fee for fishermen in or approaching retirement.
 18. Conversely, the point of Byelaw 3 is to encourage professional commercial fishermen. Creating and enforcing effective, fair and enforceable regulations for minority groups is difficult. In today's industry, most permit holders want to be able to access shellfish throughout the District. That, and given the problem of agreeing a fair standard for setting variable fees, would suggest that a universal £500 annual fee for commercial fishing should be retained.
 19. A retainer permit was proposed, whereby an individual would pay a nominal administration fee to keep the option of obtaining a permit in future years. They would not be allowed to obtain a permit to fish in the year when they had chosen a retainer, and there would be a limit to the number of consecutive years this could be continued. MBFA proposed at least 5 years, as Morecambe Bay has currently been shut for 6 years.
 20. The retainer proposal was also supported as it addressed the social issue of being able to keep older fishers, for whom fishing is a way of life, within the fishing community, having the option of being able to obtain a permit and fish viably if sufficient stocks returned to allow a commercial fishery to open in their locality.
 21. A retirement permit was also discussed, which was proposed to be available for people of retirement age and over (as defined by the government), limited to local areas, which would free up permits for younger fishers, as they older fishermen wouldn't hold on to theirs, but also allow fishers with historical areas fish their limited local areas, if stocks allowed.
 22. **TSB Recommendation.** Retain the general permit fee at £500, and develop a 'retainer permit', with a nominal fee and limited years of continuous application to be added to Byelaw 3 when it is amended.
 23. **Flexible management of mussel sizes (Paragraph 9).** There is no EU MLS for mussels, only NWIFCA Byelaw 3 which sets the MLS of 45mm across the District. Having a strict MLS is inflexible and can limit management options which might make the fishery more sustainable and allow greater exploitation.
 24. Fishermen and Officers supported greater use of closing mussel beds in preference to management by MLS. Clumping of mussels makes it hard for fishermen to effectively and efficiently separate size mussels without creating significant discard mortality.
 25. Some areas such as the Dee and Morecambe Bay require different management approaches. In the Dee a larger MLS is sometimes appropriate. Mussel fisheries are a prime example of a requirement for flexible and adaptive management to meet specific conditions.

26. **TSB recommendation.** A standard 45mm MLS should be kept, but the Byelaw should be amended to explicitly allow flexibility over size, and over the opening and closing of mussel beds so that management can be flexible and adaptive, which is necessary for the long term. There may need to be discussion with MMO lawyers as to the extent of flexibility which an Authority such as the NWIFCA can have to set and vary its own regulations as specified in byelaws.
27. **Seasonal closure for cockles (Paragraph 10).** A seasonal cockle closure (1st May – 31st August) was introduced by the NWNWSFC several years ago. Science suggests that the closed season helps settlement and growth of juvenile cockles by reducing disturbance. However, recent fisheries have required openings under derogations during the closed period and management strategies in the future may require similar approaches.
28. Including flexible seasonal closures within the Byelaw would ease administration problems and make adaptive management easier. No matter when the closure period, spat will be disturbed to some degree at all stages of development by tamping and ATV activity, therefore, flexibility should be included.
29. Failure to manage cockles by reducing density at critical times can lead to catastrophic die-offs. In some areas there is evidence that die-offs leaving large amounts of dead cockle shell can promote mussel settlement resulting in the loss of cockle grounds. Adaptive management is essential and therefore so is flexibility in the byelaw.
30. Climate change should also be considered as fishers have seen changes in the timings fish appearances in recent years, and any long term planning should build in the ability to be adaptive. A closure of some sort is preferable, rather than a free-for-all, but the flexibility is necessary.
31. **TSB recommendation.** Flexible closures should be included in the Byelaw when it is amended.
32. **Procedure for designating commercial areas (Paragraph 11).** The original Byelaw 3 draft contained provision for the Authority to be able to adaptively designate commercial areas as stocks allowed. This was removed by MMO. Currently the Byelaw only includes two commercial areas and it would be useful for good management to be able to include other areas if significant settlement occurred in unexpected places or to vary the area of the commercial areas.
33. **TSB Recommendation.** This is an avenue that should be pursued again and it was agreed that the Chief Executive would rewrite the proposals for an amendment.
34. **Set an annual deadline for permit applications (Paragraph 12).** A rush of applications for Byelaw 3 permits when fishery openings are announced leads to overstretched administration in the NWIFCA, and resultant frustration for fishers when their permits are not available instantly. Introducing a deadline for applications would help to ease these problems and ensure that fishermen received permits in good time for the opening of the season.
35. This section included a discussion on the sustainable number of permits to be issued for the NWIFCA District. The general view of TSB members was that current numbers (~280) are unsustainable, and that allowing more permit holders, up to a proposed 300-400 would make things worse.
36. A July 1st annual deadline for applications was proposed, which would allow two months for all remaining applications to be processed before the opening of the season.
37. **TSB Recommendation.** A 1st July deadline for current year applications was agreed as a proposed amendment.

A.O.B

38. **District wide Regulating Order.** NWIFCA has indicated that a District-wide Regulating Order for cockles and mussels should be attempted. The MBHFO is thought to be near to completion in Defra, but a district-wide Regulating Order may provide better management tools than a stand-alone Order in Morecambe Bay. However, a District-wide Order may not reduce the number of fishermen without creating a major enforcement task.
39. Would it just be for cockles? Or for cockles and mussels? The MBHFO includes 'all shellfish' to allow potential for new species fisheries to be developed. Orders for individual estuaries could be developed but a District-wide Order will better address the shellfish industry which wants access to all beds and would require less administration.
40. A district-wide Regulating Order would be better for long-term adaptive management. We aren't able to predict what will happen to shellfish stocks in the future, and a District-wide Order would aid management of fluctuating stocks and the potential for exploitation of other stocks in future years.
41. **TSB Recommendations.** A first draft MBHFO is expected from Defra in early 2013. With that in hand, the NWIFCA should consider if and how District-wide Order could be progressed. If the MBFO will take a long time to come into force, then the NWIFCA would be prudent to invest time investigating a District-wide Order. NWIFCA committee should write again to Defra to try and speed up the MBFO process.
42. **Bass.** The Angling Trust are lobbying the Fisheries Minister, Richard Benyon, for an increase in the Bass minimum landing size from 36-48cm. The Minister appears to be in favour but fishermen in the NW argue that this will be detrimental to fisheries in the District and want the TSB to be aware of their stance.
43. In the NW, it appears Bass begin to disperse before reaching 48cm, and such a move would damage fisheries in the District and NW fishermen have successfully lobbied against similar moves in the past.
44. The NWIFCA is currently taking a proactive stance towards Bass management, with the Heysham Bass nursery area Byelaw soon to come into force.
45. **TSB Recommendation:** A note will be tabled to update the full NWIFCA Committee for the meeting on December 11.