

Sussex Inshore Fisheries and Conservation Authority

MARINE AND COASTAL ACCESS ACT 2009 (c.23)

Shellfish Permit Byelaw 2015

The Authority for the Sussex Inshore Fisheries and Conservation District in exercise of its powers under sections 155 and 156 of the Marine and Coastal Access Act 2009 hereby makes the following byelaw for that District.

Interpretation

1. In this byelaw:

- (a) “the Authority” means the Sussex Inshore Fisheries and Conservation Authority as defined in articles 2 and 4 of the Sussex Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No. 2199);
- (b) “berried hen” means a female edible crab or lobster carrying spawn attached to its body or some other exterior part, or which is in such a condition as to show that at the time when it was taken it was carrying spawn so attached;
- (c) “certificate disc” means a disc issued by the Authority attached to a vessel containing details of the applicable permit;
- (d) “the District” means the Sussex Inshore Fisheries and Conservation District as defined in articles 2 and 3 of the Sussex Inshore Fisheries and Conservation Order 2010;
- (e) “edible crab” means a crab of the species *Cancer pagurus*;
- (f) “lobster” means a lobster of the species *Homarus gammarus*;
- (g) “mutilated lobster” means a lobster where any of the five flaps of the tail fan is missing or mutilated in such a manner that could hide or obliterate the V-notch on a V-notched lobster;
- (h) “permit” means:
 - (i) a Commercial Permit issued under paragraph 14;
 - (ii) a Recreational Permit issued under paragraph 25;
- (i) “pot” means a pot or trap capable of capturing any specified species;
- (j) “relevant fishing vessel” means a fishing vessel:
 - (i) registered in accordance with Part II of the Merchant Shipping Act 1995 (c.21) and the regulations made under that Act, or in the Channel Islands or Isle of Man; and

(ii) in respect of which a fishing licence issued under the Sea Fish (Conservation) Act 1967 (c.84) is held at the time of the application for a permit under this byelaw.

(k) "riddle" means a fixed or moving flat or cylindrical apparatus constructed of parallel bars which rejects whelks that pass between the bars;

(l) "specified species" means any of the following species:

(i) cuttlefish (*Sepia officinalis*);

(ii) edible crab (*Cancer pagurus*);

(iii) lobster (*Homarus gammarus*);

(iv) prawn (*Palaemon* spp.);

(v) spider crab (*Maia squinado*);

(vi) velvet swimming crab (*Necora puber*);

(vii) whelk (*Buccinum undatum*);

(m) "tag" means a tag issued by the Authority attached to a pot identifying the applicable permit;

(n) "vessel" means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or any other amphibious vehicle, used or capable of being used as a means of transportation on water;

(o) "V-notched lobster" means a lobster with an indentation in the shape of the letter "V" or resembling the shape of a "V" made in any one or more of the five flaps on the tail fan.

Catch Prohibitions and Restrictions

2. During a fishing trip in which a vessel is used to fish within the District, a person must not remove from the fishery or retain on board:

(a) a V-notched lobster;

(b) a mutilated lobster; or,

(c) a berried hen;

and any such crab or lobster must be returned immediately to the fishery.

3. During a fishing trip in which a vessel is used to fish within the District, a person must not remove from the fishery or retain on board more than 2 lobsters and 5 edible crabs in a calendar day.
4. During a fishing trip in which a vessel is used by more than one person to fish within the District, those persons must not remove from the fishery or retain on board more than 2 lobsters and 5 edible crabs in a calendar day.
5. Paragraphs 3 and 4 are subject to paragraph 11.

Gear Prohibitions and Restrictions

6. Subject to paragraph 12, a person must not use a pot to fish for a specified species.
7. Subject to paragraph 12, a person must not carry a pot on board a vessel unless the pot is stored in such a way that it cannot readily be used for fishing.
8. Subject to paragraph 11, a person must not use a container or other device to store specified species in the sea or in an estuary and must land any specified species removed from the fishery on the day of capture.
9. A person must not haul any other person's pots without the prior written permission of the Authority.

Supplementary Provisions and Exceptions

10. 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.
11. Paragraphs 3, 4 and 8 do not apply to a person acting in accordance with a Commercial Permit and any permit conditions or flexible conditions attached to that permit.
12. Paragraphs 6 and 7 do not apply to a person acting in accordance with a valid permit and any permit conditions or flexible permit conditions attached to that permit.

Commercial Permits

13. The Authority may issue a permit authorising a person to use pots to fish for specified species from a relevant fishing vessel in any part of the District ('a Commercial Permit').
14. An application for a Commercial Permit may only be made by the owner of a relevant fishing vessel using the printed forms available from the Authority's office and website.
15. Only one Commercial Permit will be issued per relevant fishing vessel.

16. Where the Authority issues a Commercial Permit the Authority will at the same time issue a certificate disc and tags.

17. A Commercial Permit, certificate disc and tags:

(a) are issued to the owner of the named relevant fishing vessel, or in the case of shared ownership, to all owners of that vessel (“the permit holder”);

(b) are valid for the period specified in the permit (up to a maximum of two years);

(c) are not transferrable between:

(i) the permit holder and another person; or,

(ii) the vessel named in the permit and another vessel; and,

(d) must be surrendered to the Authority immediately if no longer required.

18. A Commercial Permit holder may nominate a representative at any time in writing to the Authority.

19. The specified Commercial Permit and tag fees are payable on application as specified in (a) and (b), unless varied pursuant to paragraph 21:

(a) The sum of £200 for a Commercial Permit

(b) The sum of £0.15 per tag

20. The fee of £200 is for a permit of two years duration.

21. The Authority may vary permit fees in accordance with the following conditions and procedures:

(a) the Authority will consult in writing with commercial permit holders;

(b) the fee will not be changed for any permit already issued;

(c) the fee will not be increased more than the equivalent value of 50% every year from the date the this byelaw was introduced:

(d) the Authority will make a decision whether to vary the permit fee based upon:

(i) the responses from the consultation under paragraph 21 (a)

(ii) expenditure arising from the administration of permits and processing permit holder data required by the Authority

(iii) any regulatory impact assessments associated with this byelaw

(iv) Authority expenditure to conduct any survey activities that support the implementation of shellfish permits

(v) Authority costs associated with arranging and attending meetings with permit holders

(vi) any relevant Authority expenditure incurred by implementation of this byelaw

22. A fee is payable for the replacement of lost or destroyed Commercial Permits, certificate discs and tags as specified in (a) to (d).

(a) Replacement Permit £10

(b) Replacement Disc £10

(c) Replacement tag, fixed administration charge £3

(d) Replacement tags £0.15 per tag

23. A Commercial Permit is subject to:

(a) the general permit conditions in paragraphs 32 to 42;

(b) the Commercial Permit conditions in paragraphs 43 to 45; and,

(c) any flexible permit conditions attached to the permit in accordance with paragraphs 47 to 49.

Recreational Permits

24. The Authority may issue a permit authorising a person to use pots to fish for specified species in any part of the District ('Recreational Permit').

25. An application for a Recreational Permit may be made by any person using the printed forms available from the Authority's office and website.

26. Only one Recreational Permit will be issued to a person.

27. Where the Authority issues a Recreational Permit, the Authority will at the same time issue tags.

28. A Recreational Permit and tags:

(a) are issued to the applicant ("the permit holder");

(b) are valid for the period specified in the permit (up to a maximum of one year);

(c) are not transferrable between the permit holder and another person; and,

(d) must be surrendered to the Authority immediately if no longer required.

29. A fee of £10 for a Recreational Permit and tags is payable on application, unless varied pursuant to paragraph 21.

30. A fee is payable for the replacement of lost or destroyed Recreational Permits and tags as specified in (a) to (c), unless varied pursuant to paragraph 21.

- (a) Replacement permit £5
- (b) Replacement tags, fixed administration charge £2; and,
- (c) Replacement tags £0.15 per unit

31. A Recreational Permit is subject to:

- (a) the general permit conditions in paragraphs 32 to 42;
- (b) the Recreational Permit conditions in paragraph 46; and,
- (c) any flexible permit conditions attached to the permit in accordance with paragraphs 47 to 49.

General Permit Conditions

32. The permit holder must not fish for crab or lobster using a pot which has a chamber with an entrance designed to restrict escape, unless the pot is fitted with an escape gap located in the exterior wall of the pot or (in the case of a multiple chambered pot) an escape gap located in the exterior wall of each individual chamber.

33. The escape gap referred to in paragraph 32 must be of sufficient size so that a rigid box shaped gauge 80 millimetres wide by 45 millimetres high and 100 millimetres long may be passed through the gap.

34. The permit holder must not use a pot to fish for whelk unless the pot is fitted with the specified number of escape holes.

35. The escape holes referred to in paragraph 34 must:

- (a) be positioned at least 150 millimetres from the inside base of the pot or no more than 50 millimetres from the top of the pot;
- (b) be of a size that a cylindrical bar of the specified diameter will pass freely through the hole;
- (c) not be obstructed.

36. The permit holder must pass all whelks removed from the fishery over or through a riddle which has sufficient space between bars so that a gauge of a specified size will pass through; and a whelk which passes through the bars of the riddle, or which is of a size below the minimum size for whelks as contained in provisions within European or national legislation must be returned immediately to the sea.

37. In paragraphs 34 to 36 "specified" means specified in a flexible permit condition attached to the permit in accordance with paragraphs 47 to 49.

38. The permit holder must not set a pot that:
- (a) is not fitted with a tag issued by the Authority; or
 - (b) is fitted with a tag that has previously been notified to the Authority as lost.
39. All individual pots or each string of pots used by the permit holder must be marked by at least one floating buoy or dahn clearly marked with either the registration (port, letters and numbers) of the relevant fishing vessel named on the permit or the permit number.
40. The permit holder must provide any relevant fisheries information required by the Authority.
41. To obtain a replacement tag in the event that a tag is lost, the permit holder must submit a written request to the Authority.
42. If a lost tag is subsequently found by the permit holder it must be returned within 48 hours to the Authority and must not be used on a pot again.

Commercial Permit Conditions

43. The vessel named on a Commercial Permit must remain a relevant fishing vessel for the duration of the permit.
44. The permit holder or the nominated representative of the permit holder must be present on board the vessel during the permitted activity to use the permit.
45. The certificate disc must be clearly displayed at all times on the vessel named on the permit.

Recreational Permit Conditions

46. The permit holder must be present during the permitted activity to use the permit.

Flexible Permit Conditions

47. The Authority may introduce, remove or vary a flexible permit condition which falls within one or more of the following categories:
- (a) catch restrictions;
 - (b) bait restrictions;
 - (c) gear restrictions;
 - (d) spatial restrictions;
 - (e) time restrictions.
48. The Authority may introduce, remove or vary a flexible permit condition in accordance with the review procedure set out in paragraphs 50 and 51.

49. The flexible permit conditions that apply to a permit until the first review pursuant to paragraphs 50 and 51 are those set by the Authority taking into account the impact assessment that accompanies this byelaw and all other material considerations.

Review Procedure

50. The Authority will review a flexible permit condition no less than once every four years, as follows:

- (a) the Authority will consult in writing with permit holders and such other stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by the proposed future management options;
- (b) the Authority will make a decision whether to introduce, remove or vary a flexible permit condition based upon responses received from the consultation under paragraph (a) and the information listed in paragraph 51;
- (c) following a decision being made by the Authority, permit holders will be notified in writing and permits will be re-issued.

51. The information includes any one or more of the following:

- (a) data collected from permit holders;
- (b) scientific and survey data gathered by the Authority or provided to the Authority by such other bodies, organisations, or persons as the Authority thinks fit;
- (c) scientific advice provided by Centre for Environment, Fisheries and Aquaculture Science or such other bodies, organisations, or persons as the Authority thinks fit;
- (d) an impact assessment of any proposed changes;
- (e) advice given by Natural England or such other bodies, organisations, or persons as the Authority thinks fit;
- (f) information from any other relevant source.

Breach of Permit Condition

52. A failure to comply with a:

- (a) general permit condition (within paragraphs 32 to 42);
- (b) Commercial Permit condition (within paragraphs 43 to 45);
- (c) Recreational Permit condition (within paragraph 46); or
- (d) flexible permit condition attached to a permit in accordance with paragraphs 47 to 49;

constitutes a contravention of this byelaw.

Revocation

53. The byelaws with the following number, title or purpose made by the Sussex Sea Fisheries Committee in exercise of its power under sections 5 and 5A of the Sea Fisheries Regulation Act 1966 (c.38) and in force immediately before the making of this byelaw are hereby revoked:

- (a) No. 15, introducing permits for taking lobsters confirmed on 13th October 1982;
- (b) 'Fishing for and taking of Whelks' confirmed on 17th September 1997; and

54. The byelaw with the following number and purpose made by the Sussex Sea Fisheries Committee in exercise of its power under the Sea Fisheries Regulation Acts, 1888 to 1930 and the Sea Fish Industry Act 1938 and in force immediately before the making of this byelaw is hereby revoked:

- (a) No. 3, introducing a closed period for the taking of periwinkles confirmed on 6th February 1962.

Explanatory Note

(This note is not part of the byelaw)

The Shellfish Permit Byelaw establishes a permit based system for both the commercial and recreational exploitation of shellfish species fished for by pots and traps. The provisions within the byelaw enable a responsive approach to the management of the fisheries applying adaptive management based on best evidence. The byelaw will enable stock management at sustainable levels and maximise economic benefit from the relevant fisheries for the benefit of the community. The byelaw's provisions will support the Authority in delivering its conservation duties.

The byelaw applies in the Sussex Inshore Fisheries and Conservation District and regulates fishing for specified species (defined in paragraph 1 as cuttlefish, edible crab, lobster, prawn, spider crab, velvet swimming crab and whelk) and provides for Recreational Permits and Commercial Permits.

The removal of V-notched lobsters, mutilated lobsters and berried hen edible crabs and lobsters from the fishery is prohibited (paragraph 2).

The holder of a Recreational Permit must not remove from a fishery more than 2 lobsters and 5 edible crabs in a day (paragraph 3) and where more than one holder of a Recreational Permit fishes from the same vessel, the total that may be removed by all the holders, taken together, remains 2 lobsters and 5 edible crabs in a day (paragraph 4).

A person must not use a pot to fish for a specified species unless they have a valid Recreational Permit or Commercial Permit (paragraph 6) and, unless fishing in accordance with a permit, must not carry a pot on board a vessel unless the pot is stored in such a way that it cannot readily be used for fishing (paragraph 7).

A person must not store specified species at sea or in an estuary (paragraph 8).

A person must not haul any other person's pots without the prior written permission of the Authority (paragraph 9).

There is an exemption for acts carried out for scientific, stocking or breeding purposes in accordance with a written permission issued by the Authority (paragraph 10).

The restrictions at paragraphs 3, 4 and 8 do not apply provided a person has a Commercial Permit and is acting in accordance with it (paragraph 11).

The restrictions at paragraphs 6 and 7 do not apply provided a person has a Commercial Permit or a Recreational Permit and is acting in accordance with it (paragraph 12).

The byelaw provides that the Authority may issue Commercial Permits and Recreational Permits and the terms on which they may be issued (paragraphs 13 to 23 for Commercial Permits and paragraphs 24 to 31 for Recreational Permits). The byelaw also sets out General Permit Conditions that apply to both types of permit (paragraphs 32 to 42), Commercial Permit Conditions (paragraphs 43 to 45) and Recreational Permit Conditions (paragraph 46).

The byelaw provides that the Authority may introduce, remove or vary (in accordance with the review procedure set out at paragraphs 50 and 51) flexible permit conditions in relation to catch, bait, gear, spatial and time restrictions (paragraphs 47) and specify items referred to in paragraphs 34 to 36 (paragraph 37). The position until the first review is set by the Authority taking account of the impact assessment that has been prepared to accompany the byelaw (paragraph 50).

Failure to comply with a permit condition constitutes a contravention of the byelaw (paragraph 52).

Section 163 of the Marine and Coastal Access Act 2009 provides that a person who contravenes a byelaw is guilty of an offence. Where a vessel is used in contravention of a byelaw the master, owner or charterer (if any) are each guilty of an offence. A person who is guilty of contravening a byelaw is liable on summary conviction to a fine.

Three existing byelaws are revoked (paragraphs 53 and 54).