

**NWIFCA Technical, Science and Byelaw  
Committee  
February 2018.**

**AGENDA  
ITEM NO.  
12**

**NWIFCA COCKLE AND MUSSEL PERMIT BYELAW 2018 NEXT STAGE**

**Purpose:** To consider a further draft revised cockle and mussel permit byelaw 2018.

**Recommendation:** TSB approve the draft byelaw at Annex A subject to a decision on a trading permit and MMO legal advice.

**Background**

1. Following discussion at the 31 October 2017 meeting actions were:
  - I. Members to return written comments on the draft byelaw by end November 2017.
  - II. The question of waiting list applications for minors be considered by Mr Leigh.

**Questions to be resolved.**

2. **Cockle and mussel trading permit.** The suggested trading permit was discussed at the August and October 2017 TSB meetings. A query was raised regarding the legality of the proposal in respect of IFCA powers. Legal advice on the suggested trading permit has been requested from MMO and is expected in March 2018.
3. **Applications from minors to go on waiting list .** The Authority is agreed that all permit holders must have a national insurance number and the foreshore training course so they must be 16 years old to get a permit. The minimum age at which a person may apply to join the waiting list requires resolution.
4. In the past no-one has been accepted on to the waiting list before the age of 15 because the Authority required possession of a NINO to get on the list. The new byelaw is drafted to allow those over 14 to be on the waiting list. Members may wish to consider if this is the most appropriate age. An alternative may be to set the minimum age at 12 in line with the age at which a person may apply for a passport.
5. The length of time from getting on the waiting list to becoming eligible for a permit may be a consideration. The length of the waiting list is highly variable and mainly dependant on cockle stocks in the District. At present the waiting list delay is about 10 years which could theoretically result in a 14 year not becoming eligible for a permit until age 24. However experience shows that the list rapidly shortens in years when cockles are scarce as applicants decline permit offers so the delay is likely to be much less than 10 years.
6. For minors the Authority must be confident that applicants are expressing an individual choice. The young person should make the application as distinct from a parent or guardian. Otherwise problems may arise from e.g. disagreements between parents, questions about a young persons' right to choose or complications where guardianship of the child changes. An application should be a 'follow on' to the normal parent/child dialogue around career choices. Children start to consider career choices at school around age 14.
7. Allowing under 16 to apply will require joint signing of the application from a parent or guardian as for UK passport. The Authority would have to prove parent / guardianship. When this procedure is followed by UK Passport Office if there is a dispute between parents / guardians over the application the wishes of the child are used as the deciding factor.

8. NWIFCA will also require permission from a parent or guardian to hold personal data on the young person (ie. name, address, date of birth). This will be a matter of completing an application form.
9. In all circumstances whenever an applicant reaches the top of the waiting list they are contacted to determine whether they still would like a permit. There would be no difference with a young applicant once they attain the age of 16 and have acquired their NINO. They can be contacted directly at this stage to ascertain their decision without the need to confirm with parent or guardian.

### A Draft Byelaw

10. A revised draft of the byelaw is at Annex A. If trading permit provisions are removed, the byelaw would require editing at sections: 1d, 1k, 1l, 8, 11, 13, 15, 19, 22.
11. The following are comments on the first draft of the byelaw from Dr Andrews.

<b>Table 1. Comments on the first draft of the byelaw discussed in October 2017</b>	<b>Officer responses</b>
<p>Para 4 – this needs careful thought. It would make it an offence (for instance) for fishermen based in the District to <u>possess</u> fishing apparatus that could be legally used in other parts of the country. So, for instance, driving through the District with a cockle dredge in the back of a van would be an offence, even if it was never used.</p>	<p>The clause is not intended to be so all encompassing. This is standard wording (e.g. Byelaw 3 para 4) to prohibit ‘going equipped’.</p>
<p>Para 5 – as I have said before, I would like to see the scientific evidence that supports the use of the 20mm square and 45mm length limits for cockles and mussels as a fisheries conservation measure. I am not aware of any scientific evidence that these sizes relate to any biological characteristic of the species concerned, nor of any evidence that they promote the abundance of either species.</p>	<p>The MLSs are longstanding, agreed with the industry and prevent the removal of small stock. Removal of MLS could allow over exploitation and expose the Authority to challenge of failing in its duty to manage fish stocks.</p>
<p>Para 7 – again, I would like to see the scientific evidence that shows a fisheries conservation benefit that arises from a cockle closed season.</p>	<p>Closed season allows cockles to mature without disturbance. It is accepted by industry. Removal of closed season could increase exploitation and expose the Authority to challenge.</p>
<p>Para 8 – I thought we had agreed at our meeting in August that it was inappropriate for the trading in first sale cockles or mussels to be addressed in this byelaw.</p> <ol style="list-style-type: none"> <li>I. The wording as it stands means that any shellfish buyer in the country (or in the EU) must obtain a trading permit in order to buy cockles or mussels from fishermen operating in the District.</li> <li>II. I am really not at all sure what fisheries conservation benefit arises from this.</li> <li>III. Bearing in mind the problems that mirroring AIS requirements have caused for the dredge byelaw, the risk of mirroring the EU “Buyers and Sellers” regulations in this byelaw is considerable. Again, I feel that it would be</li> </ol>	<p>No resolution was agreed in August. The tape of the discussion was circulated to clarify.</p> <ol style="list-style-type: none"> <li>i. This is officers’ recommendation.</li> <li>ii. Fisheries are managed by traders who set e.g.: quantity, size, location, dates of stock taken. However, all legal regulation falls on gatherers. In the past this has led to exploitation of labour which is partly why GLAA are concerned about the industry and require traders to have GLAA licenses.</li> <li>iii. This issue relates specifically to cockle and mussel fisheries and</li> </ol>

more appropriate to address this in a separate byelaw.	should be in this byelaw.
Para 16 is ambiguous. Does it apply to both gathering and trading permits?	Agree. Applies to gathering permits only. Wording adjusted.
Overall, it is not clear to me what the overall fisheries conservation objective is for the byelaw. It is a mixture of the old escapement management strategy that pre-dated the Marine Act (the minimum sizes) and the new effort management strategy that has been introduced since the Marine Act was implemented. I don't see the need for two management strategies, when either one or the other would be sufficient to manage the stocks concerned.	The objective of the byelaw is management and conservation. The conflict between 2 strategies is unclear.
Given the resource constraints that the Authority is operating under and the labour-intensive nature of enforcement of the cockle and mussel fisheries, I would suggest that we look very carefully indeed at the wording of this byelaw to ensure that it has a clear objective and sets out a management strategy that provides fisheries conservation benefits and which is economic to implement. This appears to me to be the approach that other IFCAs have adopted.	Not sure what is required. Please provide suitable wording.

### Proposed permit application and handling system

1. Applicants must be aged over 14 and must complete and return to the Authority at the Carnforth office, the NWIFCA Cockle and mussel permit application form available from the Authority and on the website. For applicants under 16, the application must be signed by a parent or guardian.
2. Permits will be offered in the order applications are received.
3. A maximum of 10 new permits will be offered on 1 August each year to the top 10 applicants on a waiting list. Additional applicants will remain on the waiting list.
4. Applicants not holding a National insurance number because they are underage 16 will not receive permits but will be retained in the top 10 on the waiting list until they have a NINO.
5. Applicants and permit holders must ensure the Authority has their current address. Failure to do provide their current address will result in any permit being suspended until a valid address is provided.
6. The first 10 applicants offered permits will receive permits on production of:
  - a. a valid foreshore gatherers safety training certificate course;
  - b. evidence that the applicant has registered for payment of tax with HMRC in the current or previous tax year by providing a SA300 form if self-employed or a payslip if employed showing payment of tax by PAYE.
  - c. their National Insurance number;
  - d. 2 passport photographs taken in the last year;
  - e. payment of the relevant fee;
7. If an offer of a permit from the waiting list is declined or not accepted by providing the information above within 3 weeks of the offer being sent by the Authority, the applicant may be deleted from the waiting list and the permit offered to the next person on the waiting list.

## Annex A

### North Western Inshore Fisheries and Conservation Authority

#### Marine and Coastal Access Act 2009

#### Permit to gather cockles and mussels by hand byelaw 2018

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) "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
  - b) "cockle" means a shellfish of the species *Cerastoderma edule*;
  - c) "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 Order 2010 (S.I. 2010/2200);
  - d) "first sale" means sale, exposure or offer for sale for the first time, cockles or mussels that have been gathered from a fishery within the District;
  - e) "fishery" means an area of sea, seabed, exposed estuary, seashore or other marine environment;
  - f) "foreshore gatherers safety training certificate" means a certificate issued by Seafish Industry Group Training Association, or a trainer approved by the Authority, certifying that the person named on the certificate has completed a safety training course approved by the Authority for inter-tidal shellfish gathering;
  - g) "gather" includes all activities related to fishing by hand of cockles or mussels within or from a fishery including harvesting, taking, moving and transporting;
  - h) "gathering permit" means a permit issued by the Authority to gather cockles or mussels;
  - i) "MACAA" means the Marine and Coastal Access Act 2009;
  - j) "mussel" means a shellfish of any species of the genus *Mytilus*;
  - k) "sales note" means a document that contains the name, address, trading permit holder registration number of the buyer; the name and permit number of the gathering permit holder, the date of purchase and date of landing of the shellfish, the live weight, species and location of gathering;
  - l) "trading permit" means a permit issued by the Authority to first sale purchase of cockles or mussels.

#### **Prohibitions**

2. A person must not gather cockles or mussels from a fishery unless they have in their possession while gathering a valid gathering permit issued to them by the Authority.
3. A person must not gather cockles or mussels except:
  - a. by hand using only a rake;
  - b. in the case of cockles by using a, craam, tamp or jumbo;
  - c. in accordance with a gathering permit.

4. A person must not have in their possession any article for use in the course of or in connection with gathering cockles or mussels within or from a fishery in breach of this byelaw.
5. A person must not take from a fishery any cockle which will pass through a gauge having a square opening of 20mm measured across each side of the square or any mussel less than 45mm in length.
6. A person must not have in their possession, retain, transport or store any cockle or mussel gathered in breach of this byelaw. Any person who possesses or removes cockles or mussels the removal of which is prohibited by these byelaws or any Act of Parliament must immediately redeposit the same without injury as nearly as possible in the fishery from which they were taken or under the written authority of the NWIFCA on another suitable fishery and shall spread them thinly and evenly through the fishery.
7. No person shall gather any cockle within or from a fishery on or between 1<sup>st</sup> May and 31<sup>st</sup> August in the same year.
8. A person must not purchase first sale cockles or mussels caught within the District unless they have in their possession a trading permit issued to them by the Authority.

### **Exemptions**

9. 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 permitting that act for a scientific, management, stocking or breeding purpose or in the exercise of any right of common held by that person.
10. This byelaw shall not apply to a person gathering less than 5kg of cockles and 5kg of mussels during a calendar day from a fishery which is not closed under this or any other byelaw or Act of Parliament nor designated a commercial area under paragraph 21d of this byelaw nor part of the District managed under the Dee Estuary Cockle Fishery Order (2008).

### **Permit conditions**

11. A gathering or trading permit:
  - a. is issued by the Authority to a named person ("the permit holder")
  - b. is not transferrable from the permit holder to another person
  - c. is annually renewable
  - d. is valid from 1 September to the following 31 August inclusive unless otherwise stated on the permit.
12. Only holders of a gathering permit under this byelaw shall be entitled to renew the gathering permit for the next year.
13. Holders of gathering or trading permits must:
  - a. file returns to the Authority by mail or post on the Authority website on a correct valid return form providing all the information requested to the Authority, not later than the 5<sup>th</sup> day of each calendar month, including nil returns, or more frequently if stipulated in a permit condition.
  - b. Notify the Authority of any changes of name or address;
  - c. not obstruct pursuant to MACCA s292(4) an IFCO carrying out a relevant function pursuant to MACCA s287.
14. A gathering permit holder must:
  - a. Apply for renewal at least 1 month before the permit expires.

- b. Hold a valid foreshore gatherers safety training certificate.
- 15. A trading permit holder must:
  - a. purchase all first sale cockles or mussels taken from the District from a gathering permit holder.
  - b. maintain and retain for a minimum of 5 years, separate records of all first sale purchases of cockles or mussels fished or taken from within the District and make records available for inspection by the Authority at all reasonable times.
- 16. The Authority shall keep a waiting list of new gathering permit applications in the order received. New gathering permits may be issued each year for the permit year starting 1 September in that year to a maximum of the first 10 applicants on the waiting list.
- 17. Failure to produce on the reasonable demand of a properly warranted Officer a valid permit when carrying out any activity for which a permit is required constitutes a breach of this byelaw.
- 18. Permits may be suspended by the Authority until returns have been filed;
- 19. Application for a trading permit or renewal of a trading permit may be made at any time
- 20. Applications for permits must be made using the correct forms available from the Authority's offices or website and providing all the information requested.
- 21. A fee of £500 shall be payable for each permit prior to issue upon application. The fee may be varied by no more than the annual percentage change in the Consumer Price Index on the 1st December each year.
- 22. No fee is payable for a trading permit issued to a person holding a gathering permit.

### **Flexible permit conditions**

- 23. On receipt of the information specified in paragraph 26. the Authority may in accordance with the review procedure in paragraph 25 and in order to promote sustainable exploitation of sea fisheries resources, attach or vary flexible conditions to a permit including some or all of the following:
  - a. Dates, times or tides during which gathering cockles or mussels is permitted;
  - b. Areas where gathering cockles or mussels is permitted;
  - c. Close for a specified period not exceeding 1 year any cockle or mussel bed or part of a bed for fishery management purposes or to control the rate of exploitation of stock;
  - d. Designate 'commercial cockle fishing areas' of maximum size 100 sq km for defined periods not exceeding 6 months where S.10 of this byelaw does not apply;
  - e. The total catch limit permitted within a specified period or a specified area;
  - f. Methods or equipment permitted within a specified period or a specified area.
- 24. Failure to comply with any of the permit conditions constitutes a breach of this byelaw.

### **Review procedure**

- 25. The Authority will review the permit conditions no less than once every 4 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 decide to attach, vary or remove any permit conditions based on the consultation responses obtained in accordance with sub-paragraph 25a and the information listed in paragraph 26.

- c. Following a decision being made by the Authority, permit holders will be notified in writing and permits will be amended as necessary at no cost to the permit holder.
26. 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 shall think fit;
  - c. Advice provided by Cefas, Natural England or such other bodies, organisations or persons as the Authority shall think fit;
  - d. An impact Assessment of any proposed changes
  - e. Information from any other relevant source.

### **Transitional Arrangements**

27. A NWIFCA Byelaw 3 (revoked by this byelaw) gathering permit holder is only entitled to apply for a gathering permit under this byelaw in the year this byelaw comes into force and the Byelaw 3 permit expires.
28. A person who provides evidence to the satisfaction of the Authority that they held a permit issued under Cumbria Sea Fisheries Committee byelaws 21 (Cockles permit scheme) or 23 (Mussels permit scheme) (revoked by NWIFCA Byelaw 3) prior to confirmation of this byelaw may apply to the Authority for written consent to fish for cockles or mussels in the Cumbria Sea Fisheries Committee District without being in possession of a gathering permit under this byelaw.
29. A person who provides evidence to the satisfaction of the Authority that they fished for mussels in the NWIFCA area of the Dee Estuary outside the North Western Sea Fisheries Committee District may apply to the Authority for written consent to fish for mussels within that area of the Dee Estuary without being in possession of a gathering permit under this byelaw.
30. All obligations of this byelaw apply to consents issued under paragraphs 28 or 29 but no fee is payable.
31. The transitional arrangements in paragraphs 28 and 29 will cease 5 years after the date of this byelaw coming into force.

### **Revocation of Byelaws**

32. NWIFCA Byelaw 3 (Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis* 2012) is revoked.
33. The following byelaws made by the North Western and North Wales Sea Fisheries Committee are revoked:
- a) Byelaw 13a Cockle and Mussels – management of the fishery;
  - b) Byelaw 16 Shellfishery – temporary closure.
34. Cumbria Sea Fisheries Committee Byelaw 18 (Shellfishery temporary closure) is revoked.

**Explanatory Note***(This note does not form part of the byelaw)*