

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

**AGENDA
ITEM NO.
16**

NWIFCA COCKLE AND MUSSEL PERMIT BYELAW 2018 NEXT STAGE

Purpose: To report progress and consider next stage.

Recommendation: A new draft of the byelaw is prepared without provision for a trader permit but including identification of the owner on containers into which shellfish are put for transport away from the fishery. Other amendments agreed at TSB in February to be included.

Background

1. A review of this byelaw was discussed at TSB in February. Resolutions were:
 - I. to seek legal advice on the draft byelaw and specifically the question of a trader permit;
 - II. to allow applicants to be added to the waiting list from age 12.

Progress since February

2. Detailed comments on the text of the draft byelaw were received from MMO bylaw team 10 April but did not include the question of the trader permit.
3. Advice from MMO legal team on the trader permit was received 16 April as follows:

“both our legal team and Defra are of the opinion that it is not within the IFCAs powers to regulate the cockle and mussel fishery with trader permits. As under the powers set out at s153(b) and 156(4) below apply only to the person who ‘exploited’ the sea fisheries resources in the first instance, and that those powers do not extend to regulating another industry, i.e. the trader who buys the shellfish from the permit holder”.
4. This advice was discussed with MMO legal advisors on 1 May. A further draft of the byelaw is in preparation to be completed following discussion at TSB.

Response to legal advice

5. The advice raises some questions and could be clarified. MACAA S153-4 does not specify that the powers in these sections apply only to ‘exploitation ... in the first instance’. S153(12) defines exploitation and includes activities that may take place after first sale..

Operation of fisheries.

6. In general gatherers collect from shellfish beds in 40kg bags which are transported by quadbike or other vehicle to the top of the shore or other area set aside for weighing and sale agreements. In that area, 40kg bags are emptied into 1 ton sacks similar to the sacks in which aggregate materials are sold from builders merchants.
7. When shellfish are put in large sacks they cease to be owned by gatherers and become the property of traders. They contain a mix of shellfish from more than 1 gatherer so the identity of the gatherer is lost. Sacks may remain in the weighing area for several days before collection. The Authority therefore needs to be able to make owners of large sacks accountable for the shellfish from the time they are put into ton sacks.
8. Traders continue to direct fisheries to a greater or lesser extent. In the past, enforcement activity has only been able to focus on gatherers. An example of trader involvement occurred at Pilling on 22 April 2018. After legal operations for many months, the catch

inspected included 10 tons mostly undersize cockle already in 1 ton sacks. The sacks were ready to be transported away. IFCOs questioned merchants but no-one admitted ownership. IFCOs instructed gatherers present to relay the undersize cockle which was done.

9. Intelligence after the event showed that the market for cockles had changed. Previously there had been a glut of small cockles. On 22 April gatherers were notified by traders that there was renewed interest in small cockles for bottling. Undersize cockles were gathered for which a high price had been offered.
10. A solution under consideration would be to require identification of filled ton sacks with either or both the identity of gatherers or the traders. Identification of catch ownership would provide evidence to prosecute gatherers or traders in relation to the transport and storage of illegal shellfish in the district.

Next steps

11. Considering the example above, the provision for a trader permit in the byelaw may be unnecessary and could be dropped. A new measure in the byelaw to require owner identification on containers containing cockles for transport away from the District could be added to the byelaw. The use of numbered tags provided by the Authority could be considered for which shellfish owners may be required to apply.
12. Following consideration by TSB a further draft of the byelaw will be prepared taking account of MMO comments and legal advice.

CEO April 2018