

Annex B: Analysis of members' comments on 18 November version of the byelaw

Comments form Mr Thompson	Officer response
<p>23-1—16 Email to CEO</p> <p>1. We do not use a fishing dredge and never have, however as you know in extreme cases we have used (with the authority's permission) bulldozers and excavators - and so as a bulldozer or excavator is intrinsically classed as a scoop and therefore a dredge then we may find it necessary at some point in the future to 'dredge' and if that is the case then the dredge byelaw will impact upon the oyster farm and so provision for this needs to be made in the byelaw. We need a clause whereby mechanical means of clearing sand/mussels from the oyster farm (or any other aquaculture operation in the district for that matter) but not necessarily taken for sale, is permitted and this is where I feel an 'Exception' added into Clause 3 relating to aquaculture would be the easiest solution. Or if this byelaw is not designed to be relevant to aquaculture operations then again I think that the byelaw should state that somewhere, I'm sure you can add some wording to that effect, however if you really want me to word it please let me know.</p> <p>2. Written permission from Byelaw 3 - using bulldozers and excavators in the future which nobody seems to like especially us because of it's high cost is not very likely but it is still a possibility, however what has been working to prevent this is our preferred method of using a few small steel blades attached to one of our various tractors to move sand from around the trestles, this loosening of the sand helps prevent swamping of the trestles, this sand can however sometimes contain tiny mussel spat but by it's nature this function would never result in the sale of any mussels.</p> <p>If you think this requires written permission from the authority then please let me know, however the mobile nature of the sand in Morecambe Bay can result in the extremely fast build up of sand around our trestles (i.e. overnight) and the authority's permission would need to be given very quickly on every occasion (which obviously would be very tricky) otherwise swamping of the oyster bags could occur which would result in mortalities in our oysters, therefore I would like to suggest that a rolling 12 month written permission would be most sensible.</p> <p>23 11 2016 email from CEO, Such clearance of mussels from around your oyster trestles requires written permission from the Authority under Byelaw 3 because moving mussels without a permit is prohibited by s3. You also require written permission under byelaw 12 s2-3.</p> <p>If you used a dredge you would also need a permit under the proposed new dredging byelaw. I don't think aquaculture needs a separate provision in the new byelaw. If you think it does please could you advise what it should say?</p>	<p>The equipment which Mr Thompson uses for mussel clearance is covered by the dredge definition in para 1 of the byelaw.</p> <p>The activity of clearing mussels from around trestles would require written consent under paragraph 3 of the new byelaw.</p> <p>Consent would normally be given subject to consultation with Natural England as it has been in previous years.</p> <p>No other specific provision to allow this activity is considered necessary in the byelaw.</p>

<p>I did not know you used a dredge. I thought you usually clear by hand or with some sort of tractor/bulldozer for which the Authority has given written permission in the past as long as mussels are just being moved within the site and not being sold?</p> <p>21-11-16 Email from Mr Thompson to CEO.</p> <p>Thank you for the new version of the Byelaw restrictions on use of a dredge, I am generally in agreement with it's contents however as I requested at the last full committee meeting, provision needed to be made for aquaculture operators, unfortunately I could not attend the last TSB Meeting because if I had I would have re-iterated the point previously brought up at the Full Committee Meeting.</p> <p>As you are well aware the oyster farm may from time to time have to mechanically clear mussel seed from the seafloor either to prevent build up or as a consequence of mussel seed build up to prevent swamping and losses to the oyster farm, maybe you see this as a separate issue that can be dealt with via 'a written permission from the authority' however if this is the case then maybe it should be incorporated into Clause 3 as an 'Exception'.</p>	
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Comments from Mr Ward (MMO)

Item	Comments	Response
1d	<p>"specified vessel" means a vessel identified by name and registration number... Registration number here presumably refers to RSS number, as opposed to PLN? Perhaps it should include both, or if it's just the one, it could be made clearer?</p>	<p>1d is modified using wording in Southern IFCA dredge byelaw to include both registration and license details.</p>
1g	<p>Just in the interests of consistency, would it be worth using the same wording as the Control Reg (1224/2009), under which vessels ≥ 15m in length are required to transmit over AIS? i.e.</p> <p>'automatic identification system' means an autonomous and continuous vessel identification and monitoring system which provides means for ships to electronically exchange with other nearby ships and authorities ashore ship data including identification, position, course and speed.</p>	<p>The AIS wording was taken from NEIFCA byelaw on advice of MMO. The definition has been edited to include wording from the control reg.</p>
4	<p>"A person may only apply for a permit.... for which the person is the owner or majority shareholder" There are several interlinked concerns here...</p> <p>1.The liability in the event of non-compliance is not explicit enough in the wording of the byelaw in my opinion. We could perhaps plagiarise the wording of the</p>	<p>Agree liability should be owner and skipper or equivalent. New sections 4 and 5 clarify that the permit is issued in respect of a vessel or vehicle but the person making the</p>

	<p>1967 Act (below), which is pretty unambiguous and seems to cover all foreseeable eventualities?</p> <p>Sea Fish (Conservation) Act 1967</p> <p>S(3) Where any fishing boat is used in contravention of any prohibition imposed by an order under this section, the master, the owner and the charterer (if any) are each guilty of an offence under this subsection.</p> <p>2. Many vessels are owned by companies- would they be able to apply as a limited company, or would they have to nominate an individual, e.g. a Director? Ordinarily, when charging the owner under this scenario we would charge the company with the offence rather than a nominated individual, as per the wording above. Following that principle, it would probably make more sense to have the company (i.e. the owner as per the Certificate of Registry) as the permit holder rather than a nominated individual.</p> <p>3. Does the permit holder need to be on board? Again, issues here perhaps with company owned vessels, relief skippers etc...? Often the owner doesn't (or even can't) skipper the vessel.</p>	<p>application must be a person who has primary responsibility for the vessel.</p> <p>Provision is included for vessels owned by companies.</p> <p>Usual IFCA byelaw practice is to issue permits to a person for a vessel.</p> <p>The applicant or permit holder does not need to be on board the vessel but the permit must be carried on the vessel.</p>
<p>7i and ii</p>	<p>Perhaps re-word to '10m and under' or '10.0m and over' in case a 10.00m vessel applies? I think there is at least one, possibly two, in the district!</p> <p>I agree with Jim's comments on this section. Are =<10m vessels precluded from using 2.0m or more length beams? Similarly, are tractors prohibited from using 2.0m or more? It's kind of implied, but I don't think it's clear at all.</p> <p>Swap 'tractor' with 'specified vehicle' in 7iii?</p> <p>The definition of a 'dredge beam' (and later 'blade') isn't particularly clear. The Welsh Scallop Order describes what I think is being referred to as a tow bar as this is restricted differentially 1-12nm in Welsh waters. It is defined in the Welsh Scallop Order as...</p> <p>"tow bar" ("<i>bar tynnu</i>") means any device or appliance which is capable of being used for the purpose of fixing or attaching a scallop dredge to a vessel for the purpose of enabling such a dredge to be towed by the vessel.</p>	<p>Change made. Please check new s8.</p> <p>Check new definition of dredge in 1c. Other references to dredge size are also removed.</p> <p>Beam trawls should not be caught by this byelaw.</p> <p>Tow bars to which dredges are attached would be prohibited by this byelaw.</p>
<p>9 a</p>	<p>See previous comments re company owned vessels</p>	<p>Now s10. Done in new s4-5</p>
<p>9 b i</p>	<p>See comments re item 4</p>	<p>Now s10. Done in new s4-5</p>

10	<p>Is the requirement to submit nil returns a bit overkill? We're going to be asking the vessels to;</p> <ul style="list-style-type: none"> a) Apply for the permit in the first place b) Phone/ text/ email 2 hours before they go fishing each time and c) Transmit on AIS <p>We should therefore know when they have (and haven't) been fishing, so do we also need a nil return? Vessels are required to submit nil returns for the MSARs (shellfish returns), and, to be honest, it often creates more of a problem than it solves. People who have fished tend to put them in anyway, but those that haven't just forget and we spend a lot of time chasing people up for these. If they keep failing to return them, you could end up prosecuting someone for not telling us they haven't been fishing, which isn't perhaps what we're trying to achieve.</p> <p>I would also argue that asking over 10m vessels to provide a return is also perhaps a bit too much, as they will be obliged to provide all that information in the log-book/ landing declaration. We'd therefore basically asking for a duplicate of the same information they are already required to provide, which goes against the principles of better regulation.</p>	<p>Now S 11 Returns: Authority has previously indicated it considers returns are important. Agree requirements should be proportionate. For byelaw 3, nil returns are a useful check and a declaration by fishermen of their activity but may be more than is needed for this bylaw. For further discussion at TSB.</p> <p>The Authority generally needs to get its own data on the quantity of shellfish taken. Also data on when fishing is active and which vessels are going where. Log book and landing declarations are not readily available to NWIFCA in relation to mussels.</p> <p>The Authority needs to use its enforcement resources as efficiently as possible so notice of fishing is needed.</p> <p>No change to this section made at this stage.</p>
12	<p>Although the definition in '1g' states the AIS has to be operational and '12' states the vessel must have an AIS terminal on board, it doesn't explicitly say here that the terminal has to be switched on and actively transmitting their position whilst engaged in fishing activity authorised under the permit. I think under the current wording it could be argued that as long as a vessel has a system fitted that is capable of being operational, they are compliant- even if it was switched off.</p>	<p>New definition of AIS at s1g to say the AIS must be switched on and transmitting whenever a vessel for which a permit has been issued is at sea.</p>

Dr Andrew's comments

Section	Comment	Response
Overall	<p>The byelaw sets out a framework for management. Much of the detail will be in the conditions. It is not clear how it will work and what implications will be for specific fisheries.</p> <p>Suggest draft permit conditions for the fishery(ies) that the byelaw is anticipated to regulate so that when it goes out for consultation the stakeholders & consultees will be able to make informed comments.</p>	<p>The byelaw allows the Authority to set conditions for the criteria listed in para 16. The detail will vary with each fishery. Example conditions for mussel seed fisheries are available.</p>

S9	para 8 proposes a fee of £50 for loss of permit. Could a similar fee apply to lost tags	S9 amended to include vehicle tag
Title	Section title Permit Conditions is misleading	Title changed to 'Permits'
S4	The byelaw specifies that a person may only apply for a permit for a vessel or vehicle of which the person is the owner or majority shareholder.	S4-5 redrafted. Please check
S6, 7, 8	<p>These require some attention to make sure that they dovetail together.</p> <p>Para 6 indicates that permits are only valid for certain dates; Para 7 indicates that fees are payable for a calendar year; and Para 8 that a fee of £50 is charged for a replacement permit (presumably if the original is lost).</p> <p>It is not clear how, for instance, these parts of the byelaw would apply in a situation where a permit was issued for certain dates to allow dredging for a species in one part of the District, and within a period of a year the same permit holder was granted permission to dredge on other dates in the same or another part of the District (i.e. within the same annual fee period).</p>	<p>S7 Dates of validity amended.</p> <p>S8 fee structure amended. Fishing in another part of the District or for another species would require an additional permit with new conditions so a new fee would be payable</p>
S7	<p>The new text states:-<i>"A permit fee is payable for each vessel or tractor for each calendar year prior to use as follows:"</i></p> <p>This is ambiguous and unclear. Suggest:</p> <p><i>"A permit shall be issued for a period of 12 months upon receipt of payment as follows:"</i></p> <p>And to deal with the risk of cheques/payments bouncing:-</p> <p><i>"Any permit issued in accordance with paragraph 7 shall be immediately rescinded if the payment made is not credited to the Authority within XX days of deposit"</i></p>	<p>Please see new S7-8. Having a fixed period in the byelaw would limit flexibility.</p> <p>Conditions will say (as in byelaw 3) that applicants should allow 21 days for receipt of a permit. Permits will not be issued until cheques have cleared.</p>
7 of byelaw.	<p>These two sections set out some new arrangements. They are not in agreement:-</p> <p>Suggestion: It would seem simpler and more appropriate to have 3 bands: Under 10m; Over 10m; Tractor.</p>	The amended byelaw wording applies. See new S8. References to blade or dredge size are removed.
9 of the byelaw	The revised wording of para 9(a) indicates that the scope of the permit is limited to the permit holder and vessel / vehicle.	S9 is now S10. See and check revised text.
15 of the byelaw.	Para 15 indicates that this permit may be subject to flexible conditions, the scope of which is outlined in	Permit will only

	<p>paras 15(a)-(g).</p> <p>It therefore appears that once a permit has been issued to a permit holder and their vessel that it provides access to any dredge fishery that may open in the District, for any species and using any pattern of dredge that is permitted under the permit conditions (since the permit itself is not constrained by dredge pattern, species or area; these can only be specified in the conditions attached to the permit).</p> <p>Under para 7, the fee is payable for a permit (i.e. for a permit holder and vessel), and not in respect for an endorsement of the permit such that it may have additional conditions added to it. So, having paid for a dredge permit, the permit holder can reasonably expect to be eligible to fish in any dredge fishery in the District, subject to the conditions that apply and for no additional fee. I suspect this was not the intention.</p> <p>Suggestion: The wording of Para 9 should be re-examined to check that it meets the objectives that Officers have outlined for the byelaw.</p>	<p>provide access to fisheries listed in the permit conditions. Types/ patterns of dredges may be specified in permit conditions.</p> <p>The point beginning 'under para 7' will be prevented by the permit conditions.</p>
<p>12 of the byelaw</p>	<p>At the meeting of the TSB we discussed the fact that smaller vessels are not currently required to be equipped with AIS, and that there is a possibility that alternative means of tracking vessels could be developed over a period of time.</p> <p>Suggestion: add words to this effect:-“...and / or any similar equipment that has been authorised by the Authority.”</p>	<p>Suggested wording would be unclear. We can only regulate specific systems or equipment. Use of 'similar' will not be allowed.</p>
<p>15 generally</p>	<p>The items that are listed for inclusion as permit conditions do not seem consistent with the requirements of §156 of the Marine Act. This section of the Act states (at §156(2)) that where the word “specified” is used in the Act, the relevant matter must be specified in the byelaw. Separate provision is made for permit conditions.</p> <p>My understanding and reading of this is that certain matters should be specified in a byelaw as opposed to permit conditions, and that these matters should not, by definition, be permit conditions.</p> <p>Matters that should apparently be specified in the byelaw (rather than conditions) include the following items listed in the permit conditions:-</p> <ul style="list-style-type: none"> • Spatial restrictions (15(b) / §156(3)(a)) • Catch limits (15(g) / §156(3)(b)) • Temporal restrictions (15(a) / §156(3)(a) & (c)) • Technical measures (relating to vessels, fishing gear, carriage of equipment) (15(d,f) / §156(5)) 	<p>Comments on use of the word 'specified' in MACA are MMO advice from 2016. By including the list of areas where conditions will be set we have complied with this advice.</p> <p>MMO have approved the list in S16 at an earlier stage and will see it again. IFCA consider flexibility in these area is needed.</p> <p>This is a developing area of byelaw</p>

	<p>I have looked at the MMO advice on sub-delegation which does not seem to offer us any help in this area.</p> <p>Suggestion If there is guidance from MMO / Defra which confirms we are allowed to move things that the Marine Act says should be specified in the byelaw into byelaw permit conditions, this should be presented to the Authority when it makes the byelaw to reassure us that we are acting intra vires.</p>	<p>making. The Authority can seek to push what can be achieved.</p>
<p>15e of the byelaw (1)</p>	<p>I am not sure that the restriction of the number of permits which can be issued for a fishery should be specified in the conditions attached to the permits themselves; this does not seem to be the correct structure within the byelaw and is also not consistent with the approach that seems to be envisaged in the Marine Act and which has been previously applied by this Authority.</p> <p>It would seem more appropriate that the restriction on the number of permits issued for a fishery should be a separate and distinct element of the byelaw (as is presently the case for NW-IFCA Bylaw 3 (paras 14 et seq)).</p> <p>I note that the Marine Act at §156(4) makes separate provision for enabling conditions to be attached to a permit (b) and enabling an IFCA to limit the number of permits issued by it (c).</p> <p>Suggestion A limit on the number of permits issued to be specified in the byelaw not in a permit condition, to ensure that the byelaw is compatible with the Marine Act.</p>	<p>Mechanisms for limiting numbers of permits are limited and must be non-discriminatory. Limiting numbers can be important in fisheries management as in Bylaw 3.</p> <p>If a number is put in the byelaw, it will apply to every fishery throughout the District until the byelaw is repealed. There would have to be justification for the number.</p> <p>As above suggest this is also left for MMO to advise.</p>
<p>15e of the byelaw (2)</p>	<p>Notwithstanding comments above, some operational issues concerning restricting access to a fishery should be considered. Section 15e allows for the number of permits that can be issued for a fishery to be limited.</p> <p>It is reasonably foreseeable that demand for dredge permits will from time to time exceed that number that the Authority may consider that it is appropriate to issue.</p> <p>There is no indication here or in the supporting documentation of whether (or not) any track record of operation in the District will be used to determine eligibility for a permit in any situation where demand exceeds supply. Factors such as historical engagement in a particular fishery and history of good compliance could be used to determine this, and a waiting list for unsuccessful applicants may also help to deliver a transparent management approach.</p> <p>The absence of clarity on this matter could create</p>	<p>Not clear what is suggested here in context of the above.</p> <p>The Authority has moved away from use of track record to select permit holders, as it is difficult to apply fairly.</p>

	<p>difficulties during consultation on the byelaw because consultees will be unable to determine from the current wording whether fisheries that have historically had limited access will now become a free for all; or alternatively fisheries where access has hitherto been unconstrained will become limited entry.</p> <p>Suggestion Prior to consultation on the byelaw, Officers should draw up draft conditions and also set out decision-making criteria so that Authority Members and those consulted on the byelaw can make an informed response to it.</p> <p>Something similar to, or based on experience of, NW-IFCA Byelaw 3 would seem appropriate here.</p>	
15f	Suggestion: Add “ <i>or vehicle</i> ” after “ <i>vessel</i> ”	Done.