

NWIFCA Quarterly Meeting

17th March 2017: 11.00 a.m.

**AGENDA
ITEM NO.
5**

BYELAW: RESTRICTIONS ON THE USE OF A DREDGE 2017

Purpose of Report

To present the proposed byelaw: ‘Restrictions on the use of a Dredge 2017’ and make the byelaw.

Recommendations

- I. That the Authority makes the byelaw as at Annex A.**
- II. The Authority agrees that if required, the differential permit fees at paragraph 10 may be replaced with a single permit fee.**
- III. That the Authority agree by resolution and vote a preferred single permit fee of £1,000 to £5,000 for all vessels and vehicles.**
- IV. That the Authority makes a second version of the byelaw as at Annex B including the agreed single fee.**
- V. The Authority proceeds with advertising and consulting on the byelaw after this meeting but not until Defra has given definitive legal advice on the proposal to use differential permit fees.**

Background

1. In 2016 the Authority resolved to make a byelaw to prohibit fishing using a dredge without a permit. The Authority has consulted with stakeholders, fishing industry and other partner bodies on the measures in this byelaw. There is general agreement on the need for the byelaw.
2. The byelaw at Annex A was sent out on 3rd March to be made by the Authority on 17th March.
3. The byelaw has been approved by MMO legal advisors responsible for quality assurance of IFCA byelaws.
4. The question of differential permit fees for different types of vessel operating different types of fishery is still unresolved. The question was raised by Defra in response to the consultation.
5. Additional evidence has been presented to MMO who are content with the differential fees proposed. However, confirmation that Defra agree with the byelaw is still awaited. Efforts to contact Defra legal advisors dealing with this byelaw have not yet received a response.
6. To protect the Authority against a further objection from Defra, MMO has suggested the Authority makes a second version of the byelaw with a single fee for all permits as at Annex B.
7. Before this byelaw can be made the Authority must agree the single permit fee. Using earlier estimates of cost and number of vessels and expected, a single fee of £5,000 would be needed to achieve the same level of cost recovery as the differential fee byelaw. A fee of less than £,5000 would not be expected to achieve the cost recovery objective

recommended in Government guidance.

8. However, a £5,000 fee would prevent small vessels participating profitably in most if not all fisheries. Even a fee of £2,000 would be expected to result in some operators opting out of fisheries which they have fished historically and have track record.
9. A single fee of £1,000 would be seen as unfair because it would have a disproportionate impact on small vessels. Large vessels would be seen as being given an unwarranted benefit and failing to cover their management costs. The reason strong objections are likely is that large seed mussel vessels are seen by local fishers as taking a disproportionate amount of mussel seed from the NWIFCA District.
10. In order to set a single fee to be included in paragraph 10 of the byelaw at Annex B, members are invited to propose appropriate fees. The most appropriate single fee is likely to be in the range £1,000-£5,000. The fee to be included in paragraph 10 of the byelaw will if necessary be the fee agreed by majority vote of the members present.
11. As long as members are in agreement with this process, this change to the byelaw does not contravene the Government's byelaw making guidelines.
12. MMO advise that there is no legal risk of making more than one version of a byelaw at this stage.
13. The byelaw should not be advertised until definitive advice is received from Defra on the issue of single or differential permit fees. There is substantial reputational risk of proceeding with differential fees and having to revert to a single fee for all permits at a later stage.

Chief Executive
7th March 2017

North Western Inshore Fisheries and Conservation Authority (NWIFCA)

Marine and Coastal Access Act 2009 (c.23)

Restrictions on the use of a dredge byelaw 2017

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. "AIS" means an operational transceiver of Class A or Class B design that transmits and can exchange accurate information with shore based facilities;
 - b. "the Authority" means the North Western Inshore Fisheries and Conservation Authority as defined in articles 2 and 4 of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010/2200);
 - c. "the 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;
 - d. "dredge" means a dredge, scoop, or similar device and any auxiliary hydraulic equipment that is designed for or capable of taking sea fisheries resources;
 - e. "specified vehicle" means a vehicle for which a permit to dredge has been issued under this byelaw;
 - f. "specified vessel" means a vessel for which a permit to dredge has been issued under this byelaw;
 - g. "permit" means a permit issued by the Authority in accordance with this byelaw.

Prohibition

2. A person must not use a dredge for the exploitation of sea fisheries resources except in accordance with a permit issued under this byelaw.

Exception

3. Paragraph 2 does not apply to any person performing an act that would otherwise constitute an offence under 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.

Permits

4. The Authority may issue a permit in respect of a specified vessel or specified vehicle authorising the use of a dredge to fish or take shellfish.
5. Contravention of a permit condition or a flexible permit condition constitutes an offence under this byelaw.

Permit conditions

6. A person may apply for a permit only in respect of:
 - a. a vessel for which the person is the owner, the majority shareholder in the company that is the owner, the leaseholder or the charterer or;
 - b. a vehicle for which the person is the owner, the majority shareholder in the company that is the owner or the leaseholder.
7. An undamaged identity tag supplied by the Authority must be permanently attached to a specified vehicle.
8. Permit applications may only be made using the form available from the Authority.
9. A permit is valid from the date of issue to 31 December of the same year unless specified in the permit
10. A fee is payable prior to issue for each permit as follows:

a.	Vessels over 15m overall length	£9,000
b.	Vessels 15m or under 15m overall length	£1,000
c.	Vehicles	£1,000
11. The Authority may charge a fee of £50 to issue a replacement permit or vehicle tag.
12. A permit:
 - a. is not transferable from a specified vessel or specified vehicle to another vessel or vehicle;
 - b. must be available for inspection by an IFC officer during a compliance visit to a vessel or vehicle;
 - c. remains the property of and must be surrendered to the Authority if no longer required.
13. A permit holder must not obstruct an IFC Officer.
14. Fishing returns must be filed as required by the Authority providing dates, times and locations of dredging and the quantity of fish taken. Returns including nil returns may be required for all months for which permits are valid.
15. The Authority may suspend a permit until outstanding returns have been filed.
16. A specified vessel used in conjunction with a permit must have a fully functioning AIS transmitting information including the vessel's identity course and speed at all times when the vessel is not stationary in port.

17. A permit holder must notify the Authority by phone, text or email at least 2 hours prior to commencement of fishing in conjunction with a permit.
18. A permit holder must notify the Authority of any change in the information provided to obtain a permit during the period when the permit is valid.

Flexible permit conditions

19. On receipt of the information specified in paragraph 21, the Authority may, in order to promote sustainable exploitation of sea fisheries resources, attach flexible conditions to a permit including some or all of the following:
 - a. dates, times or tides during which using a dredge for the exploitation of sea fisheries resources is permitted;
 - b. areas where using a dredge for the exploitation of sea fisheries resources is permitted;
 - c. species for which using a dredge to fish is permitted;
 - d. the type, size or design of dredge which is permitted;
 - e. the maximum number of permits which can be issued for a fishery;
 - f. the maximum number of dredges or total length of dredges that a vessel or vehicle may use in a fishery;
 - g. the total catch limit permitted within a specified period or a specified area.

Review procedure

20. The Authority will review flexible 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 changes in permit conditions;
 - b. the Authority will decide whether to add, vary or remove any permit condition taking account of the consultation responses and information received in accordance with paragraph 21;
 - c. following a decision by the Authority, permit holders will be notified in writing and permits will be amended as necessary with no charge.
21. The information in paragraph 20 is:
 - a. information and advice received from permit holders;
 - b. scientific and survey information gathered by the Authority or provided to the Authority by any other organisations or persons as the Authority thinks fit;
 - c. advice provided by Centre for Environment Fisheries and Aquaculture Science or Natural England or any other organisations or persons as the Authority thinks fit;
 - d. an impact assessment of any proposed changes;

- e. information from any other relevant source.

Revocation of byelaws

22. The byelaw with the title “Byelaw 12 Restrictions on fishing for bivalve molluscan shellfish” made by the North Western and North Wales Sea Fisheries Committee under the Sea Fisheries Regulation Act 1966 (c.38) section 5 and confirmed on 21 January 1998 is revoked.
23. The byelaw with the title “NWIFCA Emergency Byelaw: Restrictions on fishing for bivalve molluscan shellfish 2016” first signed by the Minister on 3 February 2016 and signed as extended on 31 January 2017 is revoked.

Explanatory Note

(This note does not form part of the byelaw)

This byelaw prohibits the use of dredges towed by vessels or vehicles for fishing within the NWIFCA District without a permit. The permit application requirements and the conditions of use are set out in the byelaw. In addition the Authority may attach conditions which may be varied to promote sustainable exploitation of sea fisheries resources. The procedure by which permit conditions may be varied is set out in the byelaw.

Vessels for which permits have been issued must carry a functional automatic identification system (AIS) which meets Class B design (tested and certified compliant by a notified body under the Radio Equipment Directive) or the higher specification Class A design (International Maritime Organisation (IMO) performance standard in the SOLAS Convention Chapter 5 Regulation 19 Section 2.4.5).

North Western Inshore Fisheries and Conservation Authority (NWIFCA)

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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

2. In this byelaw:
- h. "AIS" means an operational transceiver of Class A or Class B design that transmits and can exchange accurate information with shore based facilities;
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 - k. "dredge" means a dredge, scoop, or similar device and any auxiliary hydraulic equipment that is designed for or capable of taking sea fisheries resources;
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Exception

25. Paragraph 2 does not apply to any person performing an act that would otherwise constitute an offence under 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.

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26. The Authority may issue a permit in respect of a specified vessel or specified vehicle authorising the use of a dredge to fish or take shellfish.
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29. An undamaged identity tag supplied by the Authority must be permanently attached to a specified vehicle.
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31. A permit is valid from the date of issue to 31 December of the same year unless specified in the permit
32. A fee of (£1,000 - £5,000 to be agreed on 17 March) is payable prior to issue for each permit.
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 - a. is not transferable from a specified vessel or specified vehicle to another vessel or vehicle;
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 - j. species for which using a dredge to fish is permitted;
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 - i. an impact assessment of any proposed changes;
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