

NWIFCA Quarterly Meeting: 11th December 2015: 11.00 a.m.

**AGENDA
ITEM NO.
7**

BYELAW REVIEW

Purpose of Report: To approve byelaw work as proposed

Recommendations

1. The report be received;
2. Approve further work on a new cockle and mussel permit byelaw with regulatory notices and first sale permit scheme as immediate priority
3. Approve the non-inclusion of small boat regulations and support worker permits from the new cockle and mussel byelaw.
4. Note update on other byelaws under review

Update on byelaws under review

Byelaw	Aim of new byelaw	Current position	Next stage
Vessel length byelaw	To create District wide regulation of vessel size and engine power limits	Agreement on measures not achieved. Awaiting new draft	Next draft in prep for discussion at TSB
Non-commercial permit scheme for shellfish	To create a District wide regulation of hobby potting for crab, lobster, prawn, whelk	Awaiting review of lobster protection byelaw and clarification of technical measures	Next draft in prep for discussion at TSB
Prohibition of foul hooking	To create District wide byelaw	Landing obligation amendment now resolved (not needed)	Advertise byelaw
Shrimp and Prawn regulations	To create District wide regulations	Differences between parts of the District cannot be resolved	None at present
Lobster protection	To create District wide byelaw	Awaiting clarification on 'deeming' from Defra and agreement on technical measures	Next draft in prep for discussion at TSB
Various	Amend byelaws to avoid legal conflict with landing obligations	IFCA byelaw amendment SI now signed by Minister. Amendments are in force.	Complete. Publish new Byelaw book
Cockle and Mussel permit scheme	To strengthen current Byelaw 3 using recently agreed Regulatory Notice provision and introduce first sale permit.	Seeking approval for this work from NWIFCA. Draft Byelaw in prep.	Discuss draft byelaw with TSB and MMO.

Regulatory Notice (RN) byelaws

1. IFCA's have made recent progress in discussion with MMO about the use of byelaws with flexible permit schemes to allow adaptive management in Marine protected Areas (MPA)

using Regulatory Notices (RN). RN can allow IFCA limited adaptive management to meet changing conditions without having to make new byelaws or amendments to byelaws which require the full byelaw making process. MMO would not previously support flexible byelaws because of sub-delegation concerns.

2. MMO has issued guidance on the use of RN as at Annex A. Byelaws providing for the use of RN in marine protected areas have been enacted by Sussex IFCA at <http://www.sussex-ifca.gov.uk/repository/SxIFCA%20MPA%20Byelaw.pdf> and Eastern IFCA at: <http://www.eastern-ifca.gov.uk/documents/EMS%20Byelaw%20april%202014.pdf>
3. This Authority may consider using the RN provisions in Byelaws for this District where adaptive management would be useful.

Possible NWIFCA use of an RN bylaw to support the cockle and mussel permit scheme.

4. The main current cockle and mussel management byelaw is NWIFCA Byelaw 3, introduced in 2012. This byelaw made important changes to the previous permit scheme (NWSFC Byelaw 5) and has been effective for over 3 years.
5. It is timely to further develop byelaw 3 now because recent surveys have shown evidence that a new cockle stock is developing in Morecambe Bay and at Leasowe (Wirral). If stocks survive this winter, there could be a substantial commercial cockle fishery starting after the closed season on 1 September 2016.
6. Cockles tend to attract large numbers of fishers from across UK, Europe and beyond. Enforcement of cockle fisheries can be challenging and the Authority needs the best possible regulatory regime. While Byelaw 3 has created a much improved management framework, further development is under consideration as set out below.
7. Table 1 shows the main areas of concern in the current byelaw regime and permit scheme and proposed solutions. A number of other detailed and minor changes will be incorporated into the draft byelaw. The next stages in developing this byelaw will be:
 - I. Completion of a full draft for discussion at TSB and with MMO,
 - II. Commencement of consultation with industry, partner bodies and stakeholders
 - III. Making the byelaw at the March NWIFCA meeting followed by formal consultation
 - IV. Byelaw coming into force in good time for any fishery commencing 1st September 2016.
8. Members are invited to comment on the proposed new byelaw and approve ongoing work.

Chief Executive and Head of Enforcement
2nd December 2015

Table 1: NWIFCA cockle and mussel fisheries: Regulatory weaknesses in the current byelaw

Issue	Regulatory failure	Solution
Shellfish buyers not regulated in cockle and mussel fisheries. There is no regulation of first sale buying and onward transport so no traceability.	Regulations are targeted at fishers who carry all the risk of non-compliance. But fisheries are driven by merchants who buy and sell to markets. If buyers are not available, no fishery takes place. Buyers dictate price paid, quality, timing and operation of the fishery.. Some buyers encourage illegal fishing by e.g. buying from non-permit holders, buying undersize fish, falsely completing Environmental Health registration documents and creating incentives for non-compliance with regulations.	Create registration and permit scheme for cockle and mussel buyers operating in the NWIFCA District with offences of purchase and onward transport of illegal shellfish. The permit would require returns from buyers showing fish bought, sellers and where fish were sent. Initial discussion with MMO indicates that such a permit scheme may be allowed within an IFCA byelaw.
IFCA byelaws must allow for the 'Public right to fish'. So Byelaw 3 allows the taking of up to 5kg of cockles and 5kg of mussels per day without a permit for personal use.	The public right to fish clause allows non-permit holders to be active on commercial shellfish beds with fishing equipment making the 5kg limit unenforceable. Byelaw 3 included 2 fixed 'commercial only' cockle fishery areas in the central part of Morecambe bay and the Ribble Estuary where this clause was suspended. However, these areas are not sufficiently flexible for regulating fisheries which may develop outside the areas defined in the byelaw or in other parts of the District.	Use Regulatory Notices (RN) to extend the provision in Byelaw 3 to set commercial areas to make restricted areas in any EMS as required by the location of busy cockle fisheries. The new byelaw would contain provision for the issue of RN which would set restricted areas for defined time periods in named EMS in which the taking of any shellfish without a permit would be prohibited thus removing the public right to fish in busy cockle fisheries.
Use of small boats regulations covering safety and qualifications	Small boat regulations were included in byelaw 3 as an emergency measure for fishing on Foulhaze Bank in the Ribble. However IFCA powers (Marine and Coastal Access Act s156) do not cover use of boats which are responsibility of Marine and Coastguards Agency (MCA). IFCA do not have the training and expertise to enforce small boat regulations and coding.	Omit boat regulations. Confirm arrangements with MCA. Note HSE website guidance on inter-tidal shellfish fisheries: Access to the fishery by boat: Should you use a fishing vessel, boat or inflatable craft to access the fishery, legislation enforced by the MCA will apply and require the specific provision of lifejackets and/or liferafts. Further detailed advice may be obtained by contacting the MCA Advice Line on 0870 6006505 or through their website at mcca.gov.uk http://www.hse.gov.uk/pubns/estuary.htm
Support worker permits	Byelaw 3 provides for non-fishing permits for work on loading, weighing, transport and other ancillary tasks associated with cockle fisheries on the shore. No training or waiting list is required for these permits and they create an enforcement loophole	Drop the support worker scheme Require all workers in cockle fisheries on the shore to have full gathering permits.