

NWIFCA Quarterly Meeting

13th September 2018: 11 a.m.

**AGENDA
ITEM NO.
11**

NWIFCA COCKLE AND MUSSEL PERMIT BYELAW 2018

Purpose: To consider a further draft byelaw following discussion at TSB in August

Recommendation: Draft at Annex A to be approved for making the byelaw at the December meeting.

Background

1. The review of Byelaw 3: Permit to fish for cockles and mussels, confirmed 23.08.12 has continued through 2018. TSB approved a further draft byelaw in August with minor comments which have been incorporated in the version at Annex A.
2. Members requested provision for use of electric pumps on the shore to create a water supply for washing cockles in S.3. After discussion it was agreed a clause in the byelaw was not needed as the activity is not prohibited by the byelaw.
3. Main changes from the previous 2012 version of the byelaw are:
 - i. Conversion to a flexible permit scheme byelaw with provision for the Authority to set permit conditions with safeguards (S. 21-24) thereby increasing the flexibility and effectiveness of regulations;
 - ii. Removal of the proposal for shellfish merchant permits as robust legal purpose and wording could not be determined despite recognition of the role that merchants play in controlling the industry;
 - iii. Amendment of the prohibition S.6 on possession of illegal shellfish following MMO comment;
 - iv. Requirement to label containers containing cockle or mussel with the name of the owner (S7-8) in lieu of the trader permit;
 - v. A change to the timing limit for permit renewal (S.14) to streamline permit renewal process by limiting the period for renewal;
 - vi. Provision for the Authority to set up commercial cockle fishing areas (with safeguards) where gathering small amounts for personal consumption is not permitted. Commercial areas will be set up under the provisions of flexible permit conditions. The purpose of commercial areas is to increase compliance and safety. The new measure is in lieu of the defined commercial areas in the previous byelaw which could not be adjusted to meet requirements which change with time.
 - vii. Setting a lower limit of age 12 for applicants to be added to the waiting list (S. 15) to allow young people to prepare for work in commercial fishing as soon as they receive a National Insurance Number (NINO);
 - viii. Removal of provision for shellfish merchants to have permits for 'support workers' (S.27 current byelaw). Support worker permits have only been available since 2012 but have led to complaints from existing full permit holders and compliance difficulties over accusations that support workers are assisting fishing or actually fishing without qualifying for a fishing permit through the waiting list procedure.
 - ix. Ending transitional arrangements (new byelaw S.25, 26). The current byelaw (S.23-26) provides for fishers in the Dee or Cumbria areas to get local permits at no cost.
 - x. Ending boat user endorsement of permits and provision for safety regulation of the use of boats for hand fishing cockles and mussels (S.28-29 current byelaw) as this

is outside the remit of the Authority and falls within the duties of the Maritime and Coastguard Agency.

- xi. Revocation of byelaws S.27, 28, 29, 30, 31

Next stage

- 4. Subject to comments at this meeting, the draft byelaw should be returned to MMO for checking before it is made at a future Authority meeting, if possible in December 2018.

CEO
30th August 2018

North Western Inshore Fisheries and Conservation Authority
Marine and Coastal Access Act 2009

Cockle and mussel fishing permit 2018 (Draft September 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) "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);
 - b) "cockle" means a shellfish of the species *Cerastoderma edule*;
 - c) "Commercial areas" means areas of the District where s. 11 is temporarily suspended such that all gatherers must have a permit;
 - d) "Craam, tamp or jumbo" are alternative terms used in the District for hand tools used to cause cockles to rise to the surface of intertidal sand flats;
 - e) "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;
 - f) "foreshore gatherers safety training certificate" means a document certifying that the person named 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) "permit" means a permit issued by the Authority to gather cockles or mussels by hand;
 - i) "mussel" means a shellfish of any species of the genus *Mytilus*;

Prohibitions

2. A person must not gather cockles or mussels from a fishery unless they have in their possession while gathering a valid permit issued to them by the Authority.
3. A person must not gather cockles or mussels except:
 - a. by hand or using hand tools such as rakes;
 - b. in the case of cockles by using a craam, tamp or jumbo;
 - c. in accordance with a 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 retain 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 any NWIFCA or MMO byelaw, Statutory Instrument 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. A container must not be used for holding or transporting cockles or mussels gathered from a fishery unless it is marked with the name of the person, persons or company which is the owner of the container and the contents. Any cockles found in an unmarked container may be confiscated and re-laid by IFCOs
8. A person must not obstruct an Inshore Fisheries and Conservation Officer in the course of their duties.
9. A person must not gather any cockle within or from a fishery on or between 1st May and 31st August in the same year.

Exemptions

10. 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 for scientific, management, stocking or breeding purpose or in the exercise of any right of common held by that person.
11. This byelaw does not apply to a person gathering less than 5kg of cockles and 5kg of mussels during a calendar day from a fishery which is:
 - a. not closed under any NWIFCA, MMO byelaw, Statutory Instrument or any Act of Parliament
 - b. not part of the District managed under the Dee Estuary Cockle Fishery Order (2008) without a licence to fish issued under the terms of that Order.
 - c. not in a designated commercial area.

Permit conditions

12. Applications for permits must be made using the correct forms available from the Authority's offices or website and providing all the information requested.
13. A fee of £500 shall be payable for each permit prior to issue. The fee may be varied by no more than the annual percentage change in the Consumer Price Index on the 1st December each year.
14. A 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 31 August inclusive unless otherwise stated on the permit.
15. Permits will not be issued to applicants who do not have a National Insurance Number and a valid foreshore gatherers safety training certificate showing the applicant has completed a safety course approved by the Authority for work in intertidal areas.
 16. Only permit holders under this byelaw shall be entitled to renew the permit for the next year. To renew a permit, a permit holder must apply for renewal at least one month before the permit expires.
 17. The Authority must keep a waiting list of new permit applications in the order received. Applicants must be 12 years or over to be added to the waiting list.
 18. New permits will be issued each year for the permit year starting 1st September to persons at the top of the waiting list who fully complete an application until a maximum of 10 permits have been issued. Applicants failing to fully complete an application must return to the end of the waiting list to receive a permit.
 19. 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 is a breach of this byelaw.
 20. A permit holder is required to file with the Authority, no later than the 5th day of the month following, such information in regard to catches and fishing effort for the previous month, under the terms of such permit, as the Authority may require. Nil returns may be required by the Authority. Permits may be suspended by the Authority until returns have been filed or for any breach of this byelaw.

Flexible permit conditions

21. On receipt of the information specified in paragraph 24. the Authority may in accordance with the review procedure in paragraph 23 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 areas' of maximum size 100 square km for defined periods not exceeding six months where S10 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.
22. Failure to comply with any of the permit conditions constitutes a breach of this byelaw.

Review procedure

23. 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.
 - d. Notifications must include co-ordinates of all designated commercial areas and be posted on the Authority website.
24. 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

25. 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 calendar year this byelaw comes into force.
26. The transitional arrangements in paragraphs 25 and 26 of Byelaw 3 permit to fish for cockles and mussels confirmed 23.08.12 will not apply from the date this byelaw is confirmed.

Revocation of Byelaws

27. The byelaw with the title “Byelaw 3 Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*)” made by the Authority, in exercise of its powers under sections 155 and 156 of the Marine and Coastal Access Act 2009, confirmed on 23rd August 2012,
28. The byelaw with the title “Byelaw 13a Cockle and Mussels – management of the fishery” made by the North Western and North Wales Sea Fisheries Committee in exercise of its powers under Section 5 of the Sea Fisheries Regulation Act 1966, confirmed 29th of March 1996); and in force immediately before the making of this byelaw is revoked.
29. The byelaw with the title “Byelaw 16 Shellfishery – temporary closure” made by the North Western and North Wales Sea Fisheries Committee in exercise of its powers under Section 5 of the Sea Fisheries Regulation Act 1966, confirmed 14th of September 1973 and in force immediately before the making of this byelaw is revoked.
30. The byelaw with the title “Byelaw 18 Shellfishery temporary closure” made by Cumbria Sea Fisheries Committee under Section 5 of the Sea Fisheries Regulation Act 1966 confirmed on 16th of July 1973 and in force immediately before the making of this byelaw is revoked.
31. The Byelaws 6 Shellfishery – temporary closure, 8 Introduction of shellfish, 11 Protection of shellfish beds made by the National River Authority to regulate fishing for shellfish in the river Dee and in force immediately before the making of this byelaw are revoked

Explanatory Note

(This note does not form part of the byelaw)

1. The purpose of this byelaw is to regulate the exploitation of cockles and mussels to

sustainable levels using a permit scheme. Only hand gathering of cockles and mussels is normally permitted.

2. The byelaw updates and modernises Byelaw 3 permit to fish for cockles and mussels confirmed 23rd August 2012.
3. The main changes from the 2012 byelaw include:
 - a. Provision for the Authority to set permit conditions (S.21-24) thereby increasing the flexibility and effectiveness of regulations;
 - b. Requirement to label containers containing cockles or mussels with the name of the owner (S7-8);
 - c. A limited time period for permit renewal
 - d. Provision for the Authority to set up commercial cockle fishing areas where gathering for personal consumption without a permit is prohibited.
 - e. Setting a lower limit of age 12 for applicants to be added to the waiting list (S15);
 - f. Removal of provision for shellfish merchants to have permits for 'support workers'.
 - g. Ending provisions for fishers in the Dee or Cumbria areas to get local permits.
 - h. Ending boat user endorsement of permits and provision for safety regulation of the use of boats for hand fishing cockles and mussels.