

ANNEX B North Western Inshore Fisheries and Conservation Authority

Marine and Coastal Access Act 2009 (c.23)

Potting Permit Byelaw 2019

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 No. 2200);
- (b) “berried hen” means a female edible crab or lobster carrying spawn attached to its body or some other exterior part, or which is in such a condition as to show that at the time when it was taken it was carrying spawn so attached;
- (c) ‘dahn’ means a pole with a float, weight and flag attached;
- (d) “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;
- (e) “inboard, lashed and stowed” means that the pots are stored in such a way that they cannot readily be used for fishing;
- (f) “keep pot” means a container used to store sea fisheries resources in the sea or estuaries;
- (g) “mutilated lobster” means a lobster where any of the five flaps of the tail fan is missing or mutilated in such a manner that could hide or obliterate the V-notch on a V-notched lobster;
- (h) “named representative” means a person qualified to skipper a vessel who has been granted permission to fish from a vessel by a permit holder and is nominated by that permit holder for the purposes of paragraphs 18 and 19, who may fish using the permit holder’s permit from that vessel under the same entitlement, conditions and responsibilities as the permit holder in their absence;
- (i) “permit” means:
 - i. A Category One Permit issued under paragraph 11;
 - ii. A Category Two Permit issued under paragraph 20;
- (j) “permit holder” means the owner of a named relevant fishing vessel, or in the case of shared ownership all the owners of that vessel, to whom a permit is issued;
- (k) “permit sticker” means a disc issued by the Authority for attachment to a vessel and which contains details of the applicable permit;
- (l) “pot” means any folding or rigid cage device or structure with one or more openings or entrances capable of capturing any sea fisheries resources;

- (m) “relevant fishing vessel” means a fishing vessel:
- i. Registered in accordance with Part II of the Merchant Shipping Act 1995 (c.21) and the regulations made under that Act, or registered in the Channel Islands or Isle of Man; and
 - ii. In respect of which a fishing licence issued under the Sea Fish (Conservation) Act 1967 (c.84) is held at the time of the application for a permit under this byelaw;
- (n) “riddle” means a fixed or moving flat or cylindrical apparatus constructed of parallel bars which rejects any specified species that pass between the bars;
- (o) “specified species” means any of the following species:
- i. Lobster (*Homarus gammarus*);
 - ii. Edible crab (*Cancer pagurus*);
 - iii. Norwegian lobster (*Nephrops norvegicus*);
 - iv. Whelk (*Buccinum undatum*);
 - v. Prawn and shrimp (*Palaemonidae spp. Crangonidae spp. and Pandalidae spp.*);
 - vi. Cuttlefish (*Sepia officinalis*);
 - vii. Spider crab (*Maia squinado*);
 - viii. Velvet swimming crab (*Necora puber*);
 - ix. Spiny lobster or crawfish (*Palinurus elephas*);
 - x. Any teleost (bony) or cartilaginous (sharks and rays) fish species;
- (p) “tag” means a tag issued by the Authority for attachment to a pot and which contains details of the applicable permit;
- (q) “vessel” means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes, hovercraft, amphibious vehicles and any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) which can be used as a means of transportation on water;
- (r) “V-notched lobster” means a lobster with an indentation in the shape of the letter “V” or resembling the shape of a “V” made in any one or more of the five flaps on the tail fan.

Prohibitions and Restrictions

2. It is prohibited for a person to use pots for fishing for a specified species unless in possession of a valid permit and in accordance with the permit. The permit must be carried on board the vessel or by the permit holder or named representative at all times when fishing with pots.
3. A person must not take or land from a fishery more than the stated amount of the species listed below in any one calendar day:

Specified Species	Maximum Daily Quantity	
Lobster	1 individual	and
Edible crab Spider crab Velvet swimming crab	Combined total of 5 individuals	and

Whelk	50 individuals	and
Norwegian lobster	50 individuals	

4. A person must not remove or retain from a fishery:

- (a) a V-notched lobster;
- (b) a mutilated lobster;
- (c) a berried hen;

and any such crab or lobster must be returned immediately to the fishery without further injury.

5. A person must not use any keep pot, container or other device to store specified species in the sea or in an estuary and any specified species removed from the fishery must be landed within 24 hours of capture.

6. A person must not carry a pot on board a vessel unless the pot is inboard, lashed and stowed.

Exceptions

7. This byelaw does not apply to a person performing an act which would otherwise constitute an offence against 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.

8. Paragraph 3 does not apply to a person when fishing from a relevant fishing vessel.

9. Paragraph 5 does not apply to a person fishing from a relevant fishing vessel.

10. Paragraph 6 does not apply to a person acting in accordance with a valid Potting Permit.

Category One Permits

11. The Authority may issue a permit authorising a person to use pots to fish for specified species from a relevant fishing vessel (a Category One Permit).

12. An application for a Category One Permit may only be made by the owner of a relevant fishing vessel using the printed forms available from the Authority's office and website.

13. Only one Category One Permit per specified species will be issued per relevant fishing vessel.

14. A Category One permit for edible crab and lobster will count as one specified species permit, and may only be issued to the owner of a relevant fishing vessel which holds a current fishing licence with a shellfish entitlement issued by the appropriate UK Fisheries Department at the time the application is made.

15. Where the Authority issues a Category One Permit the Authority will at the same time issue a permit sticker. Gear tags and tag applicator will also be issued if tagging of pots is required under the Flexible Permit Conditions.

16. A Category One Permit, permit sticker, gear tags and tag applicator:

- (a) are issued to the owner of the named relevant fishing vessel, or in the case of shared ownership, to all owners of that vessel ("the permit holder");

- (b) are valid for the period 1st October to 30th September the following year. Upon confirmation of the byelaw the first permit shall be valid for the remainder of the first 12 months to 30th September, and to the 30th September in the subsequent year;
 - (c) cannot be resold;
 - (d) are not transferrable between:
 - (i) the permit holder and another person; or,
 - (ii) the named vessel to another named vessel.
 - (e) shall remain the property of the Authority and must be surrendered to the Authority immediately if no longer required.
17. Paragraph 16(d)(ii) shall not apply if the ownership of the recipient vessel is the same as that of the donor vessel, subject to any Flexible Permit Conditions in force at the time of transfer. In such case the permit must be returned to NWIFCA for administrative changes to be made.
18. A Category One Permit holder may nominate a named representative(s) at any time in writing to the Authority to use the permit from the permitted vessel.
19. A Category One Permit holder, when nominating a named representative(s) at any time other than at the time of the permit application, must:
- (a) make the nomination in writing; and
 - (b) receive approval from the Authority prior to the named representative(s) fishing under the authority of the permit issued to the permit holder.

Category Two Permits

20. The Authority may issue a permit authorising the use of pots to fish for specified species (a 'Category Two Permit') to:
- (a) the owner of a named vessel that is not a relevant fishing vessel;
 - (b) a named person without a vessel.
21. An application for a Category Two Permit may be made by any person using the printed forms available from the Authority's office and website.
22. Only one Category Two Permit will be issued per person.
23. Where the Authority issues a Category Two Permit the Authority will at the same time issue a permit sticker and gear tags.
24. A Category Two Permit, permit sticker and gear tags:
- (a) are issued to the applicant ("the permit holder");
 - (b) are valid for the period 1st October to 30th September the following year. Upon confirmation of the byelaw the first permit shall be valid for the remainder of the first 12 months to 30th September, and to the 30th September in the subsequent year;
 - (c) cannot be sold;
 - (d) are not transferrable between the permit holder and another person; and,
 - (e) remain the property of the Authority and must be surrendered to the Authority immediately if no longer required.

General Permit Conditions

25. The fee for a permit and permit sticker and gear tags if in force, is payable prior to issue as specified below, unless varied pursuant to paragraph 26:

Type of Permit	Annual Fee per permit (£)	Includes if required under permit or flexible permit conditions
Category One permit	200	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category Two Permit	20	Replacement of one lost or damaged permit sticker and up to one set of replacement tags.

26. The Authority may vary permit fees in accordance with the following conditions and procedures:

- (a) the Authority will consult in writing with permit holders;
- (b) the fee will not be changed for any permit already issued;
- (c) the Authority will make a decision whether to vary the permit fee based upon:
 - i. the responses from the consultation under paragraph 26 (a);
 - ii. expenditure arising from the fishery regulatory costs required by the Authority;
 - iii. any regulatory impact assessments associated with this byelaw;
 - iv. Authority expenditure to conduct any research, monitoring, survey and enforcement activities that support the implementation of potting permits under this byelaw;
 - v. Authority costs associated with arranging and attending meetings with permit holders;
 - vi. any relevant Authority expenditure incurred by implementation of this byelaw.

27. A permit holder must not use a pot to fish for a specified species unless the pot is of a design defined in the flexible permit condition.

28. Any vessel used in accordance with the byelaw shall clearly display the permit sticker with the number issued with the permit, and shall not be used to haul pots not marked with that number, and neither shall any vessel used in accordance with the byelaw display more than one permit sticker.

29. The site of pots set in strings shall be marked at each end by either a dhan or a buoy. Pots set individually shall each be marked by ether a dhan or a buoy.

30. All dhans and buoys used under a Category One permit shall be legibly marked with the Port Letter and Number (PLN) of the permitted vessel. All dhans and buoys used under a Category Two permit shall be legibly marked with the permit number.

31. When using a dhan each flag must be at least one metre above the surface of the sea.
32. When gear is marked with buoys only all buoys must be red, yellow or orange with a minimum circumference of 84 cm.
33. Correct marking of gear must be maintained during any period the pots are in the water.
34. A permit holder must comply with a reasonable request of an IFCA Officer and must not obstruct an IFCA Officer in carrying out their relevant function.
35. A permit holder must file with the Authority, no later than the fifth day of the month following, information as required by the Authority on catches and fishing effort for the previous month by fully completing the correct forms available from the Authority's offices or website. Nil returns will be required by the Authority. Permits will be suspended by the Authority until returns have been filed.
36. Where a permit holder accepts a written warning, formal caution, or fixed administrative penalty or is convicted by a court for an offence under this byelaw, the permit holder will be issued with a penalty point by the Authority. All penalty points remain on the permit holder's record for 3 years from the date of issue. A permit will be suspended for a period of 12 months if a permit holder is issued with 4 penalty points within any 3-year period.
37. After the 12-month period the permit will be re-instated by the Authority subject to the payment of any annual permit fee outstanding.
38. 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.

Category One Permit Conditions

39. The vessel named on a Category One Permit must remain a relevant fishing vessel for the duration of the permit.
40. The permit holder or the named representative(s) of the permit holder must be present on board the vessel during the permitted activity to use the permit.
41. Keep pots used under a Category One permit must be legibly marked with the permitted vessel's PLN.

Category Two Permit Conditions

42. A permit holder must not use more than a total of five pots to fish for specified species.
43. A permit holder must not set a pot that:
 - (a) is not fitted with a tag issued by the Authority; or
 - (b) is fitted with a tag that has previously been notified to the Authority as lost.
44. To obtain a set of replacement tags in the event that a tag is lost, the permit holder must submit a written request to the Authority.
45. If a lost tag is subsequently found by the permit holder it must be returned within 48 hours to the Authority.

46. During a fishing trip in which a vessel is used by more than one person to fish, the total that may be removed from the fishery or retained on board by all the persons on-board, taken together, remains as in the table in paragraph 3 above.
47. A permit holder must not remove from the fishery any part of an edible crab or lobster or prawn or Norwegian lobster which is detached from the carapace of the crab or lobster or prawn or Norwegian lobster.

Flexible Permit Conditions

48. The Authority may introduce, remove or vary a flexible permit condition which falls within one or more of the following categories:
 - (a) catch restrictions;
 - (b) bait restrictions;
 - (c) technical measures and gear restrictions;
 - (d) spatial restrictions;
 - (e) time restrictions;
 - (f) number of permits issued.
49. The Authority may introduce, remove or vary a flexible permit condition in accordance with the review procedure set out in paragraphs 51 and 52.
50. The flexible permit conditions that apply to a permit until the first review pursuant to paragraphs 51 and 52 are those set by the Authority taking into account the impact assessment that accompanies this byelaw and all other material considerations.

Review Procedure

51. The Authority will review flexible permit conditions no less than once every three 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 51(a);
 - (c) following a decision by the Authority, permit holders will be notified in writing and permits will be amended as necessary with no charge.
52. The information used in Flexible Permit Condition reviews will include one or more of the following:
 - (a) information and returns data 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.

Breach of Permit Condition

53. A failure to comply with a:

- (a) general permit condition (within paragraphs 25 to 38);
- (b) Category One Permit condition (within paragraphs 39 to 41);
- (c) Category Two Permit condition (within paragraphs 42 to 47); or
- (d) flexible permit condition attached to a permit in accordance with paragraphs 48 to 50;

constitutes a contravention of this byelaw.

Revocation and Amendment

54. The byelaws with the following number, title or purpose made by the North West Sea Fisheries Committee (NWSFC) and Cumbria Sea Fisheries Committee (CSFC) in exercise of their power under sections 5 and 5A of the Sea Fisheries Regulation Act 1966 (c.38) and in force immediately before the making of this byelaw are hereby revoked:

- (a) NWSFC Byelaw 31 Protection of V-notched lobsters confirmed on 16th December 1997;
- (b) NWSFC Byelaw 30 Fishing for Lobster, Crawfish, Crab, Prawn and Whelk confirmed on 20th April 2007;
- (c) CSFC Byelaw 8 Berried Lobsters confirmed on 16th April 1993;
- (d) CSFC Byelaw 25 Requirement for escape Gaps in Pots, Creels and Traps confirmed on 20th October 1997;
- (e) CSFC Byelaw 26 Permit to Fish for Lobster, Crab and Whelks confirmed on 20th January 2007.

55. The byelaws with the following number, title or purpose made by the North West Sea Fisheries Committee (NWSFC) and Cumbria Sea Fisheries Committee (CSFC) in exercise of their power under sections 5 and 5A of the Sea Fisheries Regulation Act 1966 (c.38) and in force immediately before the making of this byelaw are hereby amended:

~~a(i)-~~ NWSFC byelaw 11 confirmed on 22nd August 2003 title be amended from 'Marking of fishing gear and keep pots' to 'Marking of nets and lines'.

a(ii) The first paragraph is amended to: 'No person shall use in fishing for seafish any set or stake net or line except in accordance with the following regulations;'

a(iii) Paragraph (a) is amended to: 'The site of the stakes, nets or lines shall be marked by substantial buoys non-metallic poles or perches visible above the surface at any state of the tide and such buoys poles or perches and shall be maintained as long as the stakes or nets are in position.'

b-(i) CSFC byelaw 4 confirmed 16th April 1993 title be amended from 'Marking and siting of fixed nets, traps, pots and lines' to 'Marking and siting of fixed nets and lines'.

b(ii) Paragraph (a) is amended to: 'the site of the nets or lines shall be marked at each end by a flag on a pole, perch or buoy the flag to be at least one metre above the surface of the sea and to be maintained so long as the nets remain in position. The pole, perch or buoy shall be legibly marked with the name and address of the owner of such net or lines or the registered number of the vessel from which the nets or lines were set'

c. NWSFC byelaw 19 Specified Fish Species confirmed on 24th July 2009 be amended to remove Whelk (*Buccinum undatum*) from the list of specified Shellfish Species.

I hereby certify that the above byelaw was made by North Western Inshore Fisheries and Conservation Authority at their meeting on the XXXXXXXXXXXX.

Dr Stephen Atkins
Chief Executive to the North Western Inshore Fisheries and Conservation Authority
NWIFCA
1 Preston Street
Carnforth
Lancashire
LA5 9BY

The Secretary of State for Environment, Food and Rural Affairs in exercise of the power conferred by section 155(4) of the Marine and Coastal Access Act 2009 confirms the Potting Permit Byelaw made by North Western Inshore Fisheries and Conservation Authority on XXXXXXXX

The Byelaw comes into force on XXXXXXXX

A Senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs

Date: XXXXXXXX

Explanatory Note

(This note does not form part of the byelaw)

The Potting Permit Byelaw establishes a permit based system for both the Category One and Category Two exploitation of sea fisheries species fished for by pots and traps. The provisions within the byelaw enable a responsive approach to the management of the fisheries applying adaptive management based on best evidence. The byelaw will enable stock management at sustainable levels and maximise economic benefit from the relevant fisheries for the benefit of the community. The byelaw's provisions will support the Authority in delivering its conservation duties.

The byelaw applies in the North Western Inshore Fisheries and Conservation District and regulates fishing for specified species (defined in paragraph 1 as lobster, edible crab, Norwegian lobster, whelk, prawn, shrimps, cuttlefish, spider crab, velvet swimming crab, crawfish and any teleost or cartilaginous fish species).

A Category One Permit is subject to the General Permit conditions, Category One Permit conditions, and any Flexible Permit conditions attached to the permit.

A Category Two Permit is subject to the General Permit conditions, Category Two Permit conditions, and any Flexible Permit conditions attached to the permit.

The byelaw provides that the Authority may introduce, remove or vary (in accordance with the review procedure) flexible permit conditions in relation to catch, bait, technical measures and gear restrictions, spatial and time restrictions, and number of permits. The position until the first review is set by the Authority taking account of the impact assessment that has been prepared to accompany the byelaw.

Failure to comply with a permit condition constitutes a contravention of the byelaw.

Section 163 of the Marine and Coastal Access Act 2009 provides that a person who contravenes a byelaw is guilty of an offence. Where a vessel is used in contravention of a byelaw the master, owner or charterer (if any) are each guilty of an offence. A person who is guilty of contravening a byelaw is liable on summary conviction to a fine and permit suspension.

Five existing byelaws are revoked. Three existing byelaws are amended.

Flexible Permit Conditions September 2019

1. Whelks

- (a) Category One permits will only be issued to an applicant who fulfils the track record requirements of fishing for whelks as defined by the NWIFCA Technical, Science and Byelaws Sub-Committee, and will be limited to the number of pots which can be fished (paragraph 1(c)).
- (b) When using a Category One permit all whelks must be placed on and passed over a riddle so that any undersize whelks can pass through the riddle prior to sorting.
- (c) A Category One permit holder may fish with a maximum of:
 - i. 1000 pots for a vessel with track record;
 - ii. 400 pots for under 10 m vessels with no track record in the District.

The following conditions apply to both Category One and Category Two permit holders:

- (d) A permit holder must not remove or retain from a fishery any whelk which has a shell length, measured along the longest part of the shell, less than the sizes in paragraph 1(d)i-iii. Any such whelk so removed or retained must be returned immediately to the sea unless the landing obligation under Article 15 of Regulation (EU) 1380/2013 requires the fish to be landed:
 - i. 55 mm in the first 12 months in which this byelaw is in force;
 - ii. 65 mm in the second 12 months in which this byelaw is in force;
 - iii. 75 mm in the third 12 months in which this byelaw is in force.
- (e) A permit holder must not use a pot to fish for whelks unless the pot consists of a rigid container with an open top through which whelks can enter.
- (f) A permit holder must not set a whelk pot that:
 - i. is not fitted with a tag issued by the Authority; or
 - ii. is fitted with a tag that has previously been notified to the Authority as lost.
- (g) A fee is payable for the replacement of a full set of tags up to a maximum of £0.10p per tag for:
 - i. the replacement of one set of lost or destroyed gear tags under a Category One permit;
 - ii. the replacement of a second or further sets of lost or destroyed gear tags under a Category Two permit.
- (h) To obtain a replacement tag in the event that a tag is lost, the permit holder must submit a written request to the Authority.
- (i) If a lost tag is subsequently found by the permit holder it must be returned within 48 hours to the Authority.

2. Crab and Lobster

- (a) A permit holder must not remove or retain from a fishery:
 - i. any lobster which has a carapace length, measured parallel to the mid-line from the back of either eye socket to the distal edge of the carapace, less than 87 mm;
 - ii. any edible crab which has a carapace length, measured across the broadest part of the back, less than 130 mm,

and any such crab or lobster taken shall be returned immediately to the sea unless the landing obligation under Article 15 of Regulation (EU) 1380/2013 requires the fish to be landed.

- (b) A permit holder must not fish for crab or lobster using a pot which has a chamber with an entrance designed to restrict escape, unless the pot is fitted with at least one unobstructed rigid escape gap located in the lowest part of the exterior wall of the pot or in the case of a parlour pot in the lowest part of the parlour area.
- (c) The escape gap referred to in paragraph 2(b) must be of sufficient size so that a rigid box shaped gauge 80 mm wide by 45 mm high and 100 mm long may be passed through the gap.

3. Norwegian lobster:

- (a) A permit holder must not remove or retain from a fishery:
 - i. any Norwegian lobster which has a carapace length, measured from the base of the eye notch to the posterior mid-dorsal edge, less than 20 mm or an overall length measured from the tip of the rostrum to the rear end of the telson less than 70 mm, and any such Norwegian lobster taken shall be returned immediately to the sea unless the landing obligation under Article 15 of Regulation (EU) 1380/2013 requires the fish to be landed.
 - ii. when using a Category One Permit, any detached part of Norwegian lobster which cannot be measured in accordance with Annex XIII of Council Regulation (EC) 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.
- (b) A permit holder must not use a pot to fish for Norwegian lobster unless the pot is fitted with at least one hard eye entrance hole of maximum 80 mm diameter