

TSB Online
3 November 2020: 10.a.m.

AGENDA
ITEM NO.
6

Byelaw Review Update October 2020

Purpose of Report: To report progress with byelaw development.

Recommendation: Receive the report

Byelaw Review

1. An update on byelaw developments with a review of byelaw targets in the Annual plan 2020-21 was requested at the August 2020 TSB meeting. See minute at Annex A.
2. The report at Annex B was received at the NWIFCA meeting on 18 September 2020. At that meeting amended byelaw priorities and targets in the NWIFCA Annual plan 20-21 were agreed as in the report.
3. The Annual plan including the amended byelaw priorities and targets was also included in the papers for the September meeting.
4. The full byelaw review report was last updated for TSB November 2019 and is attached at Annex C. This report shows that the Authority has a suite of byelaws which address the main fisheries management issues in the District. While there are byelaws which are essential for managing fisheries in the District, there are also some byelaws inherited from 3 or more different predecessor bodies are now out of date and very little used.

Future byelaw work

5. Tables 2 and 3 of the byelaw review are an overview of the way the inherited byelaws could be combined and restructured to improve the byelaw regime. The tables show new byelaws which could be developed over the next few years. If completed, the list in these tables would go a long way to complete a review of the most important byelaws inherited from predecessor bodies and create a comprehensive and better organized suite of NWIFCA byelaws.
6. It will be noted that with the limited resources the Authority can dedicate to byelaw development, Tables 2 and 3 imply considerable work over forthcoming years. Each new byelaw requires extensive research and consultation with industry to determine the measures which are required to promote sustainable fisheries. It is not unusual for a byelaw to be 2-3 years in development.

7. It has been said that the MCRS byelaw now being considered is not an ideal regulatory tool. Some of the fish sizes in the byelaw are too small to be effective in managing and protecting stocks and have little underpinning justification. Each species requires research to determine the best MCRS to protect stocks and allow a maximum sustainable catch.
8. The programme is also subject to changes in fisheries management and changing priorities of Government policy. In this District a new byelaw to control shellfish gathering at Leasowe has become an urgent priority in recent months and a byelaw to require all under 12m vessels to have working iVMS systems is expected to become a government policy priority in the near future. These emerging priorities mean that any byelaw development programme must be flexible enough to respond to emerging changes in fisheries management priorities and the Authority must be flexible to adapt to these changes.
9. From tables 2 and 3 in the 2019 byelaw review at annex C, Members may wish to consider the next priorities while the 4 byelaws now in development are completed. For any new byelaw proposed it would be helpful to remind ourselves again, what are the main issues which the byelaw should address and what the key measures/ restrictions/ prohibitions would be?

Possible next priorities

10. From discussions at the byelaw review meetings it has become evident that there is support for reviewing the complex suite of inherited netting byelaws.
11. A vessel size byelaw has also been mooted with questions over the issues this would resolve.
12. A shrimp byelaw would appear sensible but resolving different fishing practices across the District makes this difficult
13. As mentioned above research into the best MCRS for each species in the draft byelaw 1 would give this byelaw stronger scientific underpinning.

CEO

October 2020

Annex A Extract from the minutes of the TSB 11 August 2020

Paragraph 15. BYELAW REVIEW - REPORT FROM MAY MEETING (Agenda Item 9)

The Chair described the work of the Byelaw Review Group to date with the second meeting held as approved at the last TSB meeting held in May. The Group discussed the remaining items or remaining byelaws that we did not get a chance to look at in the first byelaw review meeting, which included mobile shrimp and prawn and recreational gathering. The first hour of the meeting was taken up quite a lot by the issue around Leasowe. We also briefly discussed vessel size referring back to Steve Brown's paper and very briefly iVMS and the EA /Dee legacy byelaws. As time is limited the Chair did not propose to go through the whole report or annex of the report and comments but thought it might be helpful to go through the summary of actions for each of those byelaws and then decide on a way forward and priorities for the development of these byelaws.

Steve Brown commented that there was no need for a lengthy discussion on what needed doing in each byelaw in this meeting as that had been drawn out in the report from the Byelaw Review meeting. The Chair and Brian Leigh put forward the need to look at the prioritisation of the byelaws, and CEO said that the prioritised list was shown in the Annual Plan as agreed at the June Authority meeting. This list could be changed by members putting forward a resolution to be taken to the full Authority meeting, but for this year had been prioritised on what was already underway and the realistic time available to officers to work on byelaws.

The Chair made the point that we were already not following that list because of issues that had arisen, and asked did the meeting want to have a discussion about prioritisation? CEO said that there could potentially still be a lot of work coming back from the Byelaw 3 and Potting Permit Byelaw depending on MMO advice. The Chair said that work on other byelaws could be being progressed while we await MMO response.

Brian Leigh suggested it was not a case of changing in large the annual plan, but a case of going back to Members and perhaps just changing the prioritisation of the byelaws in such a way that gives Members of the Authority a really informed view of where the work is taking place and what the outputs from that work will be.

Dr Baxter explained her thinking that it was not about ticking boxes but having a strategic plan as to which ones we work on in the background and will take longer to develop whilst perhaps moving forward more swiftly with those byelaws that might be easier to address. CEO said this was laid out in the Annual Plan; Dr Baxter felt this was more a list than a strategic approach.

Brian Leigh asked that the CEO present a short paper setting out the methodology and reasoning behind the existing prioritisation of the byelaw review that is laid out in the latest Annual Plan so Members are better placed to actually comment on that and make suggestions for any required changes to it. Dr Atkins agreed to do so.

NWIFCA Authority Meeting
18th September 2020; 11.00 a.m.

AGENDA
ITEM NO.
11

Byelaw Update September 2020

Purpose of Report: To report progress with byelaw development and update annual plan.

Recommendation: Receive the report

14. At the August 2020 meeting TSB requested an update on byelaw developments with a review of byelaw targets in the Annual plan 2020-21.

15. Byelaws in development are listed in the table below

Byelaws in development	Update	Suggested Target
1. Byelaw 3 Cockle and Mussel permit scheme	Amended byelaw sent to MMO for confirmation July. Comments received 12 August which are being addressed. The existing byelaw remains in force and fully effective	Sign-off by Minister by December 2020
2. Byelaw 4 Potting	Byelaw sent to MMO for confirmation in July. MMO deadline for response is 24 September	Sign-off by Minister by April 2021
3. Byelaw 1 Minimum Conservation Reference Sizes	Considered by TSB on 11 August. On agenda today to be made	Sign-off by Minister by April 2021
4. Emergency byelaw made 3 June 2020 North Wirral Foreshore Bivalve Mollusc	Byelaw in force for 12 months from the date of making. A permanent byelaw is under consideration by TSB. A 6 month extension allowed by emergency byelaw regulations would extend the byelaw to November 2021	Sign-off by Minister by April 2022
5. Byelaw to consolidate Netting regulations:	Consultations with industry and stakeholders are continuing to agree and develop the measures to be included in this byelaw	Draft byelaw by April 2021

Byelaw review and priorities

6. The second meeting of the NWIFCA byelaw review group consisting of TSB Chair and Vice Chair was held on 29 May online and reported to TSB on 11 August. TSB requested the Authority review byelaw priorities in the annual plan at this meeting.

7. Byelaw priorities in the 2020-21 annual plan approved in June 2020 are as follows:

- i. Complete Byelaw 3 Cockle and mussel permit scheme

- ii. Complete District wide potting permit byelaw.
 - iii. Review and remake District wide netting byelaws
 - iv. Draft and make Minimum Conservation Reference Size byelaw
 - v. Implement emergency byelaw to prohibit shellfish gathering on Wirral June 2020
 - vi. Draft and make iVMS byelaw in line with national policy. Currently not needed pending national redevelopment of the iVMS project.
 - vii. Continue Byelaw review and make recommendations to the Authority
8. Other work and priorities have delayed progress on 'iii. District wide netting byelaw'. The IVMS byelaw is on hold pending a national reassessment of the IVMS policy. Both these may be deleted from the list this year with an option to bring them back in future if appropriate.
9. Byelaws 1,3, 4 and the conversion of the emergency byelaw will fully occupy available resources for byelaw work for the remainder of 2020-21.
10. **Recommendation:** The Annual plan 2020-21 Table 3 Section 7 Byelaw priorities for 2021 is amended to:
- i. Complete Byelaw 3 Cockle and mussel permit scheme
 - ii. Complete District wide potting permit byelaw.
 - iii. Draft and make Minimum Conservation Reference Size byelaw
 - iv. Implement emergency byelaw to prohibit shellfish gathering on Wirral June 2020
 - v. TSB to continue the Byelaw review and make recommendations to the Authority

CEO September 2020

ANNEX C Byelaw review last updated for November 2019 TSB

BYELAW REVIEW UPDATED SINCE 14TH MAY 2019 VERSION

Purpose: To revise and update Byelaw review.

Recommendation: Approve revised byelaw review as set out below

Background

1. This paper first received by TSB on 16th August 2016 was updated for 14th May 2019 and 6th August 2019 meetings and again for this meeting.
2. Provisions in MACAA S155 – 162 define the scope of IFCA byelaw making powers.
3. Statutory Instruments (SI) transferred relevant SFC and other inshore fisheries byelaws to NWIFCA so there was no break in regulations. SFC and other inherited byelaws remain in force until revised or repealed by NWIFCA. IFCA aim to revise inherited byelaws as soon as possible.
4. Defra guidance on IFCA byelaw making was published in 2011 and is on the Defra website. Checking and quality assurance of draft byelaws is an MMO responsibility. IFCA are responsible for consultation with stakeholders. A documented impact assessment of all new byelaws is required to identify the rational, justification and regulatory costs.
5. An extensive review of IFCA byelaw making was undertaken for MMO by the consultancy MRAG. This report: ***“Quality Assurance of IFCA Byelaw: process review”*** published October 2018 was first considered by TSB in February 2019 and is included as an annex to the report for agenda item 6 this meeting.
6. MMO used this report to consider their roles and responsibilities in the IFCA byelaw making process and adopted a revised and more streamlined process of quality assurance by both MMO and Defra reported to TSB in February 2019.

Developments in byelaw making

7. In order to achieve increased flexibility in byelaw regulations, byelaw may now include flexible permit schemes whereby targeted permit conditions can be attached to meet specific fisheries. Examples of flexible permit condition byelaws are the NWIFCA Permit to Dredge byelaw, the draft Potting Permit and draft Cockle and Mussel permit byelaws.

The NWIFCA Byelaw review progress

8. NWIFCA inherited a uniquely complex set of byelaws arising from the amalgamation of 2 SFC Districts and the addition of the Dee estuary previously regulated by the EA. The current set includes byelaws made by North Western SFC and predecessor bodies, Cumbria SFC, the EA and predecessor bodies for the Dee. No other IFCA inherited such a complex byelaw regime and the byelaw review is particularly challenging in this District. The inherited byelaws contain significant differences in approach which are difficult to resolve into District wide regulations in some cases.

9. While the byelaw review is underway all existing byelaws continue in force to maintain an effective functional regulatory regime ensuring no loss of fisheries regulations. Inherited byelaws will be repealed as replacement byelaws come into force.
10. Table 1 shows Byelaws introduced since 2011. Despite the Government intentions to speed up byelaw making this has not worked in practice. Not only are recent byelaws more complex, the making process has more stages including requirement for impact assessments, increased consultation and sign off by both MMO and Defra.
11. Table 2 shows current byelaw priorities. Byelaw development is lower priority than essential statutory duties such as enforcement and survey so the Authority has limited resources to implement new byelaws. Other factors are the requirements for consultation with stakeholders before and after the byelaw is made, the requirements for approval by the Authority at various stages in the byelaw making process and the capacity of the MMO byelaw team of 2 officers to scrutinize and advise all IFCA and MMO on byelaw proposals.
12. Table 3 provides an overview of the planned outcome of the full byelaw review resulting in replacement and repeal of all inherited byelaws.

Byelaw Description	Byelaw Reference	Year
Permit to fish for cockles and mussels	NWIFCA Byelaw 3	2012
Heysham Bass nursery area and prohibition of fishing	NWIFCA Byelaw 5	2013
Protection of European Marine Site features	NWIFCA Byelaw 6	2014
Amendments to byelaws requested by Defra to meet landing obligation	Various	2015
Restrictions on fishing for Bivalve shellfish	NWIFCA Emergency byelaw	2016
Restrictions on the use of a dredge byelaw 2017		2017
Prohibition on Foul hooking byelaw 2017		2018

NWIFCA Byelaws in development	Aim of new byelaw	Current position	Next stage and timescale
NWIFCA Byelaw 4 potting permit.	District wide permit scheme for commercial and non-commercial potting for crab, lobster, nephrops, whelk,	Statutory consultation underway concludes 8 Nov.	Address objections and seek confirmation.
NWIFCA Byelaw 3. Cockle and Mussel hand fishing permit	Improve regulation with flexible permit provisions.	Statutory consultation underway concludes 8 Nov.	Address objections and seek confirmation.
Net fishing regulations	Create a district wide regulatory framework for all fishing with nets.	Initial work begun	Identify byelaw measures required

NWIFCA Fish MLS Byelaw.	NWSFC byelaw 19 ensured EU MLS applied to shore fishing and set MLS for species not covered by EU legislation.	Following removal of powers to enforce MLS on non-commercial fishers, the Authority to consider if this byelaw is still needed and if should be made District wide.	Research by Science team underway to understand science underpinning MLS.
NWIFCA Byelaw 9. Shrimp and Prawn fishing	To create District wide mesh and net size regulations for shrimping.	Differences between parts of the District, to be resolved. A single District wide mesh size may lead to reduction in MLS England and reduced conservation benefit.	On hold pending resolution of measures.
NWIFCA Byelaw 2. Vessel size limits	To create District wide regulation of vessel size and engine power limits	Agreement on the need for this byelaw and measures required not yet in place.	

Table 3 Possible New byelaws	Inherited byelaws replaced
Possible Vessel size and engine power limits. Byelaw may not be required.	NWSFC Byelaw 9 (2005) Vessel max length 15m
	Cumbria SFC Byelaw 3 (1993) 0-3 miles. Vessel max length 13.72m
	Cumbria SFC Byelaw 15 (1993) Solway Firth. Engine power limit 221Kw
	Cumbria SFC Byelaw 13 (1996) Prohibition on multi-rigged trawls
Byelaw 9 Shrimp & Prawn.	NWSFC Byelaw 6 (2001) Shrimp and prawn fishing restrictions Cumbria Byelaw 14 2004 Shrimp & prawn regulations
Winkles byelaw Consider District wide replacement.	Cumbria SFC Byelaw 7 (2004) Fishing method and min size
NWIFCA Fish MLS Byelaw.	NWSFC Byelaw 19 2009 Fish MLS to cover shore fishing in byelaw. Cumbria Byelaw 9 1993 Skate min size
NWIFCA Netting Byelaw The main SFC netting byelaws NWSFC Byelaw 26 and Cumbria Byelaw 10 were reviewed by EA in 2010-11. A further review to incorporate other netting measures and lines and create a common regulatory netting and lining regime is being considered.	NWSFC Byelaw 2 (1951) Attachments to nets
	NWSFC Byelaw 3 (1989) Prohibition of seine netting
	NWSFC Byelaw 7 (1989) Mesh sizes for nets other than trawls
	NWSFC Byelaw 8 (1989) Small mesh net regs
	NWSFC Byelaw 10 (1985) Set and drift nets
	NWSFC Byelaw 26 (2011) District Fixed nets Protection of salmonids
	NWSFC Byelaw 27 (1996) Drift nets Protection of salmonids
	Cumbria SFC Byelaw 10 (2010) Fixed/drift nets salmonid protection
	Cumbria SFC Byelaw 20 (1998) Min mesh size for protection of plaice
	EA Byelaw 5 Dee Estuary Trammel nets, trawl nets, beam trawls, otter trawls, Any instrument
Gear marking to be included in specific fishery byelaws for potting, netting etc.	NWSFC Byelaw 11 (2003) Requirement to mark nets lines pots traps Cumbria Byelaw 4 (1993) Requirement to mark nets traps pots and lines

Measures covered by new draft NWIFCA byelaw 3.	NWSFC Byelaw 16 (1973) Shell fishery temporary closure
	Cumbria Byelaw 18 (1993) Shellfish temporary closure
Byelaws not needed. All will be repealed when suite of NWIFCA byelaws is complete.	NWSFC Byelaw 1 (1986) Defines District
	NRA byelaw 1 Defines EA District (Dee Estuary)
	NRA byelaw 2 EA District (Dee Estuary only) interpretation
	NRA byelaw 7 Exemptions
	NWSFC Byelaw 28 (1992) . Pre 1992 byelaws apply within 3 miles
	Cumbria Byelaw 19 (1993) Pre 1992 byelaws apply within 3 miles
	Cumbria Byelaw 1 (1993) Revocation of all pre1993 byelaws
	Cumbria Byelaw 2 1993 Authority to make byelaws
	EA Byelaw Fishing for seafish in rivers below tidal limit

CEO
October 2019