

**NWIFCA Quarterly Meeting
14th March 2019; 11.00 a.m.**

**AGENDA
ITEM
7**

BYELAW 3 COCKLE AND MUSSEL FISHING PERMIT 2019

Purpose of Report: To consider amendments to the previous version

Recommendations:

- i. Changes listed in paragraphs 6-17 below are agreed**
- ii. Legal advice is sought on the changes where necessary**
- iii. The draft byelaw at Annex A is referred back to TSB for completion**

Background

1. This proposed byelaw has been extensively discussed at recent TSB meetings and with legal advisors in MMO.
2. At TSB in February it was agreed that it may be possible to make the byelaw at the March quarterly meeting of the Authority subject to any further legal advice.

Update

3. Further advice was received from MMO since the TSB in February. Together with internal discussion this has resulted in more proposed amendments than expected. Therefore a further version of the byelaw agreed by members and exposed to legal scrutiny is considered necessary before proceeding to formally make the byelaw.
4. Proposed amendments are listed and explained below and a further full draft of the byelaw is at Annex A. A track changes version of the byelaw showing the changes which have been made is available by switching on 'track changes' and 'show markup' with the document open in word. If this does not work, a track change version can be supplied from the office.
5. This version of the byelaw will be sent to MMO and the Authority solicitor for legal advice on the points listed below.

Summary of changes made

6. Paragraph 4 is added and paragraphs 6 and 10 are amended to clarify that permit conditions and flexible permit conditions apply to anyone fishing without a permit under the exception in paragraph 13 (which allows non permit holders to take up to 5kg of cockles and mussels from open fisheries). Legal advice is sought as to whether these amendments are required and achieve their intended purpose.
7. The amendment to paragraph 6 is considered important to ensure that fishing for seed mussel can be permitted using a flexible permit condition and if necessary other size limits can be applied to meet specified circumstances. Legal advice is sought as to whether this amendment is required

8. Legal advice is sought on whether it is necessary to have fixed or default regulations in the byelaw (e.g. paragraphs 6 minimum landing size and 10 closed season), if these regulations can be varied in flexible permit conditions?
9. Paragraph 8 is added to prevent unlabeled containers of shellfish being left unattended with no identification.
10. Paragraph 12 is added to clarify that a dredge permit is sufficient to fish for cockles and mussels using a dredge and a permit under this byelaw is not also required. Legal advice is sought as to whether this paragraph is required.
11. Paragraphs 17 and 22 are amended so that NI Number is changed to NI card because we are advised that the NINO can be issued from birth if requested but a card is not provided until age 16. Therefore we propose setting a minimum age of 16 for receiving a permit in addition to the NINO requirement. A NINO is required as evidence of a right to work in the UK. Legal advice is sought as to whether our understanding of the NINO is correct.
12. Paragraphs 25-27 are a new provision for permit suspension following an offence for which a sanction is issued. This follows the publication of a newly confirmed Cornwall byelaw which includes a similar provision. Members are invited to resolve that permit suspension for up to 2 years is agreed and that permit holders may immediately reapply for permits when the suspension ends without returning to the end of the waiting list. Alternatively, members may consider that holders whose permits have been suspended should not be able to immediately renew and that they should be placed on the waiting list. In this case note that this could mean that a permit suspension lasts many years as the current waiting list is about 10 years.
13. Paragraph 28g is added to provide for specified access routes to fisheries. This is to ensure that for example environmental features such as salt marsh can be protected from damage. A condition of this nature is often included in authorisation as currently issued. Also the word 'specified' has been added to condition categories as was advised for the dredge byelaw.
14. Paragraph 32 is amended to include provision for the existing waiting list to be transferred in full to the new byelaw.
15. Paragraphs 33, 34 and 35 provide further detailed transitional arrangements considered necessary.
16. In some cases the cockle commercial areas as drawn in Schedule A were noted to completely contain areas classified under shellfish hygiene regulations. If confirmed these commercial areas would prevent any non-permit holder fishing in those classified areas. This is considered to be too restrictive as it would prevent non-permit holders fishing cockles from known safe areas. To address this issue, the boundaries of the commercial areas are being re-examined to ensure in all cases that parts of classified areas are left outside the commercial areas.
17. A revised version of the byelaw talking into account the points above and any further amendments will be presented to TSB at the May meeting with a view to making the byelaw at the June meeting.

CEO
28th February 2019

North Western Inshore Fisheries and Conservation Authority
Marine and Coastal Access Act 2009 (c.23)

Byelaw 3 Cockle and mussel fishing permit 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. 2010/2200);
 - b) “cockle” means a shellfish of the species *Cerastoderma edule*;
 - c) “co-ordinates” are derived from the World Geodetic System 1984 database;
 - d) “commercial areas” means areas of the District listed in Schedule A where all fishers must have a permit at all times;
 - e) “Craam, tamp or jumbo” are terms used in the District for hand tools used to harvest cockles;
 - f) “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;
 - g) “fish” or “fishing” includes all activities related to fishing by hand of cockles or mussels within or from a fishery in the District including harvesting, taking, moving and transporting;
 - h) “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;
 - i) “permit” means a permit issued to a named person who is the permit holder by the Authority to gather cockles or mussels by hand;
 - j) “mussel” means a shellfish of the genus *Mytilus*;

Prohibitions

2. A person must not fish cockles or mussels unless they have in their possession while gathering a valid permit issued to them by the Authority.
- ~~3.~~ 3. A person must not fish cockles or mussels except by hand or using rakes, spades, craams, tamps or jumbos.
- ~~3.4.~~ 3.4. A person must not fish cockles or mussels from a fishery which is closed by a permit condition under paragraph 28 of this byelaw.
- ~~4.5.~~ 4.5. A person must not have in their possession any article for use in connection with fishing cockles or mussels in breach of this byelaw.

- ~~6.~~ A person must not retain any cockle which will pass through a gauge having a square opening of 20 millimetres measured across each side of the square or any mussel less than 45 millimetres in length unless permitted by a flexible permit condition under paragraph 28.
- ~~7.~~ A person must not have in their possession, retain, transport or store any cockle or mussel fished in breach of this byelaw. A person having in their possession any cockle or mussels fished in breach of this byelaw must immediately redeposit the same, without injury, as nearly as possible in the fishery from which they were taken or on another suitable fishery and must spread them thinly and evenly through the fishery.
- ~~7.~~ A person must not leave unattended ~~use~~ a container ~~for~~ holding ~~or transporting~~ cockles or mussels 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 or mussels found in an unmarked container ~~may be confiscated~~ will be seized and must immediately be redeposited, without injury, as nearly as possible in the fishery from which they were taken or on another suitable fishery and must be spread thinly and evenly through the fishery ~~re-laid by an Inshore Fisheries and Conservation Officer.~~
- ~~8.~~ A person must not obstruct an Inshore Fisheries and Conservation Officer in the course of carrying out their duties and must comply with a reasonable request of an Inshore Fisheries and Conservation Officer.
- ~~9.~~ A person must not fish any cockle on or between 1st May and 31st August in the same year. unless permitted by a flexible permit condition under paragraph 28

10.

Exemptions

11. 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.
12. This byelaw does not apply to a person fishing for cockles or mussels under a permit issued pursuant to the "Restrictions on the use of a dredge byelaw 2017".
13. A permit is not required for a person fishing less than 5 kilograms of cockles and 5 kilograms of mussels during a calendar day from a fishery which is:
- not closed by a permit condition under paragraph ~~28~~6 of this byelaw;
 - not part of the District managed under the Dee Estuary Cockle Fishery Order (SI 1472 2008), without a licence to fish issued under the terms of that Order;
 - not in a commercial area as detailed in Schedule A.

Permit conditions

14. Applications for permits must be made using the correct forms available from the Authority's offices or website. Failure to notify the Authority of any change of name or address or material change in the information required on the application form would constitute a breach of this byelaw.
15. A fee of £500 shall be payable for each permit prior to issue.
16. A permit:
- is not transferrable from the permit holder to another person;

- b) is annually renewable;
- c) is valid from 1st September to 31st August in the following year unless otherwise stated on the permit.

- 17. Permits will not be issued to applicants who do not have a National Insurance ~~NumberCard~~ or are aged under 16 or do not hold -a foreshore gatherers safety training certificate.
- 18. 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.
- 19. The Authority must keep a waiting list of new permit applications in the order received. A maximum of 10 new applicants at the top of the waiting list may receive a permit each year starting 1st September.
- 20. Written offers of permits to start on 1st September will be sent to eligible new applicants after the preceding 1st August each year. Offers must be accepted by applicants by providing the information, signed declaration and payment required by the Authority within 15 working days of receiving an offer.
- 21. An offer not accepted by an applicant within 15 working days will be withdrawn and an offer will be made to applicants, in order, from the top of the waiting list, until 10 new offers have been accepted for each year. Applicants whose offers are withdrawn will be removed from the waiting list and may immediately re-join the end of the waiting list.
- 22. Applicants must be age 12 years or over to be added to the waiting list. Applicants reaching the top of the waiting list before they are old enough to ~~receive a national insurance number~~ be eligible for a permit will remain at the top of the waiting list until they are eligible for a National Insurance ~~NumberCard~~. On the 1st August after ~~receiving a National Insurance Number~~ after reaching age 16, applicants become eligible for offer of a permit if they are in the first 10 applicants on the waiting list.
- 23. The permit holder must carry their permit at all times when engaged in fishing or any related fishing activity within the District. The permit must be available for inspection by an Inshore Fisheries and Conservation Officer if required.
- 24. A permit holder must file with the Authority, no later than the fifth day of the month following, information 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 or for any breach of this byelaw.
- 25. The Authority will suspend a permit or not re-issue a permit if the Authority determines that a permit holder has not complied with a permit condition.
- 26. Where a permit holder fails to comply with the permit conditions or a flexible permit condition introduced under paragraph 268 and any enforcement action leads to a penalty imposed by a court or the permit holder accepts fault and pays a financial administrative penalty or accepts a caution the permit will be withdrawn by the Authority for a period not exceeding 2 years from the date ~~the offence was committed~~ of conviction or acceptance of the Fixed Administrative Penalty. The period of the suspension will be determined by resolution of the Committee of the Authority responsible for byelaws.
- 27. The permit holder may immediately reapply for a permit on the day the permit suspension ends, paying the annual fee for the remainder of the year or may defer reapplication until the following 1st September without having to re-join the waiting list.

Flexible permit conditions

28. On receipt of the information specified in paragraph 31. the Authority may in accordance with the review procedure in paragraph 30 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) [specified](#) dates, times or tides during which gathering cockles or mussels is permitted;
 - b) [specified](#) areas where gathering cockles or mussels is permitted;
 - c) close for a specified period not exceeding one 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) the total catch limit permitted within a specified period or a specified area;
 - e) [specified](#) methods or equipment permitted within a specified period or a specified area;
 - f) ~~the~~[specified](#) permitted minimum landing size;
 - f)g) [specified access to a fishery](#).
29. Failure to comply with any of the permit conditions constitutes a breach of this byelaw.

Review procedure

30. The Authority will review the permit conditions no less than once every four years and the flexible permit conditions no less than once every two 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 30a and the information listed in paragraph 31;
 - 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.
31. 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 deem fit;
 - c) advice provided by Cefas, Natural England or such other bodies, organisations or persons as the Authority deem fit;
 - d) an impact assessment of any proposed changes;

- e) information from any other relevant source.

Transitional Arrangements

32. The permit application waiting list compiled under the A-“North Western Inshore Fisheries and Conservation Authority Byelaw 3 Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*)” (2012)” (revoked by this byelaw) are fully transferred and applied to this byelaw on the day this byelaw is confirmed. (revoked by this byelaw)
33. A gGathering permit holder under the “North Western Inshore Fisheries and Conservation Authority Byelaw 3 Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*)” (2012)” (revoked by this byelaw) is immediately a permit holder under this byelaw on the day this byelaw is confirmed and may renew their permit in accordance with paragraph 18.
34. Support worker permits are not issued under this byelaw. Support worker permits issued under “North Western Inshore Fisheries and Conservation Authority Byelaw 3 Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*)” (2012)” (revoked by this byelaw) are revoked on the day this byelaw is confirmed.
- 35: Permits issued under paragraphs 25 and 26 of “North Western Inshore Fisheries and Conservation Authority Byelaw 3 Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*)” (2012)” (revoked by this byelaw) are revoked on the day this byelaw is confirmed. Holders of these permits who can show to the satisfaction of the North Western Inshore Fisheries and Conservation Authority that their permit has been used in the 1 year period prior to the date of making this byelaw immediately become permit holders under this byelaw on the day this byelaw is confirmed and may renew their permit in accordance with paragraph 18.

Revocation of Byelaws

36. 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 and in force immediately before the making of this byelaw is revoked.
37. 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.
38. 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.
39. 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.

I hereby certify that the above byelaw was made by the Authority at its meeting on.....

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Date.....

Dr Stephen Atkins; Chief Executive Officer; North Western Inshore Fisheries and Conservation Authority; 1 Preston Street, Carnforth, Lancashire, LA5 9BY.

The Secretary of State for Environment, Food and Rural Affairs in exercise of the powers conferred by section 155(4) of the Marine and Coastal Access Act 2009 confirms the Byelaw 3; Cockle and mussel permits 2019 made by the North Western Inshore Fisheries and Conservation Authority on

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..... Date.....

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

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. This byelaw introduces a flexible permit scheme for the fishing of cockles and mussels in order to effectively manage the fishery. A maximum catch of 5kg of cockles and 5kg of mussels is permitted for non-permit holders outside defined commercial areas. The byelaw defines the minimum age for applicants to be added to the waiting list as twelve'.

Schedule A. Commercial cockle fishing areas of the NWIFCA District where gathering without a permit is prohibited at all times.

North Morecambe Bay Commercial Area

- A- 54.08475, -2.83495
- B- 54.08475, -3.03341
- C- 54.15375, -3.03341
- D- 54.15378, -2.82702

South Morecambe Bay Commercial Area

- A- 54.03125,-2.92447
- B- 53.98149,-2.88261
- C- 53.93853,-2.89378
- D- 53.93853,-2.95470
- E- 53.97500,-2.99939

Ribble Commercial Area

- A- 53.67879, -3.00111
- B- 53.67879, -3.11947
- C- 53.72397, -3.11947
- D- 53.72397, -3.00111
- E- 53.70200, -2.96296

Wirral Commercial Area

- A- 53.41786, -3.11383
- B- 53.43971, -3.14038
- C- 53.45513, -3.10342
- D- 53.43305, -3.07556