

North Western Inshore Fisheries and Conservation Authority (NWIFCA)

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) “certificate disc” means a disc issued by the Authority attached to a vessel containing details of the applicable permit;
- (d) “Commercial Permit Holder” means a person named on a commercial permit;
- (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) “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;
- (g) “permit” means:
 - i. a Commercial Permit issued under paragraph 8;
 - ii. a Recreational Permit issued under paragraph 18;
- (h) “pot” means any folding or rigid cage device or structure with one or more openings or entrances capable of capturing any sea fisheries resources;
- (i) “Recreational Permit Holder” means a person named on a recreational permit;
- (j) “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 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.

- (k) “riddle” means a fixed or moving flat or cylindrical apparatus constructed of parallel bars which rejects any specified species that pass between the bars;
- (l) “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. any teleost (bony) or cartilaginous (sharks and rays) fish species;
- (m) “tag” means a tag issued by the Authority attached to a pot, buoy or pole identifying the applicable permit;
- (n) “vessel” means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or any other amphibious vehicle, used or capable of being used as a means of transportation on water;
- (o) “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. No person shall take or land from a fishery within the District more than the stated amount of the species listed below in any one calendar day, except:
 - i. when fishing from a relevant fishing vessel;
 - ii. when fishing commercially for shrimp in an intertidal fishery;
 - iii. when fishing commercially for lobster or edible crab in an intertidal fishery;

Specified Species	Maximum Daily Quantity	
Lobster	2 individuals	and
Edible crab Spider crab Velvet crab	Combined total of 5 individuals	and
Prawn	150 individuals	and
Whelk	50 individuals	and
Norwegian lobster	50 individuals	

- 3. No person shall remove or retain from a fishery within the District:
 - (a) a V-notched lobster;
 - (b) a mutilated lobster;

(c) when fishing with the use of a pot a berried hen;

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

4. No person shall use a pot to fish unless in possession of a valid permit.
5. No person shall carry a pot on board a vessel unless the pot is stored in such a way that it cannot readily be used for fishing.

Provisions and Exceptions

6. 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.
7. Paragraph 5 does not apply to a person acting in accordance with a valid Potting Permit.

Commercial Permits

8. The Authority may issue a permit authorising a person to use pots to fish for a specified species from a relevant fishing vessel in any part of the District ('a Commercial Permit').
9. An application for a Commercial 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.
10. Only one Commercial Permit per specified species will be issued per relevant fishing vessel. A permit for edible crab and lobster will count as one specified species permit.
11. Where the Authority issues a Commercial Permit the Authority will at the same time issue a permit sticker and gear tags.
12. A Commercial Permit, permit sticker and gear tags:
 - (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 specified in the permit (up to a maximum of two years);
 - (c) cannot be sold;
 - (d) are not transferrable between:
 - (i) the permit holder and another person; or,
 - (ii) the named vessel to another named vessel;
 - (e) paragraph 12(d)(ii) shall not apply if the ownership of the recipient vessel is the same as that of the donor vessel;
 - (f) remain the property of the Authority and must be surrendered to the Authority immediately if no longer required.
13. A Commercial Permit holder may nominate a representative(s) at any time in writing to the Authority.
14. The fee for a specified Commercial Permit, permit sticker and tags is payable on application as specified in (a), unless varied pursuant to paragraph 15:

- (a) the sum of £?? per annum for a Commercial Permit;
15. The Authority may vary permit administration fees in accordance with the following conditions and procedures:
- (a) the Authority will consult in writing with commercial 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 fee based upon:
 - (i) the responses from the consultation under paragraph 15 (a);
 - (ii) expenditure arising from the administration of permits and processing permit holder data required by the Authority;
 - (iii) any regulatory impact assessments associated with this byelaw;
 - (iv) Authority expenditure to conduct any survey activities that support the implementation of shellfish permits;
 - (v) Authority costs associated with arranging and attending meetings with permit holders;
 - (vi) any relevant Authority expenditure incurred by implementation of this byelaw.
16. The fee includes a sum for the replacement of one lost or damaged permit sticker and up to 20 lost tags.
17. A Commercial Permit is subject to:
- (a) the general permit conditions in paragraphs 27 to 37
 - (b) the Commercial Permit conditions in paragraphs 38 to 41; and,
 - (c) any flexible permit conditions attached to the permit in accordance with paragraphs 47 to 49.

Recreational Permits

18. The Authority may issue a permit authorising a person to use pots to fish for specified species in any part of the District (a 'Recreational Permit').
19. An application for a Recreational Permit may be made by any person using the printed forms available from the Authority's office and website.
20. Only one Recreational Permit will be issued to a person.
21. Where the Authority issues a Recreational Permit the Authority will at the same time issue a permit sticker and gear tags.
22. A Recreational Permit, permit sticker and gear tags
- (a) are issued to the applicant ("the permit holder");
 - (b) are valid for the period specified in the permit (up to a maximum of one 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.
23. The fee for a Recreational Permit and tags is payable on application, unless varied pursuant to paragraph 24.
24. The Authority may vary permit fees in accordance with the following conditions and procedures:
- (a) the Authority will consult in writing with recreational 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 24 (a);
 - (ii) expenditure arising from the administration of permits and processing permit holder data required by the Authority;
 - (iii) any regulatory impact assessments associated with this byelaw;
 - (iv) Authority expenditure to conduct any survey activities that support the implementation of shellfish permits;
 - (v) Authority costs associated with arranging and attending meetings with permit holders;
 - (vi) any relevant Authority expenditure incurred by implementation of this byelaw.
25. The fee includes a sum for the replacement of one lost or damaged permit sticker and up to 5 lost tags.
26. A Recreational Permit is subject to:
- (a) the general permit conditions in paragraphs 27 to 37;
 - (b) the Recreational Permit conditions in paragraphs 42 to 46; and,
 - (c) any flexible permit conditions attached to the permit in accordance with paragraphs 47 to 49.

General Permit Conditions

27. No permit holder shall use a pot to fish for a specified species unless the pot is of a design defined in the flexible permit condition.
28. Any boat 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 boat used in accordance with the byelaw display more than one permit number.

29. The site of the pots 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 pots remain in position.
30. All buoys used to mark pots must be red, yellow or orange of minimum A1 size. The flag or buoy shall be legibly marked with the permit number of the owner of such pot or the registered number of the permitted vessel.
31. No permit holder or nominated representative shall use any species as bait whilst fishing for any specified species unless it meets the minimum landing sizes set out in EU, national or regional legislation, subject to Landings Obligations.
32. A permit holder must not obstruct an IFC officer.
33. Fishing returns must be filed as required by the Authority providing such data as dates, times and locations of fishing and the quantity of specified species taken. Returns including nil returns may be required for all months for which permits are valid.
34. The Authority may suspend a permit until outstanding returns have been filed.
35. To obtain a replacement tag in the event that a tag is lost, the permit holder must submit a written request to the Authority.
36. If a lost tag is subsequently found by the permit holder it must be returned within 48 hours to the Authority.
37. 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.

Commercial Permit Conditions

38. The vessel named on a Commercial Permit must remain a relevant fishing vessel for the duration of the permit.
39. The permit holder or the nominated representative(s) of the permit holder must be present on board the vessel during the permitted activity to use the permit.
40. The permit holder must not set a string of pots that:
 - (a) is not fitted with a tag issued by the Authority at each end of the string; or
 - (b) is fitted with a tag that has previously been notified to the Authority as lost.
41. The permit holder must not use more than one specified species permit per day.

Recreational Permit Conditions

42. No permit holder shall use more than a total of five pots to fish for specified species.
43. The 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. During a fishing trip in which a vessel is used by more than one person to fish within the District, the total that may be removed from the fishery or retained on board by all the holders, taken together, remains as in the table in paragraph 2 above.

45. No permit holder shall remove 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.
46. No permit holder shall 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.

Flexible Permit Conditions

47. 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;
 - (c) spatial restrictions;
 - (d) time restrictions;
 - (e) vessel length and / or engine capacity restrictions;
 - (f) number of permits issued.
48. The Authority may introduce, remove or vary a flexible permit condition in accordance with the review procedure set out in paragraphs 50 and 51.
49. The flexible permit conditions that apply to a permit until the first review pursuant to paragraphs 50 and 51 are those set by the Authority taking into account the impact assessment that accompanies this byelaw and all other material considerations.

Review Procedure

50. The Authority will review flexible 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 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;
 - c. following a decision by the Authority, permit holders will be notified in writing and permits will be amended as necessary with no charge.
51. The information in paragraph 50 is:
 - a. information and advice 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 27 to 37);
- b. Commercial Permit condition (within paragraphs 38 to 41);
- c. Recreational Permit condition (within paragraphs 42 to 46); or
- d. flexible permit condition attached to a permit in accordance with paragraphs 47 to 49;

constitutes a contravention of this byelaw.

Revocation

54. The byelaws with the following number, title or purpose made by the North West Sea Fisheries Committee and Cumbria Sea Fisheries Committee 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 30 Fishing for Lobster, Crawfish, Crab, Prawn and Whelk confirmed on 20th April 2007;
- b. NWSFC Byelaw 31 Protection of V-notched lobsters confirmed on 16th December 1997;
- 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.

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 commercial and recreational 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, and any teleost or cartilaginous fish species).

The byelaw provides that the Authority may issue Commercial Permits and Recreational Permits and the terms on which they may be issued (paragraphs 8 to 17 for Commercial Permits and paragraphs 18 to 26 for Recreational Permits). The byelaw also sets out General Permit Conditions that apply to both types of permit (paragraphs 27 to 37), Commercial Permit Conditions (paragraphs 38 to 41) and Recreational Permit Conditions (paragraph 42 to 46).

The byelaw provides that the Authority may introduce, remove or vary (in accordance with the review procedure set out at (paragraphs 50 to 51) flexible permit conditions in relation to catch, bait, technical measures and gear restrictions, spatial and time restrictions, vessel length 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 (paragraph 50).

Failure to comply with a permit condition constitutes a contravention of the byelaw (paragraph 53). 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.

Five existing byelaws are revoked (paragraph 54).

Annex A – Flexible Permit Conditions v3

1. Minimum Landing Sizes:

No permit holder shall remove or retain from a fishery within the District:

- (a) 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 87mm;
- (b) any edible crab which has a carapace length, measured across the broadest part of the back, less than 130 mm;
- (c) any whelk which has a shell length, measured along the longest part of the shell, less than 75mm;
- (d) any Norwegian lobster which has a carapace length, measured from the base of the eye notch to the posterior mid-dorsal edge less than 20mm or an overall length measured from the tip of the rostrum to the rear end of the telson less than 70mm;
- (e) when using a Commercial 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.

2. Gear Restrictions:

- (a) No permit holder shall 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 a rigid escape gap located in the lowest part of the exterior wall of the pot or (in the case of a multiple chambered pot) a rigid escape gap located in the lowest part of the exterior wall of each individual chamber;
- (b) The escape gap referred to in paragraph 2(a) of the flexible permit conditions must be of sufficient size so that a rigid box shaped gauge 80 millimetres wide by 45 millimetres high and 100 millimetres long may be passed through the gap;
- (c) No permit holder shall use a pot to fish for whelks unless the pot consists of a rigid plastic container with an open top through which whelks can enter.
- (d) All whelks must be passed over or through a riddle prior to sorting.
- (e) No permit holder shall use a pot to fish for Norwegian lobster unless the pot is of a 'D' shape design and fitted with at least one hard eye entrance hole of maximum 45 mm diameter, and an unobstructed rigid escape panel of minimum 22mm width fitted in the lowest part of each chamber of the pot.