

**NWIFCA Technical, Science and Byelaw  
Committee**

**6<sup>th</sup> August 2019: 10:00 a.m.**

**AGENDA  
ITEM NO.**

**7**

**POTTING PERMIT BYELAW 2019**

**Purpose:** To report and consider members' comments on the potting byelaw received since the June meeting

**Recommendation:** Members agree the measures to be included in and process for completing development of the byelaw

1. The potting byelaw presented to the NWIFCA June meeting for making was agreed at TSB in May however the recommendation at the June meeting to make the byelaw was not agreed.
2. After TSB, Mr Brown who was not at TSB raised concerns in writing which were tabled as an annex to the potting byelaw report. The annex included Mr Brown's proposal that the byelaw be not made for reasons set out in the annex. Chairman agreed that Mr Brown's report should be accepted for discussion.
3. Members voted to pass Mr Brown's amendment and postpone making the byelaw.
4. Recognising the urgency of this byelaw to allow sustainable whelk fishing in the District, Members agreed to make further comments on the byelaw as presented to the meeting by Monday, 15<sup>th</sup> July.
5. Comments received are at Annex A. Their complexity requires further discussion at TSB and prevents amendments being made to the byelaw before the meeting

CEO  
24<sup>th</sup> July 2019

### **Derek Clarke comments received 21<sup>st</sup> June 2019**

In regard to the proposed Byelaw and after receiving clarity on points raised regarding monthly returns applying to cat 2 permits, escape gaps in Nephrops creels and hopefully drawing attention to plastic pollution caused by lost/discarded lay down Whelk pots at the last quarterly meeting I wish to forward my opinion(s) on the following:

#### 1. Page 5, 24. General permit conditions, Fees.

Vessels fishing under the MMO Restrictive Shellfish Licensing Scheme where additional costs are required in order to purchase the appropriate permit to allow fishing for Shellfish should not incur additional cost of fees which should only be applied for those wishing to apply for a permit to fish for Whelks which do not fit into the scheme which is only applicable to Lobsters, Crawfish, Edible, Velvet, Spider and Green Crabs.

#### 2. Page 10, 1. Whelks. Para (d).

Allocation of pots should be based upon previous landing records and the number of pots required to achieve it, vessels without a proven track record should not be allocated a permit pending the outcome of sustainability studies, this scenario would not be unprecedented as it was applied fairly recently to licences in regard to the removal of Bass entitlement from vessels unable to demonstrate previous track record of Bass landings.

Annex E - NWIFCA Potting Permit Byelaw - comments on Annex D (Steve Brown's Amendment document). General considerations: Para 11.

This states: A minor amendment to para 31 in the Byelaw is required reducing the minimum size of buoy for marking gear. This follows a request from potters fishing in certain parts of the District.

My opinion on this is that it is undemocratic and consensus should be sought if necessary from potters in 'all' parts of the district, alternatively follow the example of Northumbria IFCA which is a district where potting is carried out on a much larger scale than that of ours, their they have a Code of conduct page on their website which I suggest you view, it simply states:

"That a person must not fish passive gear unless the marker Buoy or Dahn is clearly visible on the surface of the water and the gear is marked with the vessel name, port letters and numbers of that vessel."

It then goes on to point out the responsibilities of the fishermen regarding the safety of other vessels and makes recommendations on types and size of markers, thus leaving the onus upon them.

Furthermore, I voted in favour of Steve Brown's amendment for the reason that he is correct when stating that the Byelaw must be right before being "made", I resent the inference stated at the meeting that the matter had been discussed by individuals prior to the meeting, if true then it certainly did not involve me, I also resent the sudden urgency to make the Byelaw on the basis of further delay having a detrimental effect on stakeholders livelihoods when little or no consideration was given in that regard when individuals were prevented by this Authority from Whelk fishing in the north of the district almost 2 years ago by utilising a clause in the Old Cumbria Sea Fisheries Bylaw which applied to Pots designed to target Shellfish and not Whelks.

### **Comments from Mr Derek Clarke received 12<sup>th</sup> July 2019**

With further regard to my comments on this issue, I would like to say in regard to your comment stating the reduction in the minimum size of marker buoy in line with new comments from industry tabled at the meeting (para 5):

I would express my concerns that individual (so called) stakeholders are being consulted on aspects of the proposed potting bylaw when they have very little or no practical experience of potting and aware of one such person having input, though we can recommend / advise methods of marking it is the importance of the requirement stated in the bylaw that:

'It must remain clearly visible at all states of the tide.' or 'it must remain clearly visible in all tidal conditions'.

Whatever method is used to achieve this should be the responsibility of the Stakeholder and if markers (buoys or dahns) are submerged due to spring tidal conditions then this will simply be a contravention of the bylaw.

#### **Mr Derek Clarke received 13<sup>th</sup> July 2019**

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In my response yesterday I forgot to mention escape gaps, first and foremost I would say again that they were never intended for Whelk pots when first introduced into the Cumbria Sea Fisheries Byelaw, secondly, I hope all the Committee members are aware of the main reason for fitting escape gaps in Crab and Lobster pots and that is to protect undersized juveniles from cannibalism, both species will prey on each other whilst in the pot, particularly if weather conditions have delayed hauling and the bait has been consumed, obviously the smallest will be eaten first, to give some idea, when a pot is hauled with both Crab and Lobster inside, generally the Lobster(s) will be hiding in the upper section, as far away from the Crabs as possible.

#### **Dr Jim Andrews received 12<sup>th</sup> July 2019**

Further to your e-mail earlier today, and following on from the request that you made at the quarterly meeting of the Authority in June for advice on the proposed new "Potting" byelaw, I have been working with several of the TSB members who had made comments on the proposed potting byelaw to prepare a discussion document that looks at options for progress. We finalised some text yesterday (see Annex B) in the hope that this is a helpful contribution to the matter.

Please could I request that this item is put on the agenda for discussion at the upcoming TSB meeting in August?

As noted in the document, this is for discussion at the meeting – it is not a document that requires a response ahead of the meeting. We know from previous comments at Authority meetings that you and your officers are all very busy and do not wish to add to your workload outside of the cycle of meetings.

We have also noted in this document, further to my comments at the quarterly meeting, that we need to be cognisant of the requirements of §9.33 of the Constitution. To explain what we mean: this section means that the August TSB meeting cannot rescind or amend what was agreed at the May TSB meeting (unless 1/3 of the Members of the Authority agree to this (§9.34)); however the May TSB meeting itself amended what had been agreed at the February TSB meeting without using this procedure and so (arguably) the resolution in May was unconstitutional. If this rationale is accepted, then the August TSB meeting can make a new resolution on this matter and §9.34 is not needed for this meeting; however if this rationale is not accepted then the August TSB meeting will need to be preceded by the §9.34 procedure if we are to amend what was agreed in May. Alternatively we should defer this matter until November (6 months after the May meeting). It will be important to determine how to approach this matter, otherwise we run the risk of wasting all of our time on a discussion that cannot reach a formal resolution.

#### **Mr Ron Graham received 14<sup>th</sup> July 2019**

Dear Colleagues,

Please let me first of all apologise for the length of this response however I do feel that the background to where we find ourselves deserves elaboration.

It might be said that I initiated the email received from Stephen as I had spoken to the Chairman as to how this process should be progressed and that given a number of Authority members were absent from the June Quarterly meeting and being mindful that minutes of the meeting would not be available I was concerned that the date of 15th July for comments on the proposed byelaw would be missed.

I agree with the CEO comment that there is some urgency in moving this byelaw process forward and that I am aware that considerable amount of work has been involved in the preparation so much so that I think it was reasonable to expect that the June Quarterly meeting would have 'made' the byelaw. However, this was not the case and members are asked for further comment.

Personally I fail to see how further delay can be avoided with the next TSB committee scheduled for 7th August and the Quarterly meeting on 13th September. I think we need to be mindful of Defra's scrutiny on Byelaw progress and also of the MMO position that in future there will be no 'free look draft byelaws and that IFCA's will need to have their own legal advice which we will have to pay for.

This Potting Byelaw was submitted to MMO in time so will be treated under the old arrangement unless there is undue delay and MMO have a change of mind. The TSB Committee first looked at the flexible approach to the Potting Byelaw in February 2018 and the subject has been on TSB agendas ever since with quite a lot of meeting time devoted to it.

The discussion has been further complicated as a result of the anomaly with Cumbria Sea Fisheries Committee Byelaw 25 which quite wrongly included whelks which meant that those involved in whelk fishing in the district would have to have escape gaps in their pots when the prime purpose was to let immature crab and lobster escape. However, this anomaly has in fact prevented industry fishing for whelks in the northern part of the district unless escape gaps were in the pots, which is quite frankly, unthinkable. I believe that the CSF Byelaw has been effective since 20th October 1997!

The TSB Committee meeting on 7th August 2018 considered this serious anomaly and initially thought that it could be remedied by way of derogation but decided against and it is now part of the draft potting byelaw. I think that it is reasonable to suggest that one can understand why the whelk fishermen are asking when will there be resolution to this problem.

The TSB Meeting on 14th May 2019 discussed at length the draft potting byelaw which include written comments from members unable to attend the meeting and agreed that the draft potting byelaw be submitted to the Quarterly Meeting in June for approval.

The TSB Committee were mindful in arriving at this decision that a considerable amount of work had been involved in the preparation of the draft byelaw which had included taking advice from serving IFCOs on the enforcement provisions, submitting the draft to MMO for consideration, presenting the draft to NWIFCA legal advisors and consulting with both the commercial fishing and recreational fishing interests.

Byelaws by their very nature are often controversial and depending on how they affect different groups can be difficult in construction but we are charged with finding a balance that fairness of approach, safeguards sustainability and at the same time takes into account the socio economics of the industry. This draft byelaw includes provision for sustainability with the minimum landing size for whelks increasing over a 3 year period, limitation on the number of pots, limit on the length of the vessel that can fish within the district.

Provision is made for recreational fishing within the draft byelaw.

As part of the overall approach is the question of cost recovery for the NWIFCA. The proposals for cost recovery are proportionate and have taken into account the different activity engagement for both commercial and recreational and I believe the Authority is right in proposing such.

I believe the current draft byelaw 'ticks all the boxes' and I have no hesitation in repeating my personal support for this draft byelaw. Members will be aware that when the Authority eventually agree the byelaw there will be a further consultation with the industry and a further review by the MMO.

### **Dr Bryony Pearce received 15<sup>th</sup> July 2019**

I don't have a huge amount to add to the discussions around the new potting byelaw except that I feel the concerns of Mr Brown were adequately and wholly addressed by the Senior Scientist and I support the byelaw being progressed. Many of the issues raised have been discussed at length during TSB meetings and the votes were reflected in the byelaw that was presented to be made, so I was very surprised (to put it mildly) of the outcome of the vote.

My understanding of the issues around vessel length and gear marking are that they are the result of some confusion / differing views with regards to how these issues are dealt with. With some members feeling that they are best dealt with in a stand-alone byelaw and other feeling that they should be dealt with in individual byelaws. Regardless of what happens with this byelaw I do think this aspect of the byelaw review should be looked at with some urgency as it seems very likely that this will become a hurdle for other new byelaws going forward if it is not. Below are some comments on some of the specific issues raised:

#### **Vessel Length**

With regards to vessel length, my understanding is that this was included in the flexible permitting conditions because, due to legacy byelaws issues, there is an area that is not currently covered by any vessel restrictions and hence without including vessel length in the flexible permitting conditions, this area could be open to exploitation by very large whelking vessels coming in to exploit this new fishery. I assume that track record would in effect prevent exploitation of whelk by larger vessels, is the same also true of crab and lobster? If this is the case, and if it is ultimately also the case that vessel length will be dealt with in a stand-alone byelaw perhaps one way forward on this issue would be to take vessel length out of the flexible conditions but to prioritise making the new vessel length byelaw ASAP and certainly before such a time that vessels without a track record are able to fish for whelk in this area.

That said, I don't see including vessel length in the flexible permit conditions as a major issue as any restrictions placed now through flexible permitting could be retracted should an over-arching vessel length byelaw come into force and I think the more management opportunities the IFCA has available to it, to manage the sustainability of the fishery into the future, the better. Also, if there is a possibility that track record may be revoked from the byelaw following consultation (as per Mr Brown's comments) then we need to be sure that the area not covered by current vessel restrictions is protected from over-exploitation by some other means and including vessel length in the flexible permitting conditions would seem to be the simplest way of doing this.

#### **Gear Marking**

I support the inclusion of technical gear marking specifications in individual byelaws, including this one, as I feel it would be too complex an issue to deal with in an over-arching byelaw and as a permit holder I would think it would be far preferable to have all of the specifications relevant to that activity in one place (or at least as few as possible). I don't know enough about the fishery to comment on the precise technical specifications of the buoys / dhans themselves but I thought Derek's comments about the specification being that the markers be visible during all states of the tides, is a sensible one putting the onus on the fishermen to ensure they make sure they have rigged them correctly. Could 32 be expanded to provide for this perhaps?

#### **Penalties**

I support the IFCA's approach to penalty points as a means of discouraging repeat offences. The penalties imposed by the courts are sometimes a lot lower than the financial gains from illegal fishing activities and I have spoken with many fishermen in the past (albeit not in this district) that

have openly confessed that they treat court fines as an overhead that their business must pay every now and again. I believe the threat of permit suspensions would be a much more effective deterrent in these cases. I also think it is more in-keeping with other professions where crimes committed have a knock-on effect on your capacity to continue in your profession, for example, if I were to be convicted of a financial offence I would be excluded from tendering for contracts awarded by public bodies in the UK and would not pass the pre-qualification vetting undertaken by most private sector clients i.e. I would be prevented from doing my job.

#### Multiple Potting Licences on a Single Vessel

I can appreciate the difficulties regarding illegal fishing activities but also appreciate Mr Brown's concerns that stopping pleasure potting trips could be considered unreasonable. A potential solution could be to set specific limits for recreational / charter vessels allowing for a small group of recreational fishers to retain their catch, whilst still preventing illegal fishing. For example, giving a maximum recreational vessel limit of 4 lobster / 200 whelk, providing they have at least four category 2 licence holders on-board at the time? The key would be to set the limits high enough to allow for a 'normal recreational trip' but low enough to prevent them from being used for commercial fishing. Another possibility might be to have an additional permit for the charter / recreational vessel owner to allow for "multi-permit trips".

#### Track Record

The issue of track record has been discussed at length at TSB and has been voted on, as reflected in the draft byelaw. Had the byelaw been made in June, I assume this would have been consulted on during the byelaw consultation so I don't really understand the request for a separate consultation of this particular component of the byelaw. However, given that the making of the byelaw has now been delayed is it possible to consult fully on Track Record now, whilst other issues are being resolved? I don't know if it makes sense to consult on Track Record separately from the byelaw as a whole, but if it would help resolve this issue and keep the byelaw development moving forwards, then it would be worth exploring.

I hope these comments help in some small way to keep the byelaw development moving and I would like to reiterate my support for the byelaw as it stands, I know how much work has gone into this already; I think the senior scientist has done an excellent job of balancing the complex needs of the fisheries management and the differing views of the committee members on this subject.