

North Western Inshore Fisheries and Conservation Authority (NWIFCA)

Marine and Coastal Access Act 2009 (c.23)

Potting Permit Byelaw 2019 v.10

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 and associated Flexible Permit Conditions:
 - (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) “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;
 - (d) “inboard, lashed and stowed” means that the pots are stored in such a way that they cannot readily be used for fishing.
 - (e) “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;
 - (f) “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 17 and 18, who may fish using the permit holder’s permit under the same entitlement, conditions and responsibilities as the permit holder in their absence;
 - (g) “owner” means the person named as the owner of a vessel in the certificate of registry for that vessel granted under the Merchant Shipping Act 1995 (c.21) and the Merchant Shipping (Registration of Ships) Regulations 1993 (SI 1993/3138), or in the Channel Islands or the Isle of Man;
 - (h) “permit” means:
 - i. a Category One Permit issued under paragraph 11;
 - ii. a Category Two Permit issued under paragraph 19;
 - (i) “permit sticker” means a disc issued by the Authority for attachment to a vessel and which contains details of the applicable permit;
 - (j) “pot” means any folding or rigid cage device or structure with one or more openings or entrances capable of capturing any sea fisheries resources;
 - (k) “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.
- (l) “riddle” means a fixed or moving flat or cylindrical apparatus constructed of parallel bars which rejects any specified species that pass between the bars;
- (m) “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. crawfish (*Palinurus elephas*);
 - x. any teleost (bony) or cartilaginous (sharks and rays) fish species;
- (n) “tag” means a tag issued by the Authority for attachment to a pot and which contains details of the applicable permit;
- (o) “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;
- (p) “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 to fish 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 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 crab	Combined total of 5 individuals	and
Prawn	150 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.

Provisions and 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:
- i when fishing from a relevant fishing vessel; or
 - ii. when fishing for shrimp in an intertidal fishery the limit for prawn does not apply.
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 a 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 and, subject to any Flexible Permit Conditions in force, gear tags and tag applicator.
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 specified in the permit (up to a maximum of one year);
 - (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 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;
 - (f) remain the property of the Authority and must be surrendered to the Authority immediately if no longer required.
17. A Category One Permit holder may nominate a named representative(s) at any time in writing to the Authority.
18. A Category One Permit holder, when nominating a named representative(s) at any time other than at the time of the permit application, must:
- (i) make the nomination in writing; and
 - (ii) 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

19. 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.
20. 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.
21. Only one Category Two Permit will be issued to a person.
22. Where the Authority issues a Category Two Permit the Authority will at the same time issue a permit sticker and gear tags.
23. A Category Two 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.

General Permit Conditions

24. 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 25:

Type of Permit	Annual Fee (£)	Includes if required under flexible permit conditions
Category One whelk permit	500	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One crab and lobster permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One Norwegian lobster permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One prawn and shrimp permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One cuttlefish permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One Spider Crab permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One Velvet Swimming Crab permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One crawfish permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category One bony / cartilaginous fish permit	300	One set of gear tags, one applicator, and replacement of one lost or damaged permit sticker.
Category Two Permit	30	Replacement of one lost or damaged permit sticker and up to 5 lost tags.

25. 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 25 (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 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.
26. A permit holder must not use a pot to fish for a specified species unless the pot is marked with the permit number and of a design defined in the flexible permit condition.
27. 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.
28. The site of pots set in strings 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. Pots set individually shall each be marked by a flag on a pole, perch or buoy.
29. All buoys used to mark pots must be red, yellow or orange of minimum 78cm circumference. The flag or buoy shall be legibly marked with the permit number of the owner of such pot.
30. To obtain a replacement tag in the event that a tag is lost, the permit holder must submit a written request to the Authority.
31. If a lost tag is subsequently found by the permit holder it must be returned within 48 hours to the Authority.
32. A permit holder must comply with a reasonable request of an IFC Officer and must not obstruct an IFC Officer in carrying out their relevant function.
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. The Authority may suspend a permit until outstanding returns have been filed.
34. 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.
35. After the 12 month period the permit will be re-instated by the Authority subject to the payment of any annual permit fee outstanding.
36. 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

37. The vessel named on a Category One Permit must remain a relevant fishing vessel for the duration of the permit.
38. 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.
39. Subject to the Flexible Permit Conditions 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.
40. A fee is payable for the replacement of lost or destroyed gear tags as specified in (a):
 - (a) Replacement tags full set up to a maximum of £0.10p per tag.

Category Two Permit Conditions

41. A permit holder must not use more than a total of five pots to fish for specified species.
42. A permit holder must not set a pot that:
 - (d) is not fitted with a tag issued by the Authority; or
 - (e) is fitted with a tag that has previously been notified to the Authority as lost.
43. 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 onboard, taken together, remains as in the table in paragraph 3 above.
44. A permit holder must not 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.

Flexible Permit Conditions

45. The Authority may introduce, remove or vary a flexible permit condition which falls within one or more of the following categories:
 - (f) catch restrictions;
 - (g) bait restrictions;
 - (c) technical measures and gear restrictions;
 - (d) spatial restrictions;
 - (e) time restrictions;
 - (f) vessel length restrictions;
 - (g) number of permits issued.
46. The Authority may introduce, remove or vary a flexible permit condition in accordance with the review procedure set out in paragraphs 48 and 49.

47. The flexible permit conditions that apply to a permit until the first review pursuant to paragraphs 48 and 49 are those set by the Authority taking into account the impact assessment that accompanies this byelaw and all other material considerations.

Review Procedure

48. The Authority will review flexible permit conditions no less than once every four 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 49;
 - c. following a decision by the Authority, permit holders will be notified in writing and permits will be amended as necessary with no charge.
49. The information in paragraph 48 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

50. A failure to comply with a:
- a. general permit condition (within paragraphs 24 to 36);
 - b. Category One Permit condition (within paragraphs 37 to 40);
 - c. Category Two Permit condition (within paragraphs 41 to 44); or
 - d. flexible permit condition attached to a permit in accordance with paragraphs 45 to 47;
- constitutes a contravention of this byelaw.

Revocation

51. 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 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).

The byelaw provides that the Authority may issue Category One Permits and Category Two Permits and the terms on which they may be issued.

A Category One Permit is subject to the general permit conditions in paragraphs 24 to 36; the Category One Permit conditions in paragraphs 37 to 40; and, any flexible permit conditions attached to the permit in accordance with paragraphs 45 to 47.

A Category Two Permit is subject to the general permit conditions in paragraphs 24 to 36; the Category Two Permit conditions in paragraphs 41 to 44; and, any flexible permit conditions attached to the permit in accordance with paragraphs 45 to 47.

The byelaw provides that the Authority may introduce, remove or vary (in accordance with the review procedure set out at (paragraphs 48 to 49) flexible permit conditions in relation to catch, bait, technical measures and gear restrictions, spatial and time restrictions, vessel length restrictions, and number of permits (paragraphs 45 to 47). 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 49d).

Failure to comply with a permit condition constitutes a contravention of the byelaw (paragraph 50 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 under paragraph 34.

Five existing byelaws are revoked (paragraph 51).

Annex A – Flexible Permit Conditions (v10)

These flexible permit conditions relate to potting permits issued under the NWIFCA Potting Permit Byelaw and should be read in conjunction with that byelaw.

A. Whelks

1. Permits will only be issued to an applicant to fish using a relevant fishing vessel of 15m or less in length.
2. Permits will only be issued to an applicant with a track record of fishing for whelks as defined by the NWIFCA Technical, Science and Byelaws Sub-Committee.
3. A permit holder must not remove or retain from a fishery:
 - (a) notwithstanding North West Sea Fisheries Committee Byelaw 19 any whelk which has a shell length, measured along the longest part of the shell, less than the sizes in 3(a)i-iii,, and any such whelk 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:
 - i. 55mm in the first year in which this byelaw is in force;
 - ii. 65mm in the second year in which this byelaw is in force;
 - iii. 75mm in the third year in which this byelaw is in force.
4. 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.
5. A permit holder must not use a pot to fish for whelks unless the pot is fitted with a NWIFCA issued tag. Hard-wearing tags will be issued with the initial permit and should only require replacing if lost or damaged.
6. All whelks must be placed on and passed over a riddle so that any undersize whelks can pass through the riddle prior to sorting.
7. A permit holder may fish with a maximum of:
 - (a) 1000 pots for a vessel with track record;
 - (b) 400 pots for under 10m vessels with no track record in the Cumbria Sea Fisheries Committee area of the District.

B. Crab and Lobster

1. A permit holder must not remove or retain from a fishery:
 - (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,

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.

2. 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 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.

3. The escape gap referred to in paragraph B2 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. Norwegian lobster:

1. A permit holder must not remove or retain from a fishery:
 - (a) 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, 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.
 - (b) 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.
2. 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 45 mm diameter, and an unobstructed rigid escape panel of minimum 22mm width fitted in the lowest part of each chamber of the pot.