

<b>Title:</b> NWIFCA Potting Permit Byelaw 2019  <b>Lead department or agency:</b> North Western Inshore Fisheries and Conservation Authority (NWIFCA)  <b>Other departments or agencies:</b> MMO, Natural England, Defra	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 31/05/2019
	<b>Stage:</b> Development/Options
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
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<b>Summary: Intervention and Options</b>	RPC Opinion: <b>N/A</b>

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2017 prices)	In scope of One-In, Three-Out	Business Impact Target Status
£	£	£		
			Not in scope	Qualifying provision

**What is the problem under consideration?**

- 1) NWIFCA inherited two different sets of byelaws for potting in the north and south of its District (North West SFC and Cumbria SFC byelaws). Some of these apply to all potting activity, some only to 'hobby' potting. There are no byelaws covering potting activity in some of the estuaries. There is a need to amalgamate and consolidate good practice from both sets into one district-wide byelaw to ensure consistent, fair and appropriate regulation.
- 2) Data on both commercial and recreational potting activity and catches is lacking, which inhibits the NWIFCA ability to ensure sustainability of the fisheries. By implementing a permit scheme requiring landings and other fishing returns, that gap can be filled.
- 3) Enforcement Officers have encountered suspected illegal fishing but current regulation is too weak to counter this. This byelaw closes loopholes.
- 4) A number of species are fished currently. Other species may be targeted in the future and management needs to be in place to a) permit activity to take place; b) ensure sustainable fishing. This byelaw is future-proofed for that occurrence.
- 5) The inherited Cumbria SFC Byelaw 25 has a requirement for an escape gap in all pots, creels and traps which was designed to protect immature crab and lobster. Unintentionally it has prevented legitimate whelk potting from being prosecuted. There is an urgent need to rectify this situation to permit whelk potting in the north of the District.
- 6) Whelk fisheries are under increasing pressure due to markets opening in the Far East, and fishers diversifying. This is a national trend. In order to ensure that whelk populations can be fished sustainably, management measures need to be implemented, controlling exploitation rates.
- 7) Adaptive and flexible management is needed in all fisheries to ensure appropriate management relating to Marine Protected Areas (MPAs) as more are designated, to react to pressures identified on individual stocks, and to proscribe gear restrictions as gear development occurs. Byelaw making is a lengthy process. By incorporating flexible conditions into the permit scheme, changes can be made more quickly following consultation.
- 8) This is an enabling byelaw in that it supports sustainable fishing practices, and improves on previous management. It enhances existing enforcement which protects the interest of

legitimate fishers as well as the fishery resource

#### **Why is government intervention necessary?**

Fishing pressure on UK whelk stocks is increasing at a rapid rate. All UK and Isle of Man regulators with whelk fisheries have recognised the need to act swiftly to prevent over-fishing and depletion of the stocks, signified by the setting up of a national Whelk Working Group. Research is on-going into size / age at maturity as evidence suggests the current minimum landing size of 45mm is too low, and immature animals are being (legally) fished.

Crabs, lobsters and Norwegian lobsters are important as both commercial and recreational fisheries. There is a risk that without enhanced management and enforcement these stocks could be overfished; a result of 'Tragedy of the Commons'.

Management of fisheries within MPAs requires the legislation to enable appropriate measures to be implemented when required to protect designated features.

Given these pressures, management intervention is required to redress market failure in the marine environment by implementing appropriate management measures (this Byelaw) to conserve features, to ensure negative externalities are reduced or suitably mitigated. Implementing this byelaw will support continued provision of public goods in the marine environment. NWIFCA has a duty under section 153(1) of the Marine and Coastal Access Act 2009 (MaCAA) to manage the exploitation of sea fisheries resources in the district. Section 153(2) of MaCAA, sets out what steps it must take when carrying out its management duty.

#### **What are the policy objectives and intended effects**

1. Ensure sustainable use of fishery stocks.
2. Ensure protection of MPAs through adaptive management.
3. Improve on the successful permit schemes for hobby potting in the light of decades of experience under previous SFC regimes.
4. Improve clarity of regulation and fairness for permit holders.
5. Consolidate management District-wide into one byelaw and revoke five inherited byelaws.

**What policy options have been considered, including any alternatives to regulation?**

**Please justify preferred option (further details in Evidence Base)**

The following policy options have been considered through this IA:

- Option 0.** Do nothing - Retain existing byelaws unchanged
- Option 1.** Switch to voluntary agreements with code of conduct
- Option 2.** Implement byelaw to meet problem and objectives as above.

All options are compared to option 0. Option 2 is preferred.

Option 0 retains two sets of byelaws with inconsistent management across the District. This option would also continue to prevent legitimate whelk fishing from being prosecuted in the north of the District.

Option 1 has been dismissed as for effective sustainable management to be implemented there needs to be clear regulation with sanctions for non-compliance. Enforcement Officers have identified suspected illegal activity, and a voluntary agreement would not prevent this from continuing. This option would also continue to prevent legitimate whelk fishing from being prosecuted in the north of the District.

Option 2 creates an opportunity to take advantage of the latest thinking on byelaw measures including flexible permit conditions which will allow maximum fishing under regulation. There is the potential to make better use of modern technology to run the permit scheme creating benefits for both permit holders and the regulator.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** Month/2022

Does implementation go beyond minimum EU requirements? No

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
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What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A	<b>Non-traded:</b> N/A
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**Commented [MK1]:** to be completed when month of making known

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible:

Date:

Summary: Analysis & Evidence  
FULL ECONOMIC ASSESSMENT

Policy Option 2

Price Base Year 2019	PV Base Year	Time Period Years	Net Benefit (Present Value (PV) (£)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£)	Total Transition (Constant Price) Years		Average Annual (excluding transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			0	0

**Description and scale of key monetised costs by 'main affected groups'**  
Currently 100% of management and administration costs of these fisheries are paid from public funds via the NWIFCA budget. Under the new scheme a proportion of costs will be paid by permit fees collected under the byelaw. It is difficult to assess the exact numbers of Category One permits for whelks that will be issued as the number of permits is not capped - effort is restricted through flexible permit conditions. There will be a change to pot fishers who have either not had to have a permit previously (Category One permits) or have not had to pay for permits (Category Two permits). There will be an annual cost of £200 per Category One permit for commercial fishers. There will be an annual cost of £20 per Category Two permit for recreational fishers.

**Other key non-monetised costs by 'main affected groups'**  
A proportion of the costs of potting fisheries including for example administration, compliance, science and research, collating returns and pot tags supplied with the permit is recovered through permit fees. The rest is paid from public funds through NWIFCA levy on Local Councils.  
Costs of protecting the environment and damage resulting from the fisheries are non-monetised.

BENEFITS (£)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate		0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**  
Recovery of a proportion of costs of the fishery through permit fees. NWIFCA has 22 staff, all contribute to management of all the fisheries in the District.

**Other key non-monetised benefits by 'main affected groups'**  
Fair and equitable compliance and regulation. Environmental protection and compliance with environmental legislation (UK and EU).

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	<b>3.5</b>
The byelaw can be effectively enforced by NWIFCA resources and partner assistance; Fisheries will continue to be available subject to continued growth and replenishment of stocks; Fishers will see their interests to be in purchasing a permit.		

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent</b>	<b>In scope of</b>	<b>Score for Business Impact Target</b>
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<b>Annual) £:</b>			<b>OI3O?</b>	<b>(qualifying provisions only) £:</b>
<b>Costs: 0</b>	<b>Benefits: 0</b>	<b>Net: 0</b>	No	N/A

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## Evidence Base

### Background

Fisheries prosecuted by use of pots and traps in the seas around the coasts of North Western England are regulated under Inshore Fisheries and Conservation Authorities (IFCA) byelaws. Current regulations have been in place for a number of years and are inconsistent across the District. They do not reflect current understanding of the fisheries, nor up-to-date appropriate management to ensure sustainability of the fisheries resources. They also do not provide any mechanisms for managing new fisheries sustainably and preventing over-exploitation should they appear.

#### Crab and Lobster Potting

The majority of potting is for crab and lobster, prosecuted by both registered and licensed (commercial) fishing vessels and recreational (hobby) fishers. There is no current requirement for a commercial permit for crab and lobster, although vessels must have a Shellfish Entitlement attached to their fishing licence to fish these species. Landings data is required by potting boats under the MSARs (Monthly Shellfish Activity Returns Forms). However the spatial scale of this recording does not provide sufficient detail to ensure sustainable management within the NWIFCA District.

Recreational potters fishing in both the old CSFC and NWSFC parts of the District have been required to have annual permits under separate byelaws, along with (different) daily limitations on landings and pot limitations. There has previously been no fee for these permits and public funds have borne the total monetary burden of issuing the permits. Under these two byelaws individual hobby pots have been required to be labelled to identify the owner in the north but not in the south of the District. Enforcement officers have identified possible loopholes whereby more pots than permitted have been fished, and therefore more of the resource been landed than permitted.

#### Whelk Potting

Whelk fisheries are under pressure across the UK and require careful management to ensure their sustainability. This is due to fishers diversifying and markets opening up in the Far East. There is a risk of over-exploitation and depletion of stocks.

Whelk fisheries in the NWIFCA District could provide an important source of employment, but it is crucial that the fisheries are carefully managed. Officers have been working over the past year to gain an in-depth understanding of whelk fisheries in the District. Contact has also been made with other regulators to determine methods of management and what issues they have identified and a multi-sectoral national Whelk Working Group including IFCAs, Welsh Government, Isle of Man Government, States of Jersey, Cefas, and Defra has been convened. This is indicative of the perceived urgency to act and the risk of over-fishing in UK whelk fisheries.

Research into size at maturity of whelks in the north east Irish Sea indicates that the current minimum landing size (MLS) of 45mm is too small, and will result in overfishing. Fishing pressure may already have driven down size at maturity in some areas of the UK. Although it is understood that due to whelk life history, populations are likely to be discrete and may be subject to quite distinct spatial variability in size at maturity, there is a body of evidence that suggests size at maturity may be related to temperature and that latitude could be influential. Current management measures implemented by regulators in Wales, the Isle of Man and Jersey States have increased whelk MLS.

A detailed analysis of 2010-17 landings data from MMO statistics and MSARs reporting was completed. Information on current whelk fishing activity within and just beyond the NWIFCA District, describing the vessels used and information gained from industry consultation showed the

importance of this fishery and that without precautionary management there is a risk that over-fishing could occur rapidly and stocks be irreversibly damaged.

#### Norwegian Lobster Potting

Nephrops or Norwegian lobster are mainly prosecuted through bottom trawling in the Irish Sea mudbelts within the NWIFCA District. Due to MPA designations and positioning of developments such as extensive windfarms fishers are being displaced from traditional nephrops grounds. NWIFCA is keen to encourage diversification to other gears, providing management is in place to ensure sustainability. An opportunity exists for potting for nephrops to be undertaken and the IFCA needs appropriate management which can be achieved through this byelaw.

#### **Rationale for intervention and Policy objectives**

NWIFCA has a duty to:

1. Ensure sustainable use of fishery stocks.
2. Ensure protection of MPAs through adaptive management.
3. Improve on the successful permit schemes for hobby potting in the light of decades of experience under previous SFC regimes.
4. Improve clarity of regulation for the Authority and fairness for permit holders.
5. Consolidate management District-wide and revoke inherited byelaws.

The current byelaws were inherited from Cumbria and North Western Sea Fisheries Committees and are outdated and inconsistent.

This byelaw makes use of new powers provided in MaCCA (Marine and Coastal Access Act 2009) and was developed from this Authority's extensive experience of these fisheries.

The new byelaw will consolidate good practice management across the whole District - for example by specifying gear requirement such as escape gaps, and prohibition of taking of 'V-notched' lobsters. There are a number of provisions within the byelaw to close loopholes where illegal activity is suspected, such as requiring hobby pots to be tagged with NWIFCA issued sequentially numbered tags.

The NWIFCA has the opportunity under the new Potting Permit Byelaw to introduce a suite of flexible management measures and enable sustainable potting to proceed, thus benefitting stakeholders and the wider marine ecosystem. There is a knowledge gap about the District's whelk fisheries and population dynamics. To date whelk fishing has been limited by a number of factors. Analysis of current and potential whelk vessels illustrates the number of vessels wishing to fish whelks may increase. NWIFCA requires a suite of management tools to limit effort, increase minimum landing size and improve data acquisition.

#### **Description of options considered (including status-quo)**

Option 0. Retain existing byelaw unchanged

Option 1. Switch to voluntary agreement with code of conduct

Option 2. Introduce new byelaw to meet objectives as above. Preferred

**Option 0** would retain two sets of byelaws with inconsistent management across the District. This would also continue to prevent legitimate whelk fishing from being prosecuted in the north of the District.

**Option 1** has been dismissed as for effective sustainable management to be implemented there needs to be clear regulation with sanctions for non-compliance. Enforcement Officers have identified suspected illegal activity, and a voluntary agreement would not prevent this from continuing. This would also continue to prevent legitimate whelk fishing from being prosecuted in the north of the District.

**Option 2** creates an opportunity to take advantage of the latest thinking on byelaw measures including flexible permit conditions which will allow maximum fishing under regulation. There is the potential to make better use of modern technology to run the permit scheme creating benefits for both permit holders and the regulator.

The main changes from the previous regulation are:

The byelaws with the following number, title or purpose made by the North West Sea Fisheries Committee (NWSFC) and Cumbria Sea Fisheries Committee (CSFC) 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 31 Protection of V-notched lobsters confirmed on 16<sup>th</sup> December 1997;
- (b) NWSFC Byelaw 30 Fishing for Lobster, Crawfish, Crab, Prawn and Whelk confirmed on 20<sup>th</sup> April 2007;
- (c) CSFC Byelaw 8 Berried Lobsters confirmed on 16<sup>th</sup> April 1993;
- (d) CSFC Byelaw 25 Requirement for escape Gaps in Pots, Creels and Traps confirmed on 20<sup>th</sup> October 1997;
- (e) CSFC Byelaw 26 Permit to Fish for Lobster, Crab and Whelks confirmed on 20<sup>th</sup> January 2007.

The byelaws with the following number, title or purpose made by the North West Sea Fisheries Committee (NWSFC) and Cumbria Sea Fisheries Committee (CSFC) 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 amended:

- a. NWSFC byelaw 11 confirmed on 22<sup>nd</sup> August 2003 title be amended from 'Marking of fishing gear and keep pots' to 'Marking of nets and lines'.
- b. CSFC byelaw 4 confirmed 16<sup>th</sup> April 1993 title be amended from 'Marking and siting of fixed nets, traps, pots and lines' to 'Marking and siting of fixed nets and lines'.

**Analysis of Costs and Benefits:**

Permit fees are introduced for both categories of permit to recoup a proportion of the costs associated with managing potting fisheries sustainably and currently wholly financed through public funds.

The flexible permit conditions allow for greater efficiency which will deliver a benefit to industry through increased exploitation to a level still considered sustainable.



## Consultation

The byelaw has been developed over a number of years. During its development it has undergone lengthy and detailed internal discussion with Officers and Members of the NWIFCA Technical Science and Byelaws Sub-Committee. It was submitted to informal consultation with potting fishers, both from the commercial and recreational sectors, whereby a written questionnaire was distributed and two Drop-In days were held (Whitehaven and Preston). Individual meetings were also offered and taken up by some fishermen / producer companies. Management of the whelk fishery within the flexible permit conditions was also subject to informal consultation with whelk potters via a questionnaire. The responses to this informal consultation have helped to shape the byelaw.

## Conclusion

Option 2 is the chosen option. A new flexible permitting byelaw for all fisheries using pots and traps, future proofed to enable new fisheries to be regulated, will provide a suite of appropriate management tools to enable sustainable fishing.

Key benefits include:

- consolidation of good practice across the District;
- improved acquisition of fisheries data;
- flexible management that can be adapted should technology or understanding change;
- increase in minimum landings size for whelks to prevent damage to whelk populations'
- flexible management to prevent over-exploitation of fisheries resources;
- revocation of five inherited and outdated byelaws;
- flexibility to implement spatial and temporal closures for protection of MPA features and fishery;
- clearer more transparent regulation.

Costs include:

- a change to pot fishers who have either not had to have a permit previously (Category One permits) or have not had to pay for permits (Category Two permits);
- an annual cost of £200 per Category One permit for commercial fishers;
- an annual cost of £20 per Category Two permit for recreational fishers.

Aim:

to enable sustainable potting to be carried out by commercial and recreational fishers across the District.

## Annex A: Policy and Planning

Which marine plan area is the MPA and management measure in?

At present, there is no a Marine Plan in place in the IFC District

Have you assessed whether the decision on this MPA management measure is in accordance with the Marine Policy Statement and any relevant marine plan?

- Yes, see below

When assessing this byelaw due regard was given to the UK Marine Policy Statement, the byelaws contribute to the following;

- The achievement of sustainable development of marine areas.
- Promote sustainable economic development.
- Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets.
- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.
- Achieve integration between different objectives.
- Recognise that the demand for use of our seas and the resulting pressures on them will continue to increase.
- Manage competing demands on the marine area, taking an ecosystem-based approach.
- Enable the co-existence of compatible activities wherever possible.

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