

**NWIFCA Technical, Science and Byelaw
Committee**

14th May 2019: 10:00 a.m.

**AGENDA
ITEM NO.
8**

NWIFCA POTTING PERMIT BYELAW

Purpose:

- i. to present the finalised draft of the byelaw;**
- ii. to provide detailed guidance explaining the byelaw;**
- iii. to provide a summary of the responses from industry to the informal consultation on proposed whelk management measures.**
- iv. to present consequential changes to NWSFC byelaw 11 and CFS byelaw 4**

Recommendations:

- i. that TSB agrees:**
 - a) permit fees for all permits;**
 - b) the use of vessel length as a flexible permit condition;**
 - c) method of defining track record for whelk fisheries;**
 - d) flexible permit conditions for the whelk fisheries.**
 - e) consequential changes to NWSFC byelaw 11 and CFS byelaw 4**
 - f) the byelaw is approved for making at the June Authority meeting.**

Background:

1. Following the last TSB, Members comments and amendments were incorporated into the byelaw and it was distributed back to TSB.
2. Although during the February meeting agreement had been reached to remove the option of using vessel length restrictions in the flexible permit conditions as an effort control measure, there was some further communication indicating some Members would like to revisit this. Consequently this has been reinstated in the latest version for further discussion and decision.
3. The revised draft was sent to legal advisor Andrew Oliver for comment. This was briefly discussed with him at a meeting in March and his written comments are awaited.
4. The same version was sent to MMO for their informal advice. Their response is awaited.
5. In drawing up the guidance document two or three minor amendments to wording of the byelaw were identified. The wording for suspension of the permit also needs to mirror that in the revised Cackle and Mussel Hand-gathering Byelaw. These have been incorporated and result in version 10 of the byelaw presented as Annex A.
6. A detailed Guidance Document has been prepared and is provided as Annex B to assist Members' decision-making. This will form the basis of a user-friendly guide for potting fishers to accompany the byelaw. Comments on its format and content are welcomed.
7. The flexible permit conditions presented to TSB in February were taken to industry as an informal consultation and a summary of their responses is provided as Annex C.
8. NWSFC byelaw 11 and CFC byelaw 4 contain gear marking regulations which are different from the regulations in the new byelaw. The Authority cannot have 2 different sets of regulations in its byelaws therefore amendments to these byelaws are required as set out in Annex D.

Permit Fees:

9. At the February TSB, estimates of cost recovery were tabled. The CEO subsequently reviewed the fee structure implemented for Byelaw 3, and used that percentage cost recovery basis to provide the table at paragraph 24 of the byelaw as the proposed fees for this byelaw.
10. Members are asked to consider these and agree figures that can be taken forward for making the byelaw in June.
11. Each permit fee for Category One permits (ie. commercial potters) covers the cost of the permit itself, the permit sticker, the cost of replacement of one lost or damaged permit sticker, and if required - one set of gear tags for all pots and one tag applicator. Pot tags will only be required if implemented under Flexible Permit Conditions and will be embossed with the permit number.
12. The permit fee for Category Two permits (ie. recreational potters) covers the cost of the permit itself, the permit sticker, one set of gear tags for maximum of five pots, the cost of replacement of one lost or damaged permit sticker, and up to 5 lost tags. A pot tag is required for each individual pot, and will be embossed with the permit number and be sequentially numbered. Tags will be issued annually and different colours can be used for different years.

Flexible Permit Conditions - Gear Tags:

13. Members have questioned the justification for individual pots requiring gear tags, considering admin implications and the additional work for fishers in fitting them.
14. Discussion was held internally with enforcement officers and with other IFCA's who implement a pot tags requirement, to better explain the need for this management measure.
15. The following justification is given for Category One pot tags:
 - i. Gear limitations are a robust management measure for restricting effort - crucial to sustainable fisheries and used by a wide range of regulators both nationally and internationally;
 - ii. Clearly it would not be possible for enforcement officers to inspect every single pot when there may be up to 1000 pots permitted to one permit holder. Enforcement is based on random inspections when officers instruct a fisher to haul specific strings of pots and gear is also checked on the quay side;
 - iii. Without identifiers such as pot tags, gear limitations are unenforceable and thus it is recommended that NWIFCA follow the course taken by other IFCA's and implement this requirement in this new byelaw under the Flexible Permit Conditions;
 - iv. On making of the byelaw only whelk pots will be required to be individually tagged.
16. IFCA's maintain the following justifications for Category Two pot tags:
 - i. Cumbria SFC Byelaw 26 for 'hobby' potters already requires the marking of each individual pot and permit holders are familiar with the concept;
 - ii. In the past fishermen have been prosecuted for a breach of this byelaw. It already works to a certain degree, but IFCA's believe would work better with individual unique numbers for each pot;
 - iii. Pots are not always set in strings of five - they can be set individually across a wide area;
 - iv. IFCA's will be able to identify how many pots an individual is using at any one time, and to stop other non-permitted persons using more pots than allowed by using other peoples' permit numbers. This is a known problem with some fishers believed to be working commercially from unlicensed vessels and it will close a loophole in enforcement against them;

- v. This provides a safeguard for fishermen so that fraudulent persons do not use their identities for their gains;
 - vi. It will not be possible for a fraudulent potter to duplicate the tags as they are bespoke manufactured and will change annually.
17. For the two categories of permit the tags will be supplied by different companies as there are different requirements:
- i. when gear tagging is required under flexible permit condition, individually embossed sheep ear tags (cost £0.09 each) will be issued to Category One permit holders with an applicator (cost (£9.00 each) for attaching tags to every pot. The permit holder states how many pots they wish to use in their permit application. These are long-lasting tags (used by Kent and Essex IFCA) and should not require replacing very often, and therefore will **not** be changed annually. IFCOs will check tag permit numbers against current listed of valid permits;
 - ii. individually embossed and sequentially numbered tags will be issued to Category Two permit holders for each of a maximum of 5 pots. This is a cable tie type design and easy to fit, and will be changed annually.

Flexible Permit Conditions included on face of byelaw - Vessel Length Restriction:

- 18. There is a strong argument put forward by some Members that vessel length restrictions should be dealt with under an individual byelaw and not form part of this potting byelaw.
- 19. An alternative view is that by having the option within flexible permit conditions to restrict vessel length provides for a more integrated and flexible approach to management, to be implemented when appropriate and justified.
- 20. For example, during two bouts of informal consultation with industry on this byelaw, some sectors have supported managing areas seasonally for different sizes of boat, with the justification that during summer larger boats can fish further offshore on grounds that smaller boats cannot get out to. During winter months smaller boats are more restricted by weather to get out at all and the larger vessels could be permitted in to the closer inshore grounds.
- 21. One proposal from industry was to have a <10m vessel length restriction in the 0-6nm area during all months except winter, and then to allow up to 15m vessels into the 0-6nm during the winter.
- 22. This method of management may prove very appropriate in certain cases, and by keeping the measure in the flexible permit conditions provides that option in the future even if Members decide not to use it now. To eliminate it at this point removes the possibility of ever using it in the future.

Flexible Permit Conditions for Whelk Permits - Informal Consultation with Industry:

- 23. The proposed measures for managing whelk fisheries under flexible permit conditions that were tabled at the February TSB meeting were taken to informal consultation with industry and their responses are presented as Annex C.
- 24. Increase MLS to 75mm:
 - i. 4 out of 7 (57%) respondents agreed with increasing the MLS to 75mm;
 - ii. reasons for disagreeing with this measure focused on markets rather than the biology of the animal;
 - iii. one respondent stated that 45mm is set across all IFCAs. This is factual - however NWIFCA officers are working within the national Whelk Working Group which has called for Defra to act nationally and increase the MLS urgently. In absence of Defra

acting, each IFCA is considering increasing MLS within their District due to current understanding of length at maturity and very real risks to stocks of not increasing it;

- iv. 5 responded to the question about implementation of an increase in MLS;
- v. 4 out of the 5 (80%) said to increase it incrementally over a few years rather than in one go.

25. Track Record:

- i. 5 out of the 7 (71%) respondents agreed with implementing a track record to restrict the number of whelk permits;
- ii. 2 respondents stated that they felt basing permit allocation on track record prevented fishers from diversifying;
- ii. Of the 5 that agreed, 3 agreed with the proposed method of assigning track record. It is believed that one of the 2 who disagreed had perhaps not understood what the issues were that the NWIFCA faced which may have affected his answers, and when discussed with him on the phone he agreed a method needed to be found;
- iii. There was overwhelming disagreement with the suggested time-frame to be used for track record (2018). Respondents suggested it should be taken over 2 or 3 years;
- iv. 2 respondents suggested including evidence of a minimum weight landed to be used in track record along with sales notes etc. One stated that a hobby fisher could land two tonnes a year, so a realistic limit for commercial fishing was needed. Another suggested 5 tonnes be set as the limit used. (During the first round of informal consultation several licensed fishers told officers they could land one tonne per day).

26. Vessel Length Restriction:

- i. 5 out of 7 (71%) respondents agreed with a vessel length restriction for whelk potting;
- ii. One stated a vessel length restriction should apply to all fishing not just whelks;
- iii. There was no consistent response to what the vessel length restrictions should be. A number of suggestions were put forward as documented in Annex C.

27. Pot Limitation:

- i. 6 out of 7 (86%) respondents agreed with 1000 pot limitation for those with track record, although one of these 6 did not agree with the concept of track record (as above);
- ii. One respondent felt a maximum pot limit of 500 should be implemented for all boats 'to reduce fishing effort and maintain sustainability';
- iii. 4 out of 7 (57%) respondents disagreed with the 300 pot limit for under 10m vessel with no track record;
- iv. 2 of these 4 stated that the limit should be 500 not 300;
- v. one disagreed with track record so could not agree to this measure;
- vi. the 4th of these respondents felt that no track record should mean no entitlement to permit. It is believed that perhaps he did not understand the issue faced by the NWIFCA over the current dilemma of the escape gap requirement in Cumbria preventing whelk potting from being prosecuted, and when discussed within him over the phone he verbally agreed that a means to allow vessels in to the fishery in this situation did need to be found;
- vii. In effect this gives 6 respondents agreeing to pot restriction to those under 10m vessels without track record in the north of the District but disagreeing over what it should be set at. Officers recommend a limit of 400 is set as a compromise. In reality

some vessels in this category will not fish this many due to space and capacity of their boats.

28. Additional Comments (reported verbatim):
- i. 'Reducing effort of fishing by making vessels operate a maximum number of 500 pots would be more effective'.
 - ii. 'Alternatively reducing the size of vessel allowed to operate within the area would also be as effective'.
 - iii. 'Fishermen from Isle of Man and the Welsh should not be permitted to fish this area (North-east ICES rectangle 36E6)'.
 - iv. 'As no-one is allowed to fish inside the 6nm or inside the 3nm of the IOM, unless you live there. And the Welsh have something similar'.
 - v. 'Plus over the track record to qualify, the minimum weight should be at least 5 ton per year to qualify for a permit, then you know who is really fishing for them (ref Q4)'.

Defining Track Record for Whelk Fisheries:

29. The decision over how to define track record for whelk permits lies with the Authority. Many regulators have used track record when needing to restrict effort, each by a means appropriate to that fishery.
30. Officers consider that the proposal for establishing track record as put to February TSB and to industry should be followed, plus a minimum landing requirement of 5 tonnes over a three year period (2015-18) as the evidence of potting to be provided.
31. Officers recommend that a six month time period from the making of the byelaw should be implemented during which applications for track record will be accepted.
32. Track record is established once and is not transferable between permit holders.
33. Evidence to Establish Track Record for all of the District for the period 2015-18:
- i. Sale notes / proof of payments for under 10m;
 - ii. Logbooks for over 10m;
 - iii. VMS tracks for over 12m vessels, to be cross referenced with logbooks.
34. Areas in which track record needs to be evidenced:
- i. Southern Part of the District (NWSFC area) ie. in ICES rectangles 35E6, 36E6 and part of 37E6.- where whelk potting has legally been occurring;
 - ii. 0-12nm in ICES rectangle 37E6 and anywhere in 38E6.
35. Minimum landings of whelks of 5 tonnes.

Impact Assessment:

36. On approval of the byelaw by TSB for taking to the June meeting for making, the MMO will be contacted to ascertain whether or not an Impact Assessment is required for this byelaw. If it is, work will begin on it. Much of the evidence provided in this report will form the basis of that Impact Assessment.

Recommendations:

37. Agree the amounts for permit fees in the table in paragraph 24 of the byelaw.

38. Maintain the vessel length restriction in the potential flexible permit conditions on the face of the byelaw.
39. Use track record to implement a restriction on the number of permits issued based on the proposal above, and with a minimum landing requirement of 5 tonnes as part of track record evidence for the period 2015-18.
40. For vessels providing appropriate track record evidence, restrict pot numbers to 1000 per permit under the flexible permit conditions.
41. For under 10m vessels who cannot provide track record in the north of the District, restrict pot numbers to 400 per permit under flexible permit conditions.
42. Increase MLS for whelks incrementally over 3 years to 75mm.
43. Implement a 15m max vessel length for whelk vessels across the whole of the District as currently in for southern part (NWSFC Byelaw 9). Maintain the measure within the flexible permit conditions to have the option of changing this in future once the fishery is fully operational and fishing returns evidence provides better information of what it is needed for continued sustainable management of the fishery.
44. Members approve the byelaw for making at the June Authority meeting.

Mandy Knott
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29th April 2019