

**NWIFCA Technical, Science and Byelaw
Committee**

5th November 2019: 10:00 a.m.

**AGENDA
ITEM NO.**

8

WHELK POTTING TRACK RECORD - APPEALS PROCESS

Purpose: To provide members with information on issues around the track record method brought to light during the byelaw consultation that Officers consider requires an appeals process for applicants who fall just outside of the track record.

Recommendation:

- i. the proposed track record method is retained to screen in the main pool of whelk fishers eligible to whelk permits;
- ii. that in order to capture those who might fall just outside the proposed method, an appeals process and panel should be initiated to scrutinise those who fall into this category;
- iii. on approval by Members of (i) and (ii) officers will draft an appeals process for Members' further approval.

Background:

1. Officers began considering the need for a means of establishing track record for whelk potting permits under the new byelaw as a precautionary measure of limiting effort when the actual number of vessels with an interest in prosecuting this fishery could only be estimated.
2. Obtaining an accurate figure is not possible due to the problems caused by the inherited Cumbria SFC Byelaw 25 which prevents interested parties from prosecuting the fishery in the north of the District.
3. The first public mention of track record of any kind was reported in Annex C to the main potting byelaw paper to TSB in November 2018. This was listed under issues to be addressed following the first round of informal consultation over the byelaw.
4. A detailed report was tabled at February 2019 TSB on what was known about whelk fisheries both in the UK as a whole and in the District. Although the detail of the proposed track record area and requirements was incorporated into the Annex D of this report that was redacted, the main report recommendations do refer to track record, and it is included as one of the management measures under consideration and therefore published in the public domain.
5. February TSB approved that officers should consult with industry on the track record and other management measures proposed. This was actioned and a questionnaire on measures for the whelk fishery was sent to stakeholders on our database on 8th February. Seven responses were received.
6. The TSB summary report given to the March Authority meeting stated that track record for whelk potting is being considered.
7. The full byelaw along with the proposed flexible permit conditions and the proposed Method for Assigning Track Record for Whelk Potting was tabled as Annex B to Agenda Item 8 at the June Authority meeting and is available publicly online.

8. TSB discussed track record at its August meeting and again the papers for this meeting are publicly available online.
9. The intention with all proposed management measures is to provide a means of enabling a sustainable fishery to go ahead but to not significantly increase effort beyond what would have been fishing had the old byelaw not prevented it.

Present Situation:

10. The consultation for the potting byelaw was launched on 1st October and runs until 8th November 2019. All stakeholders on the NWIFCA database were notified either by email or post, and the information was posted on the website, as well as local newspaper advertisements and posters displayed in relevant locations around the District.
11. Through correspondence and discussion with fishermen prior to and at the beginning of the consultation period one or two issues came to light that had not previously been brought to Officers attention, whereby some fishers might be precluded from obtaining track record even though they have a legitimate interest - for example, a 10.5m vessel based in the north who did not fish beyond the 6nm.
12. In an attempt to assess how many vessels / owners of vessels might be impacted to provide that information to Members, Officers obtained data from MMO on whelk landings for 2015 - 19. Due to the low resolution of the spatial data reported to the MMO it is not possible to get a clear picture until applications for track record, along with supporting evidence, are received.
13. Officers cannot be confident of knowing all possible scenarios that might preclude legitimate claims to whelk fishing interest, although it is gleaned that numbers would be low and not significantly affect effort.
14. Officers feel it is imperative to bring this issue to Members' attention at this stage and not to delay until after the formal consultation period, in order to avoid delaying the progress of the byelaw un-necessarily.
15. It is important to mention that there is no reference to track record within the byelaw itself and subsequently this issue should not affect the byelaw consultation process, responses and action.
16. Track record is referenced in the Flexible Permit Conditions for whelks:

"Category One permits will only be issued to an applicant who fulfils the track record requirements of fishing for whelks as defined by the NWIFCA Technical, Science and Byelaws Sub-Committee, and will be limited to the number of pots which can be fished."
17. The written 'method of assigning track record' lies in a supplementary document and is therefore separate from the byelaw.

Officers recommend that:

- i. the proposed track record method is retained to screen in the main pool of whelk fishers eligible to whelk permits;
- ii. that in order to capture those who might fall just outside the proposed method, an appeals process and panel should be initiated to scrutinise those who fall into this category;
- iii. on approval by Members of 17(i) and (ii) officers will draft a process for Members further approval.

The method for NWIFCA Method for Assigning Track Record is provided as Annex A. The MMO used an appeals process when deciding eligibility for bass authorisations, the text of which is provided as Annex B as an example of how such a process has been run.

Mandy Knott
Senior Scientist
28th October 2019

NWIFCA Byelaw 4 Potting Permit Byelaw

Applying for Whelk Permits

Applications for whelk permits must be made within six months from the date of confirmation of the byelaw.

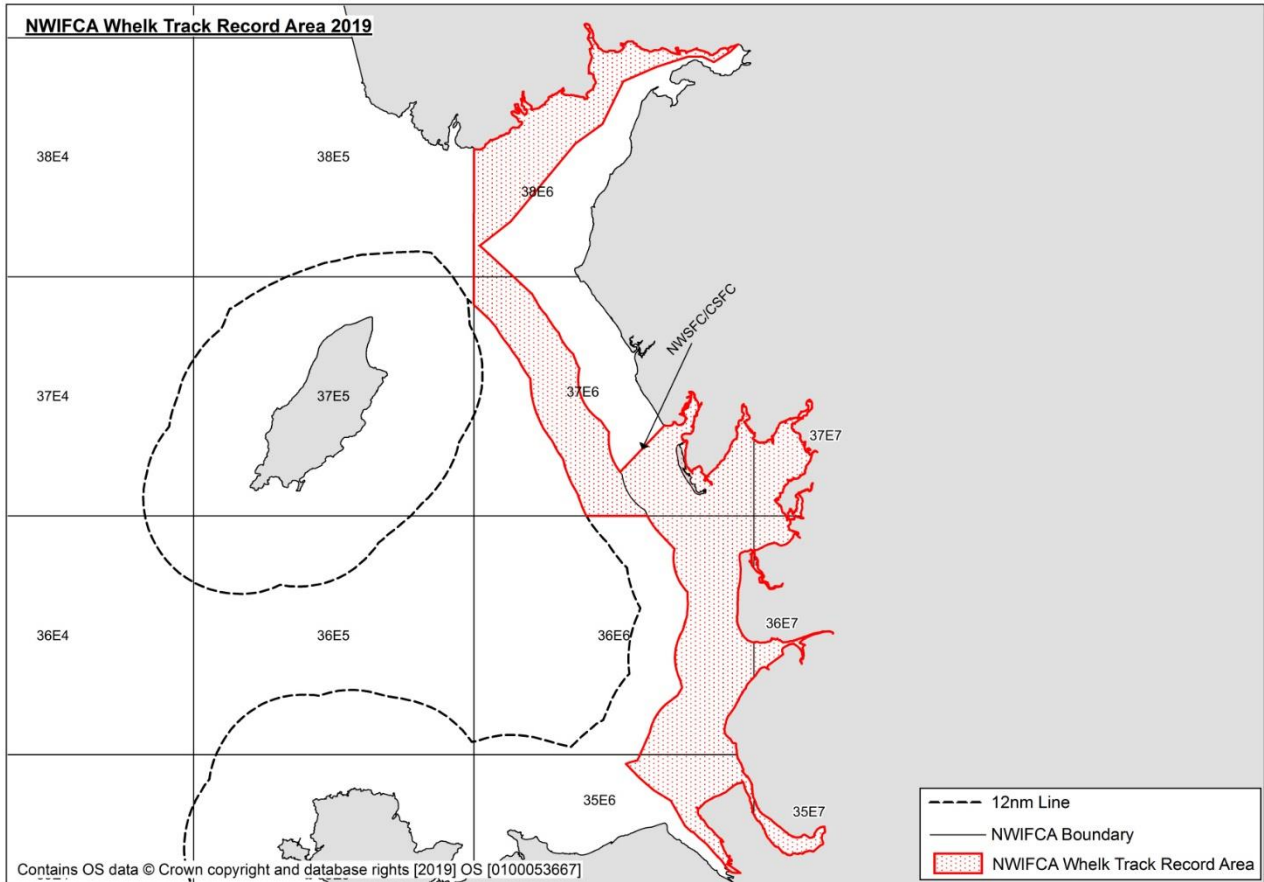
- a) Category One permits will only be issued to an applicant to fish for whelks using a relevant fishing vessel.
- b) Owners of vessels who can establish Track Record can apply for a Category One whelk permit with 1000 pot limitation.
- c) Owners of vessels under 10m OAL without Track Record can apply for a Category One whelk permit with 400 pot limitation.
- d) Applications for whelk permits must be made in writing using the Potting Permit application form, available on the NWIFCA website or from the Carnforth office.
- e) Application forms must be returned to the Carnforth office either by post or email.

Method for Assigning Track Record for Whelk Permits

- f) Applications to establish track record for whelk potting must be made within six months from the date of confirmation of the byelaw.
- g) Applications must be made in writing using the Track Record application form, available on the NWIFCA website or from the Carnforth office.
- h) Application forms must be returned to the Carnforth office either by post or email.
- i) Track record is established once for a vessel and is not transferable between permit holders. In the case of shared ownership of a vessel, only one track record will be assigned.
- j) Evidence that will be accepted to establish Track Record must show whelk potting for the period 2015-18 only in:
 - i. 0 – 6 nm in ICES rectangles 35E7, 36E6, 36E7, 37E7 and those parts of ICES rectangles 35E6 and 37E6 that fall within the NWSFC District;
 - ii. 6 -12 nm in ICES rectangle 37E6;
 - iii. Those areas outside of the CSFC District in 38E6.
- k) The evidence must show a minimum landings of whelks of 5 tonnes.
- l) Evidence that will be accepted is:
 - i. Sale notes / proof of payments for vessels under 10m OAL;
 - ii. Positional data from vessel plotter or navigation aid;
 - iii. Logbooks for vessels over 10m. VMS tracks for vessels over 12m will be cross referenced with logbooks.

Explanatory Notes:

- (1) “nautical mile” means an international nautical mile of 1,852 m;
- (2) the area “0 - 6 nm” is defined as a distance of 6 nm from the 1983 baselines;
- (3) the area “6 – 12 nm” is defined as the area between 6 nm from the 1983 baselines to 12 nm from the 1983 baselines;
- (4) “the 1983 baselines” means the baselines for the measurement of the breadth of the English territorial sea of the United Kingdom as they existed at 25th January 1983 in accordance with the Territorial Waters Order in Council 1964(a).



ANNEX B: Text from an article in Fishing News May 2017

<https://fishingnews.co.uk/news/mmo-under-fire-over-bass-fishing-applications/>

Applications assessment 'open and transparent'

With regard to the criteria used to make decisions on how bass authorisations were granted or refused, 'in the interests of openness and transparency', the MMO gave FN the guidance document provided internally to MMO staff considering representations (*made by those who did not qualify under the track record process- MK*).

The document takes the MMO staff through a number of steps, starting with the reasons for making the representation, namely: incorrect gear on permit; new vessel/refit; ill health, no track record, other reason. Staff are told to review documents to ensure 'solid evidence' is available. 'Although we will have some discretion when considering the evidence provided, we will have to justify our decisions and take an impartial, consistent, evidence-based decision to each representation' staff are told.

Some eligible documents are: incorrect gear on permit (coastal office may be able to confirm); new vessel or refit – receipts, orders, bank statements; ill health – doctor's letters, appointment cards/letters, proof of carers' allowance, death certificate, undertaker's receipt; no track record – check with IFCA; other.

Comments from coastal MMO staff are considered.

Applications and evidence are discussed by a panel. 'A representation should only be upheld where significant evidence convinces the majority of the panel that it demonstrates, beyond reasonable doubt, bass landing during 1 July 2015 to 30 September 2016, or proof that fishing was not undertaken due to exceptional circumstances. Both solid evidence and independent coastal verification must be present to uphold a representation.

'In very exceptional circumstances it may be necessary to contact the applicant and ask for further evidence.'

Where an appeal requests to swap eligibility from an old vessel to a new vessel, a spreadsheet is consulted to check the eligibility of the old vessel had. 'If you feel it is acceptable, award the same level of eligibility to the new (replacement) vessel' staff are instructed. Staff add their comments, the decision made and the reason for their decision.

"We were also very clear from the outset on the types of evidence that would be considered and how to submit a representation. In any representation process, some of the evidence that has been submitted will not be considered adequate, but the onus has always been on the fisher to provide the best possible evidence they have to support their representation within the required timescales.

"We have endeavoured to conclude this process as soon as possible in order to provide certainty to industry and avoid unnecessary hold-ups in allowing eligible owners to start fishing."