

203 AT THE ANNUAL MEETING OF THE NORTH WESTERN INSHORE AND CONSERVATION AUTHORITY held at Morecambe Town Hall on 28<sup>th</sup> June 2018

PRESENT – MEMBERS

Dr J. Andrews	MMO appointee (Marine Environment)
Dr E. Baxter	MMO appointee (Marine Environment)
Mr R. Benson	MMO appointee (Fishing Industry – North West)
Mr S. Brown	MMO appointee (Recreation)
Councillor J. Elmes	Blackpool Borough Council
Mr R. Graham	MMO appointee (Commercial)
Mr T. Jones	MMO appointee (Commercial/Aquaculture)
Mr. B. Leigh	MMO appointee (Anglers and Recreation)
Mr S. J. Manning	MMO appointee (Commercial)
Councillor A. J. Markley	Cumbria County Council
Councillor S. McGinnity	Sefton Council
Councillor S. Morris	Lancashire County Council
Miss C. Salthouse	MMO appointee (Marine Environment)
Mr K. Thompson	MMO appointee (Commercial/Aquaculture)
Councillor P. Williams	Cheshire West and Chester Council

IN ATTENDANCE

Mr G. White Sefton Council

NWIFCA OFFICERS ATTENDING

CEO, Finance Officer, Head of Enforcement, Clerk, Digital Communications Officer, Senior Scientific Officer, Inshore Fisheries and Conservation Adviser

APOLOGIES FOR ABSENCE

Councillor L. Beavers	Lancashire County Council
Mr C. Booth	MMO appointee (Marine Environment)
Mr. D. Clarke	MMO appointee (Fishing Industry – Cumbria)
Mr D. Harpley	MMO appointee (Marine Environment)
Councillor K. Little	Cumbria County Council
Mr M. Oddy	MMO appointee (Marine Environment)
Councillor M. Patrick	Wirral Council
Councillor B. Woolfall	Halton Council
Mr P. Wright	Halton Council (Officer)

204 APPOINTMENT OF CHAIRMAN (Agenda Item 1)

The Chief Executive opened the meeting by calling for nominations for Chairman.

RESOLVED

Councillor P. Williams be reappointed Chairman of the North Western IFCA for the forthcoming year.

205 CHAIRMAN'S ANNOUNCEMENTS (Agenda Item 2)

1. The Chairman welcomed new members: Councillor S. Morris (Lancashire County Council, Councillor S. McGinnity (Wirral Council) and Mr Rob Benson (MMO appointee).
2. The Chairman announced apologies and welcomed visitors.
3. Mr Brian Crawford has tendered his resignation from the authority due to continuing health problems. Mr Crawford has been a member of North Western IFCA since its inception in 2010. He was also a member of the former Cumbria SFC from 2009 to 2011. Mr Crawford has a vast amount of angling knowledge and experience and

was affiliated to many angling associations. His contribution to the work of the Authority will be greatly missed.

4. Supplementary report (Agenda Item 9 Appointment of TSB Committee) was tabled.

206 APPOINTMENT OF VICE-CHAIRMAN (Agenda Item 3)

RESOLVED

Mr R. Graham be reappointed Vice-Chairman of the Authority for the forthcoming year.

207 DECLARATIONS OF INTEREST (Agenda Item 4)

Agenda Item 9 (Appointment of TSB Committee). Dr J. Andrews, Mr S. Brown, Mr R. Graham, Mr T. Jones, Mr S. Manning.

Agenda Item 10 (Patrol and Enforcement Report). Mr T. Jones, Mr S. Manning

Agenda Item 11 (CEO Report). Mr R. Graham

Agenda Item 13 (Science Report including cockle and mussel fisheries). Mr R. Benson, Mr R. Graham, Mr T. Jones, Mr S. Manning

208 TO RECEIVE MINUTES OF THE NWIFCA MEETING HELD ON 15<sup>TH</sup> MARCH 2018 (Agenda Item 5)

Dr Baxter not in list of those present. It was agreed to amend the minutes.

Proposed Councillor Markley, seconded Mr Leigh.

RESOLVED

The minutes of the NWIFCA meeting held on 15<sup>th</sup> March 2018 be approved and signed as a correct record.

209 MATTERS ARISING (Agenda Item 6)

Minute No. 194 (Patrol and Enforcement Report). Mr Jones asked if the advisory and official warning letters issued for lack of compliance with Byelaw 3 returns had improved the response. Mr Moulton confirmed it had referring to the Patrol and Enforcement Report.

210 FINANCIAL REPORT (Agenda Item 7)

The Finance Officer reported a surplus from the previous year. A note on the main areas of saving is provided at Annex A as requested by members.

Mr Manning noted a reduction in Byelaw 3 permit fees and asked if some permits had not been renewed. Finance Officer explained amounts may differ due to misalignment of the permit season (starting 1<sup>st</sup> September) and the financial year (starting 1<sup>st</sup> April).

The Chairman said it would be helpful to have a balance sheet included in the accounts for 2017-18. The Auditors will be asked to put this in their Audit report. He suggested that the audit being carried out by Moore & Smalley who are external auditors should be called an 'independent audit' in future rather than 'internal'.

Councillor Markley reported on the Finance Committee meeting held earlier that day. Members had agreed payment for the new vessel. Names for the RIB on the new vessel had been proposed as Protector Junior or North Western Junior. Members were asked for their approval of one of these names. Mr Jones pointed out the RIB already carries the name Protector Charlie. Councillor Markley proposed that RIB should keep that name. The proposal was seconded by Dr Andrews.

An error was noted in the Levy figures shown in Actual to Date in Annex A. The Finance Officer said this will be amended.

A query was raised of an increase shown in the revenue from shellfish sampling. HOE suggested this could be due to either an increase in sampling due to changes in classification or additional samples required to keep a classification.

Mr Jones asked with the imminent delivery of the new patrol vessel whether carrying out contract work for other agencies is permissible. Concern over possible conflict of interest in using a fisheries enforcement vessel for contractual work was discussed. Mr Leigh agreed to investigate whether Authority powers allow contract work and to report back to the Authority (see Annex A).

Dr Andrews proposed (seconded by Mr Leigh) this matter is deferred until more information is available on the legal position and implications for the Authority.

#### RESOLVED

1. The draft Final Budget Review for the year ended 31<sup>st</sup> March 2018 be approved.
2. The date for the Independent Audit is noted.
3. Mr Leigh investigate the legality of contracting out the new vessel and implications for the Authority and report to back to the Authority.
4. The RIB on the new patrol vessel be named "Protector Charlie".

#### 211 INSTALLATION OF INSHORE VESSEL MONITORING SYSTEMS (iVMS) ON ALL UNDER 12M INSHORE VESSELS IN THE DISTRICT (Agenda Item 8)

Application for EMFF funding has been submitted and acknowledged. The report raises concerns that need to be resolved before a contract is signed. Members will be kept informed.

Mr Graham said that iVMS is a national development but each IFCA must consider financing, maintenance and compliance questions. A decision should be made when it is known if the application is successful and the nature of the terms and conditions.

Dr Andrews asked for the timescale of the project. CEO reported this remains unclear.

Miss Salthouse said European projects are strict about adhering to a spend profile which will be dependent on all fishermen agreeing to installation of units. Miss Salthouse asked what the situation would be if only half of them signed up and the spend profile is not met. The CEO said terms and conditions of any grant will be supplied to members.

Members discussed the question of whether the Authority's vessels should have iVMS fitted. It was agreed that units should be installed on the new patrol vessel and the Mersey, Barrow and Whitehaven RIBs but not on "North Western Protector's" RIB.

Proposed Dr Andrews, seconded Miss Salthouse.

#### RESOLVED

1. The Authority engage with the project as requested subject to resolution of concerns identified and further discussion at a future meeting.
2. iVMS units be installed on the patrol vessel, Mersey, Barrow and Whitehaven RIBs.

212 APPOINTMENT OF TSB COMMITTEE (Agenda Item 9)

The outcome of the postal ballot was tabled. Membership of the TSB was approved.

RESOLVED

1. The following persons be appointed members of the Technical, Science and Byelaw Sub-Committee for the forthcoming year:

Dr J. Andrews,	Dr E. Baxter	Mr S. Brown	Mr T. Jones
Mr B. Leigh	Mr S. J. Manning	Mr K. Thompson	

Ex-officio: EA, NE; MMO Officers; Councillor P. Williams (Chairman); Mr R. Graham (Vice Chairman)

213 PATROL AND ENFORCEMENT REPORT (Agenda Item 10)

Area Summary. Mr Matt Burdekin, a former IFCO, has been appointed to cover the Arnside to Knott End area.

General. Senior IFCO Erik Thinnesen and Deputy Master Alan Forster have returned to work following prolonged periods of sick leave.

“Solway Protector” has been decommissioned and the crew have spent time in Holyhead being updated on progress with the new vessel.

All IFCOs have been issued with body worn video cameras to improve safety and assist evidence gathering in the future.

NIMEG. The March meeting discussed the baseline personnel security standard. This needs to be introduced for all new staff by the end of the year. A code of conduct for inspections is also being introduced across all IFCAs.

Health and Safety. Mrs Dobson has been working with the HoE on developing H&S, checking risk assessments, reviewing these on an annual basis and working with the HS consultant.

Fisheries. Leasowe, Flookburgh and Pilling fisheries finished. Landings were reported for each month. Fishing effort increased in the last 2 weeks. Intelligence was received of undersized cockles at Pilling and a large quantity ready to be loaded on wagons were seized. Complaints of litter and disturbance from noise received from local residents led to fishermen being instructed to improve behaviour. Flookburgh fishing continued increased effort in the last two weeks.

Byelaw 3 returns. Returns reduced significantly in the spring partly as a result of weather impacting postage. Sanctions could not be issued as evidence was unclear. Submission of returns is important to assist in the statistics provided in the report.

Sanctions. Most sanctions relate to Byelaw 3 returns. 8 advisory letters were issued for non-compliance, 12 official warning letters for failure to supply returns and 7 permit suspensions. 2 FAPs were issued for landing undersize cockles at Flookburgh.

The Chairman said the Finance Committee meeting had discussed the question of outstanding costs due to the Authority from Faulkner prosecution. Members agreed this should be investigated. Mr Newlands agreed to investigate whether MMO are able to help in any way with recovery of costs.

It was RESOLVED to receive the report.

214 ADJOURNMENT OF MEETING UNTIL 1315 HOURS was agreed

215 MEETING RECONVENED AT 1315 HOURS

216 CHIEF OFFICERS' REPORT (Agenda Item 11)

The Chief Executive reported the appointment of two new MMO appointees, Mr Rob Benson and Dr Bryony Pearce. Mr Brian Crawford has tendered his resignation from the Authority and it is hoped a further recruitment of appointees will commence shortly. Mr Ron Graham proposed a letter of thanks be sent to Mr Crawford on behalf of the Authority and this was agreed.

Communications. Mr Anthony Graham is keeping the database updated. Work on GDPR was a priority this quarter.

The Chairman asked for an update on the suggestion for members to have a unique new email address. CE said he is taking advice from Lake District National park.

AIFCA. Publication of the Fisheries White Paper has been delayed and is unlikely to be available until after the summer recess.

Devon & Severn IFCA. The Chairman, together with the AIFCA Chairman and Vice-Chairman, will visit D&S to see if issues of concern with membership of AIFCA can be resolved.

"North Western Protector" Update. Delivery is expected shortly if insurance arrangements can be completed. Electrical work has taken longer than expected to complete and HMS arranged for an external expert to resolve problems with this.

Dr Andrews asked if AIFCA minutes could be provided in full. The CE agreed to include these in future reports.

It was RESOLVED to receive the report.

217 REPORT ON TSB SUB-COMMITTEE MEETING HELD ON 15<sup>TH</sup> MAY 2018 (Agenda Item 12)

Chairman Mr Graham provided background to the work of the TSB.

Concerns were raised that publication of the recent crab and lobster report has increased fishing activity in certain locations but there is no firm evidence on this.

iVMS. TSB recommended referral to the Finance Committee for consideration.

West of Walney MCZ. MMO are undertaking formal consultation 8<sup>th</sup> May to 13<sup>th</sup> July on management measures. A byelaw will prohibit all bottom towed gear within the MCZ.

St Bees Head. A Voluntary Code of Practice to suspend all netting activity around St Bees Head is in operation.

Halite Gas Storage (Preesall) and Marine Monitoring Group. Mr Brown raised concerns about the project. Monitoring needs to be continued. A report from the MMG praised the Senior Scientist for her efforts.

PhD Funded Proposal. A proposal had been put forward for IFCA to look at funding for a project. It had been agreed not to proceed with the proposal at this time.

Byelaw Review: Netting. Members had approved development of a new byelaw.

Razor Clam Research. Three companies have shown interest and there has been an initial exploratory meeting.

Cockles in NWIFCA District: History of MLS management. Dr Andrews disagreed with the summary of the discussion around the cockle MLS. The query raised was whether the minimum size bore a relationship to the life history characteristics of the cockles. Generally with finfish this is the case but not with cockles.

Byelaw Review: Byelaw 3. Following legal advice members agreed provision for a trader permit be removed. A new draft of the byelaw is to be prepared requiring identification of containers into which shellfish are put for transport away from the fishery.

It was RESOLVED to receive the report.

## 218 SCIENCE REPORT (Agenda Item 13)

Marine Conservation Zones. Annex A relates to tranche 3 sites. 41 sites are proposed for designation of which 3 estuarine sites are within the NWIFCA District: Ribble Estuary, Solway Firth and Wyre-Lune. These sites are to be designated with recover objectives for the protection of smelt. No impact on fishing is anticipated. An extension to the existing T1 site around St Bees Head and inclusion of razor bill species has also been proposed.

2 further proposed sites lie outside the District: Queenie Corner and West of Copeland. These are likely to impact NWIFCA stakeholders. Queenie Corner is a mud habitat and an alternative to the Mud Hole site originally proposed. West of Copeland is coarse sand and mixed sediments.

NWIFCA MPA Monitoring and Control Plan. This plan was approved at the last TSB meeting. It will be reviewed regularly.

NWIFCA Research Projects. The NE Nephrops creel potting has now been taken over by Cumbria Wildlife Trust. A fisherman from Barrow is currently trialling the use of creels for catching nephrops around the West of Walney windfarm.

Bass populations tagging study. EMFF funding has been obtained for a further 3 year project by Cefas for tagging of bass to look at their distribution and movements. The project will be extended to other areas including the North West. Cefas scientists will work with the science team and fishermen to deploy data storage and T-Bar tags in bass in the district. Mr Leigh said ICES is currently undertaking a fresh piece of work to ascertain if the assumed original post release mortality figure of 30% is correct. On the back of that work it is possible that the 1 fish per day catch limit could be reinstated.

Razor Clam collaborative research. Three companies have expressed interest in collaborative razor clam research. No further progress has been made with this.

NW Whelk fisheries. Science team visited a PhD student at Bangor University School of Ocean Sciences to be trained in such techniques as sexing of whelks and determining sexual maturity.

Mr Graham raised two points regarding whelks:

1 - Reference to collection of data relating to the fishery within and outside the 6nm. He reminded members NWIFCA jurisdiction extends only to 6nm. The Senior Scientist said there is no nephrops fishery in the northern part of the district because of the way the byelaw is worded. This is something that needs to be reviewed in the new potting byelaw. In the southern part of the district whelking is potentially occurring at low levels. Interest is likely to grow and fishermen will be looking for other resources and other fisheries to prosecute.

2 - Relating to the MLS for whelks and the suggestion that the issue of the current MLS of 45 mm needs addressing. The Senior Scientist said different populations have different sizes of sexual maturity and there is a need to understand whelk stocks in the district, at what size are they reaching sexual maturity and what kind of MLS should be incorporated in any byelaw.

Halite Gas Storage (Preesall) and Marine Monitoring Group. The second meeting of the Marine Monitoring Group has not yet taken place. There are concerns that if the process of agreeing the protocol for surveys has been put back the whole development is likely to be put back if the data is not collected before the construction work commences.

Cockle and Mussel Fisheries.

Ribble Estuary – Penfold North. The likelihood of the 2015 slow growing dense settlement of cockles in a muddy patch persisting through the summer is slight. The possibility of authorising a fishery for undersized cockles during the closed season is being progressed.

Dee Estuary – size mussel. Activity is low. A few men are working the bed which has to be accessed by boat under Dee byelaws.

Morecambe Bay – Heysham Flat seed mussel. The skear has received a very wide covering of spat. A further survey will be carried out on 29<sup>th</sup> June and a seed mussel fishery is highly likely. The relevant authorities have been informed.

Morecambe Bay – South America/Falklands seed mussel. The situation with these beds is unclear at present. The beds are being closely monitored with industry and BMWG will discuss this further at its meeting on 4<sup>th</sup> July.

Dr Andrews asked about the proposal for small fish surveys that had been discussed some time ago. The Senior Scientist said this was lower down the priority list but had not been forgotten.

It was RESOLVED to receive the report.

#### 219 ANNUAL PLAN 2018-19 MONITORING (Agenda Item 14)

This is a first attempt at monitoring the Annual Plan. If members feel this is useful it can be continued. With respect to SC1C the Digital Communications Officer monitors the website continuously and this is kept as up to date as possible. Table 4 is colour coded red, orange, green and comments on the various success criteria and how they are progressing.

Dr Andrews raised concerns on SC3F and the mechanism for approval of cockle and mussel plans by bivalve working groups. The BMWG is an advisory group and approval of such plans should be through TSB or full Authority. It was suggested the wording be amended to either agreed or approved by TSB.

It was RESOLVED to receive the report.

#### 220 CHAIRMAN'S PROPOSAL TO MEMBERS (Agenda Item 15)

The Chairman proposed that an independent audit of the Authority's policies, procedures and governance be carried out. The aim is for NWIFCA to be recognised as a healthy, properly organised, properly managed organisation.

Dr Andrews suggested the North West Employers' Organisation has been quite useful in carrying out this sort of exercise in the past.

Mr Leigh agreed with the principle but asked that any such process should not impinge upon staff or their operational responsibilities.

The Chairman suggested once the Terms of Reference for the audit have been drafted they should be circulated to all members for approval.

Proposed Mr Thompson, seconded Mr Leigh.

RESOLVED

The Chairman's request to initiate negotiations with one of the NWIFCAs 8 funding authorities or alternative independent body to conduct an independent policies, procedures and governance audit of NWIFCA be approved.

221 A.O.B. (Agenda Item 16)

New Patrol Vessel. Mr Graham showed members slides of the new patrol vessel "North Western Protector".

Meeting ended 1430 hours



## ANNEX A

### Trading Powers of Local Inshore Fishery Authorities

#### Background

There is a view within NWIFCA membership that the potential exists from time to time to employ the new protection vessel commercially as a means of income generation/to defray operating costs. Given that the NWIFCA is a public authority, the question arises as to what power exists to ensure that any such commercial activity is vires in the event of challenge.

#### Relevant Legislation

Marine and Coastal Access Act 2009

North Western Inshore Fisheries and Conservation Order 2010

Local Authority (Goods and Services) Act 1970

Local Government Act 2000

Local Government Act 2003

Localism Act 2011

Note. There is a plethora of legislation covering the trading powers of local authorities. I have merely taken into account those most relevant to the question under consideration.

Section 173 of MACAA 2009 includes a power for IFCA's to provide services to third party individuals or bodies in prescribed circumstances. The drafting of the section is not particularly wide in its ambit, although s173 (3) does include the power to obtain payment when carrying out the services described in s173 (2). Note that payment is described as being on the basis of 'costs recovery'. However, I do not believe we can rely on this provision alone to initiate commercial trading activity.

The 2010 Statutory Order is silent on the question of trading activities and therefore of no assistance.

NWIFCA is described as a joint committee of the participating authorities identified in the 2010 Statutory Order. Accordingly, it seems perfectly reasonable to view NWIFCA as a public Authority.

NWIFCA was created by statute and exercises a public law function. This position leads me to the view that consideration of legislation specifically aimed at defining local authority trading powers is required.

The Local Authorities (Goods and Services) Act 1970 gave councils the power to enter into agreements with other authorities (normally partnership arrangements) and a list of other prescribed public bodies. Again, I do not think that this enactment is sufficient of itself to provide a power to trade commercially.

The Local Government Act 2000

Section 2 of the Act provides a 'well-being power'. In essence, this power allowed authorities to promote the economic, social and environmental well-being of the inhabitants of their area. We would argue that the environmental well-being of inhabitants could be supported to some extent by any commercial activity undertaken by NWIFCA. However, the well-being power was constrained in its ability to provide a basis for initiating commercial activities. This was because of the

convention which prohibited Local Authorities from the raising of money through taxes or 'other means'. Public law lawyers viewed the latter as a bar to the creation of commercial trading activities.

The Local Government Act 2003 is of more assistance to NWIFCA in relation to the provision of a power to trade. The 2003 permitted trading related to the function of the Authority with a view to profit, subject to the creation of a company vehicle (ordinarily a local authority controlled company). The 2003 Act also provides a power to charge for discretionary services on a cost recovery basis. I assume that this will have been the basis on which NWIFCA has charged for any non-core function work previously.

#### The Localism Act 2011

Many in Local Government saw the 2011 Act as the legal basis for undertaking commercial activities. The Act introduced the 'general power of competence'. At best, this power enables a local authority to do anything that an individual may do – very broad in its scope. However, the 2011 Act sets out limitations to the general power of competence specifically in relation to trading and charging (see sections 3 and 4 of the 2011 Act). In short, section 3 permits the provision of discretionary services on a cost recovery basis. Section 4 helpfully permits trading in areas not related to the performance of core functions. It can also be argued that section 4 does not restrict trading to the geographical boundary covered by the Local Authority. Note that section 3(4) requires any trading activity to operate on the basis of a surplus over a 12 month period.

#### Comment

Some Authorities have used the 2011 Act as the basis for supporting commercial trading activities. Budget pressures and ever more challenging public expenditure rounds have operated to make senior officers focus on potential new income sources. Others have declined to engage in commercial activities, largely because they do not see it as part of their *raison d'être* or a desire to avoid market distortion. If the Authority decides to pursue commercial use of the protection vessel, then the creation of a suitable company vehicle is perhaps desirable. There would be an additional administrative burden in terms of the annual return to companies' house, but this can be simplified by adopting appropriate articles and memoranda. The potential for corporation tax exists, but I have not given this any detailed thought. There are also insurance considerations and some questions around employment law if a company vehicle is adopted. These are not significant in my view.

My initial view based on a quick review of the relevant legislation is that NWIFCA can use the protection vessel for commercial use. I feel that we are on safe ground to use the vessel to provide discretionary services on a cost recovery basis. Whilst the legislation I have referred to makes it easier for local authorities to carry out commercial non-core function activities, there are troublesome restrictions which need to be negotiated.

I have not been involved in the law for several years. Law constantly moves on; it would of course be sensible to seek a professional view from a public law firm/or legal departments of the member authorities if we decide to pursue commercial activities.

Subject to the actual amount of free vessel time and commercial use of the protection vessel not impacting adversely on the performance of our statutory duties, the key issue for me is who would challenge its use as being *ultra vires*?

There is the potential for political opposition based on what I have said above. However, the power of veto which the member authorities have is limited to the budget alone. Some canvassing of opinion may therefore be desirable.

I am unsure if there are local/regional private operators of vessels with similar facilities to the protection vessel. If there are such operators, then challenge is possible based on market distortion grounds.