

North Western Inshore Fisheries and Conservation Authority (NWIFCA)

Marine and Coastal Access Act 2009 (c.23)

Potting Permit Byelaw 2019

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:

- (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, lobster or nephrops 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) “certificate disc” means a disc issued by the Authority attached to a vessel containing details of the applicable permit;
- (d) “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;
- (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) “permit” means:
 - i. a Commercial Permit issued under paragraph 10;
 - ii. a Recreational Permit issued under paragraph 20;
- (g) “pot” means any folding or rigid cage device or structure with one or more openings or entrances capable of capturing any sea fisheries resources;
- (h) “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.
- (i) “riddle” means a fixed or moving flat or cylindrical apparatus constructed of parallel bars which rejects any specified species that pass between the bars;

- (j) “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 (*Palaemonidae spp.*);
 - vi. shrimp (*Crangonidae spp.* and *Pandalidae spp.*);
 - vii. cuttlefish (*Sepia officinalis*);
 - viii. spider crab (*Maia squinado*);
 - ix. velvet swimming crab (*Necora puber*);
- (k) “tag” means a tag issued by the Authority attached to a pot, buoy or pole identifying the applicable permit;
- (l) “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;
- (m) “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. No person shall remove or retain from a fishery within the District:

- (a) a V-notched lobster;
- (b) a mutilated lobster;
- (c) any ‘crippled’ female lobster (missing one or both claws);
- (d) a berried lobster or crab;
- (e) when fishing with the use of a pot a berried nephrops,

and any such crab, lobster, whelk or nephrops must be returned immediately to the fishery without further injury.

3. No person shall take or land from any fishery within the District more than the specified amount of the species listed below in a calendar day, except when fishing from any fishing boat registered in accordance with the rule for the time being in force for the registration of a British sea fishing boat and holding a current fishing licence issued by the Government of England or Wales.

Specified Species	Maximum Daily Quantity	
Lobster	1 individual	and
Edible crab Spider crab Velvet crab	Combined total of 5 individuals	and
Prawn	30 individuals	and
Whelk	50 individuals	and
Nephrops	10 individuals	

4. No person shall use a pot to fish for a specified species unless in possession of a valid permit.
5. Subject to paragraph 11 and 21, no person shall carry a pot on board a vessel unless the pot is stored in such a way that it cannot readily be used for fishing.
6. Subject to paragraph 11, no person shall 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.
7. No person shall haul any other person's pots without the prior written permission of the Authority.

Provisions and Exceptions

8. 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.
9. Paragraphs 5 and 6 do not apply to a person acting in accordance with a valid Commercial Permit and any permit conditions or flexible conditions attached to that permit.
10. Paragraph 5 does not apply to a person acting in accordance with a valid Recreational Permit and any permit conditions or flexible conditions attached to that permit.

Commercial 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 in any part of the District ('a Commercial Permit').
12. An application for a Commercial 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 Commercial Permit per specified species will be issued per relevant fishing vessel. A permit for edible crab and lobster will count as one specified species permit.
14. Where the Authority issues a Commercial Permit the Authority will at the same time issue a certificate disc and gear tags.
15. A Commercial Permit, certificate disc and gear tags:
 - (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 two years);
 - (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 15(d)(ii) shall not apply if the ownership of the recipient vessel is the same as that of the donor vessel;

- (f) remain the property of the Authority and must be surrendered to the Authority immediately if no longer required.
16. A Commercial Permit holder may nominate a representative at any time in writing to the Authority.
17. The administration fee for a specified Commercial Permit and tags is payable on application as specified in (a) and (b), unless varied pursuant to paragraph 18:
- (a) the sum of £25 per annum for a Commercial Permit;
 - (b) where more than one specified species permit is issued a maximum administration fee of £100 per annum.
18. The Authority may vary permit administration fees in accordance with the following conditions and procedures:
- (a) the Authority will consult in writing with commercial permit holders;
 - (b) the fee will not be changed for any permit already issued;
 - (c) the fee will not be increased more than the equivalent value of 50% every year from the date the this byelaw was introduced:
 - (d) the Authority will make a decision whether to vary the fee based upon:
 - (i) the responses from the consultation under paragraph 18 (a);
 - (ii) expenditure arising from the administration of permits and processing permit holder data required by the Authority;
 - (iii) any regulatory impact assessments associated with this byelaw;
 - (iv) Authority expenditure to conduct any survey 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.
19. A fee is payable for the replacement of lost or destroyed Commercial Permits, certificate discs and tags as specified in (a) to (c).
- (a) Replacement Permit £10
 - (b) Replacement Disc £10
 - (c) Replacement tag, fixed administration charge £3
 - (d) Replacement and additional tags £0.15 per tag.
20. A Commercial Permit is subject to:
- (a) the general permit conditions in paragraphs 29 to 39;
 - (b) the Commercial Permit conditions in paragraphs 40 to 43; and,

- (c) any flexible permit conditions attached to the permit in accordance with paragraphs 49 to 51.

Recreational Permits

21. The Authority may issue a permit authorising a person to use pots to fish for specified species in any part of the District (a 'Recreational Permit').
22. An application for a Recreational Permit may be made by any person using the printed forms available from the Authority's office and website.
23. Only one Recreational Permit will be issued to a person.
24. A Recreational Permit and 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) must be surrendered to the Authority immediately if no longer required.
25. An administration fee of £10 for a Recreational Permit and pot tags is payable on application, unless varied pursuant to paragraph 26.
26. The Authority may vary permit fees in accordance with the following conditions and procedures:
- (a) the Authority will consult in writing with recreational permit holders;
 - (b) the fee will not be changed for any permit already issued;
 - (c) the fee will not be increased more than the equivalent value of 50% every year from the date the this byelaw was introduced;
 - (d) the Authority will make a decision whether to vary the permit fee based upon:
 - (i) the responses from the consultation under paragraph 26 (a);
 - (ii) expenditure arising from the administration of permits and processing permit holder data required by the Authority;
 - (iii) any regulatory impact assessments associated with this byelaw;
 - (iv) Authority expenditure to conduct any survey 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.
27. A fee is payable for the replacement of lost or destroyed Recreational Permits and tags as specified in (a) and (b), unless varied pursuant to paragraph 26.

- (a) Replacement permit £5;
 - (b) Replacement tags, fixed administration charge £2; and,
 - (c) Replacement tags £0.15 per unit.
28. A Recreational Permit is subject to:
- (a) the general permit conditions in paragraphs 29 to 39;
 - (b) the Recreational Permit conditions in paragraphs 44 to 48; and,
 - (c) any flexible permit conditions attached to the permit in accordance with paragraphs 49 to 51.

General Permit Conditions

- 29. No permit holder shall use a pot to fish for edible crab or lobster unless the pot is of a design defined in the flexible permit condition.
- 30. No permit holder shall use a pot to fish for whelk unless the pot is of a design defined in the flexible permit condition.
- 31. No permit holder shall use a pot to fish for nephrops unless the pot is of a design defined in the flexible permit condition.
- 32. All commercial and recreational potting gear shall be marked at each end by a red, yellow or orange flag on a pole, or a red, yellow or orange buoy of minimum A2 size and to be maintained so long as the pots remain in position. The flag or buoy shall be legibly marked with the permit number of the owner of such pot or the registered number of the permitted vessel.
- 33. No permit holder or nominated representative shall use any species as bait whilst fishing for any specified species unless it meets the minimum landing sizes set out in EU, national or regional legislation, subject to Landings Obligations.
- 34. A permit holder must not obstruct an IFC officer.
- 35. 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.
- 36. The Authority may suspend a permit until outstanding returns have been filed.
- 37. To obtain a replacement tag in the event that a tag is lost, the permit holder must submit a written request to the Authority.
- 38. If a lost tag is subsequently found by the permit holder it must be returned within 48 hours to the Authority.
- 39. 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.

Commercial Permit Conditions

40. The vessel named on a Commercial Permit must remain a relevant fishing vessel for the duration of the permit.
41. The permit holder or the nominated representative of the permit holder must be present on board the vessel during the permitted activity to use the permit.
42. The certificate disc must be clearly displayed at all times on the vessel named on the permit.
43. The permit holder must not set a string of pots 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.

Recreational Permit Conditions

44. The permit holder must be present during the permitted activity to use the permit.
45. No permit holder shall use more than five pots to fish for specified species.
46. 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.
47. During a fishing trip in which a vessel is used by more than one person to fish within the District, the total that may be removed from the fishery or retained on board by all the holders, taken together, remains as in the table above.
48. No permit holder shall remove any part of an edible crab or lobster or prawn or nephrops which is detached from the carapace of the crab or lobster or prawn or nephrops

Flexible Permit Conditions

49. The Authority may introduce, remove or vary a flexible permit condition which falls within one or more of the following categories:
 - (a) catch restrictions;
 - (b) bait restrictions;
 - (c) technical measures and gear restrictions;
 - (d) spatial restrictions;
 - (e) time restrictions;
 - (f) vessel length restrictions;
 - (g) number of permits issued.
50. The Authority may introduce, remove or vary a flexible permit condition in accordance with the review procedure set out in paragraphs 52 and 53.

51. The flexible permit conditions that apply to a permit until the first review pursuant to paragraphs 21 and 53 are those set by the Authority taking into account the impact assessment that accompanies this byelaw and all other material considerations.

Review Procedure

52. The Authority will review a flexible permit condition 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 the proposed future management options;
 - (b) the Authority will make a decision whether to introduce, remove or vary a flexible permit condition based upon responses received from the consultation under paragraph 52(a) and the information listed in paragraph 53;
 - (c) following a decision being made by the Authority, permit holders will be notified in writing and permits will be re-issued.
53. The information includes any one or more of the following:
- (a) data collected from permit holders;
 - (b) scientific and survey data gathered by the Authority or provided to the Authority by such other bodies, organisations, or persons as the Authority thinks fit;
 - (c) scientific advice provided by Centre for Environment, Fisheries and Aquaculture Science or such other bodies, organisations, or persons as the Authority thinks fit;
 - (d) an impact assessment of any proposed changes;
 - (e) advice given by Natural England or such other bodies, organisations, or persons as the Authority thinks fit;
 - (f) information from any other relevant source.

Breach of Permit Condition

54. A failure to comply with a:
- (a) general permit condition (within paragraphs 29 to 39);
 - (b) Commercial Permit condition (within paragraphs 40 to 43);
 - (c) Recreational Permit condition (within paragraphs 44 to 48); or
 - (d) flexible permit condition attached to a permit in accordance with paragraphs 49 to 51;
- constitutes a contravention of this byelaw.

Revocation

55. 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 commercial and recreational 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, nephrops, whelk, prawn, shrimps, cuttlefish, spider crab and velvet swimming crab).

The byelaw provides that the Authority may issue Commercial Permits and Recreational Permits and the terms on which they may be issued (paragraphs 11 to 20 for Commercial Permits and paragraphs 21 to 28 for Recreational Permits). The byelaw also sets out General Permit Conditions that apply to both types of permit (paragraphs 29 to 39), Commercial Permit Conditions (paragraphs 40 to 43) and Recreational Permit Conditions (paragraph 44 to 48).

The byelaw provides that the Authority may introduce, remove or vary (in accordance with the review procedure set out at (paragraphs 52 to 53) 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 49 and 51). 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 52).

Failure to comply with a permit condition constitutes a contravention of the byelaw (paragraph 54). 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.

Five existing byelaws are revoked (paragraph 55).

Annex A – Flexible Permit Conditions v2

1. Minimum Landing Sizes:

No permit holder shall remove or retain from a fishery within the District:

- (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;
- (c) any whelk which has a shell length, measured along the longest part of the shell, less than 45mm;
- (d) any nephrops 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;
- (e) when using a Commercial Permit any detached part of nephrops 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. Gear Restrictions:

- (a) No permit holder shall 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;
- (b) The escape gap referred to in paragraph 2(a) 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) No permit holder shall use a pot to fish for whelk unless the pot consists of a plastic container with an open top through which whelks can enter but are restricted in escaping by a mesh covering the opening, and is fitted with at least four unobstructed rigid escape holes located in the lowest part of the pot;
- (d) The escape holes referred to in paragraph 2(c) must be of a minimum size of 25mm diameter each;
- (e) No permit holder shall use a pot to fish for nephrops unless the pot is of a 'D' shape design and 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.

3. Vessel Length Restrictions:

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