

**NWIFCA Technical, Science and Byelaw
Committee
31 October 2017.**

**AGENDA
ITEM NO.
10**

BYELAW 3 REVIEW

Purpose: To consider a first draft of a revised cockle and mussel permit byelaw

Recommendation: TSB considers the measures in the draft at Annex A. Written comments to be returned by end November 2017 and a further draft prepared.

Background

1. The cockle and mussel permit byelaw, confirmed in 2012 has proved effective in regulating these fisheries. However, experience has taught us that some changes could improve the working of the byelaw.
2. A consultation in 2017 followed by analysis at the August TSB meeting identified potential changes which could be useful.

A Draft Byelaw

3. Members are asked to consider the draft at Annex A and indicate how the Authority should proceed with developing the byelaw.
4. It may be appropriate to set a deadline for written comments in order to bring a further draft back to TSB at the February meeting.

Issues for discussion

5. **Deadlines for Renewal applications:** The current byelaw 3 allows renewals anytime within the year for which the permit is valid. For example the permit for 2016-7 could be renewed right up to 31 August 2017. This system whereby a holder retains entitlement to a permit without renewing until just before the following permit was due has created an administrative blockage with applications for 2 years overlapping. The system creates risk of confusion over validity of permits and risk of errors in handling permit applications. The system should be tightened to require permits to be renewed before the existing permit expires. The new draft byelaw requires applications for permits for 1 September each year to be filed and payment to be made by 1 August in the same year.
6. **Transitional arrangements:** There has now been 5 years when all fishers in the Dee and Cumbria could have obtained full cockle and mussel permits under byelaw 3. The draft includes ending transitional arrangements 5 years after the byelaw comes into force..
7. **Support worker permits:** As agreed in August provision for support workers will not be included in the revised byelaw.
8. **Boat safety provisions:** Responsibility for boat safety is not clearly within the IFCA remit and these sections are removed from the revised byelaw.
9. **Trading Permits:** An important question is whether to include a shellfish trading permit in this byelaw. In August, members suggested this might be over complex. Officers have considered the matter further and consider it would greatly support good regulation of the fisheries if shellfish merchants could be legally required to:

- a. Only purchase cockle and mussels from the District from gathering permit holders.
- b. Submit sale returns to show better assessments of how much cockle and mussel is being harvested from the District.
- c. Therefore these provisions are included in the draft.

10. Applications for permits: Information required on application forms does not have to be specified in the byelaw. The Authority will operate the following system.

Applicants are required to provide and keep their address up to date.

New applicants will be placed on the waiting list on the production of:

- a. A completed valid permit application form;
- b. Evidence of the applicant's identity, containing a photograph and signature;
- c. Proof of the applicant's address;

For the first 10 applicants on the waiting list, New permits will be issued to applicants on production of:

- a. a valid foreshore gatherers safety training certificate course;
- b. evidence that the applicant has registered for payment of tax with HMRC in the current or previous tax year by providing a SA300 form if self-employed or a payslip if employed showing payment of tax by PAYE.
- c. their National Insurance number;
- d. 2 passport photographs taken in the last year;
- e. payment of the relevant fee;

Applicants under the age of 16 may be placed on the waiting list. If they become eligible for a permit before they reach the age 16 (when they can receive a National Insurance Number), they will remain eligible until they receive a NINO. When they receive a NINO they will be included in the first 10 from the waiting list and be eligible for a permit for the following year.

Deadlines: If an offer of a permit from the waiting list is declined or not accepted within 3 weeks of the offer being sent by the Authority, the applicant may be deleted from the waiting list and the permit offered to the next person on the waiting list.

CEO 17th October 2017

Annex A

North Western Inshore Fisheries and Conservation Authority

Marine and Coastal Access Act 2009

Permit to gather cockles and mussels by hand byelaw 2017

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) "Authority" means the North Western Inshore Fisheries and Conservation Authority (NWIFCA) as defined in articles 2 and 4 of the North Western Inshore Fisheries and Conservation Order 2010
 - b) "cockle" means a shellfish of the species *Cerastoderma edule*;
 - c) "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 (S.I. 2010/2200);
 - d) "first sale" means sale, exposure or offer for sale for the first time, cockles or mussels that have been gathered from a fishery within the District;
 - e) "fishery" means an area of sea, seabed, exposed estuary, seashore or other marine environment;
 - f) "foreshore gatherers safety training certificate" means a certificate issued by Seafish Industry Group Training Association, or a trainer approved by the Authority, certifying that the person named on the certificate has completed a safety training course approved by the Authority for inter-tidal shellfish gathering;
 - g) "gather" includes all activities related to fishing by hand of cockles or mussels within or from a fishery including harvesting, taking, moving and transporting;
 - h) "gathering permit" means a permit issued by the Authority to gather cockles or mussels;
 - i) "MACAA" means the Marine and Coastal Access Act 2009;
 - j) "mussel" means a shellfish of any species of the genus *Mytilus*;
 - k) "sales note" means a document that contains the name, address, trading permit holder registration number of the buyer; the name and permit number of the gathering permit holder, the date of purchase and date of landing of the shellfish, the live weight, species and location of gathering;
 - l) "trading permit" means a permit issued by the Authority to first sale purchase of cockles or mussels;

Prohibitions

2. A person must not gather cockles or mussels from a fishery unless they have in their possession while gathering a valid gathering permit issued to them by the Authority.
3. A person must not gather cockles or mussels except:
 - a. by hand using only a rake;
 - b. in the case of cockles by using a, craam, tamp or jumbo;
 - c. in accordance with a gathering permit.

4. A person must not have in their possession any article for use in the course of or in connection with gathering cockles or mussels within or from a fishery in breach of this byelaw.
5. A person must not take from a fishery any cockle which will pass through a gauge having a square opening of 20mm measured across each side of the square or any mussel less than 45mm in length.
6. A person must not have in their possession, retain, transport or store any cockle or mussel gathered in breach of this byelaw. Any person who possesses or removes cockles or mussels the removal of which is prohibited by these byelaws or any Act of Parliament must immediately redeposit the same without injury as nearly as possible in the fishery from which they were taken or under the written authority of the NWIFCA on another suitable fishery and shall spread them thinly and evenly through the fishery.
7. No person shall gather any cockle within or from a fishery on or between 1st May and 31st August in the same year.
8. A person must not purchase first sale cockles or mussels caught within the District unless they have in their possession a trading permit issued to them by the Authority.

Exemptions

9. This byelaw does not apply to any person performing an act that 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 a scientific, management, stocking or breeding purpose or in the exercise of any right of common held by that person.
10. This byelaw shall not apply to a person gathering less than 5kg of cockles and 5kg of mussels during a calendar day from a fishery which is not closed under this or any other byelaw or Act of Parliament nor designated a commercial area under paragraph 21d of this byelaw nor part of the District managed under the Dee Estuary Cockle Fishery Order (2008) without a licence to fish issued under the terms of that Order.

Permit conditions

11. A gathering or trading permit:
 - a. is issued by the Authority to a named person ("the permit holder")
 - b. is not transferrable from the permit holder to another person
 - c. is annually renewable
 - d. is valid from 1 September to the following 31 August inclusive unless otherwise stated on the permit.
12. Only holders of a gathering permit under this byelaw shall be entitled to renew the gathering permit for the next year.
13. Holders of gathering or trading permits must:
 - a. file returns to the Authority by mail or post on the Authority website on a correct valid return form providing all the information requested to the Authority, not later than the 5th day of each calendar month, including nil returns, or more frequently if stipulated in a permit condition.
 - b. Notify the Authority of any changes of name or address;
 - c. not obstruct pursuant to MACCA s292(4) an IFCO carrying out a relevant function pursuant to MACCA s287.
14. A gathering permit holder must:
 - a. Apply for renewal at least 1 month before the permit expires.

- b. Hold a valid foreshore gatherers safety training certificate.
- 15. A trading permit holder must:
 - a. purchase all first sale cockles or mussels taken from the District from a gathering permit holder.
 - b. maintain and retain for a minimum of 5 years, separate records of all first sale purchases of cockles or mussels fished or taken from within the District and make records available for inspection by the Authority at all reasonable times.
- 16. The Authority shall keep a waiting list of new permit applications in the order received. New gathering permits may be issued each year for the permit year starting 1 September in that year to a maximum of the first 10 applicants on the waiting list.
- 17. Failure to produce on the reasonable demand of a properly warranted Officer a valid permit when carrying out any activity for which a permit is required constitutes a breach of this byelaw.
- 18. Permits may be suspended by the Authority until returns have been filed;
- 19. Application for a trading permit or renewal of a trading permit may be made at any time
- 20. Applications for permits must be made using the correct forms available from the Authority's offices or website and providing all the information requested.
- 21. A fee of £500 shall be payable for each permit prior to issue upon application. The fee may be varied by no more than the annual percentage change in the Consumer Price Index on the 1st December each year.
- 22. No fee is payable for a trading permit issued to a person holding a gathering permit.

Flexible permit conditions

- 23. On receipt of the information specified in paragraph 26. the Authority may in accordance with the review procedure in paragraph 25 and in order to promote sustainable exploitation of sea fisheries resources, attach or vary flexible conditions to a permit including some or all of the following:
 - a. Dates, times or tides during which gathering cockles or mussels is permitted;
 - b. Areas where gathering cockles or mussels is permitted;
 - c. Close for a specified period not exceeding 1 year any cockle or mussel bed or part of a bed for fishery management purposes or to control the rate of exploitation of stock;
 - d. Designate 'commercial cockle fishing areas' of maximum size 100 sq km for defined periods not exceeding 6 months where S.10 of this byelaw does not apply;
 - e. The total catch limit permitted within a specified period or a specified area;
 - f. Methods or equipment permitted within a specified period or a specified area.
- 24. Failure to comply with any of the permit conditions constitutes a breach of this byelaw.

Review procedure

- 25. The Authority will review the permit conditions no less than once every 4 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 decide to attach, vary or remove any permit conditions based on the consultation responses obtained in accordance with sub-paragraph 25a and the information listed in paragraph 26.

- c. Following a decision being made by the Authority, permit holders will be notified in writing and permits will be amended as necessary at no cost to the permit holder.
26. 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 shall think fit;
 - c. Advice provided by Cefas, Natural England or such other bodies, organisations or persons as the Authority shall think fit;
 - d. An impact Assessment of any proposed changes
 - e. Information from any other relevant source.

Transitional Arrangements

27. A NWIFCA Byelaw 3 (revoked by this byelaw) gathering permit holder is only entitled to apply for a gathering permit under this byelaw in the year this byelaw comes into force and the Byelaw 3 permit expires.
28. A person who provides evidence to the satisfaction of the Authority that they held a permit issued under Cumbria Sea Fisheries Committee byelaws 21 (Cockles permit scheme) or 23 (Mussels permit scheme) (revoked by NWIFCA Byelaw 3) prior to confirmation of this new NWIFCA Byelaw 3 may apply to the Authority for written consent to fish for cockles or mussels in the Cumbria Sea Fisheries Committee District without being in possession of a gathering permit under this byelaw.
29. A person who provides evidence to the satisfaction of the Authority that they fished for mussels in the NWIFCA area of the Dee Estuary outside the North Western Sea Fisheries Committee District may apply to the Authority for written consent to fish for mussels within that area of the Dee Estuary without being in possession of a gathering permit under this byelaw.
30. All obligations of this byelaw apply to consents issued under paragraphs 28 or 29 but no fee is payable.
31. The transitional arrangements in paragraphs 28 and 29 will cease 5 years after the date of this byelaw coming into force.

Revocation of Byelaws

32. NWIFCA Byelaw 3 (Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis* 2012) is revoked.
33. The following byelaws made by the North Western and North Wales Sea Fisheries Committee are revoked:
- a) Byelaw 13a Cockle and Mussels – management of the fishery;
 - b) Byelaw 16 Shellfishery – temporary closure.
34. Cumbria Sea Fisheries Committee Byelaw 18 (Shellfishery temporary closure) is revoked.

Explanatory Note*(This note does not form part of the byelaw)*