

**NWIFCA Annual Meeting
10th June 2016: 11.00 a.m.**

**AGENDA
ITEM NO.
9**

BYELAW 11: PERMIT TO DREDGE

Purpose: To consider the attached draft byelaw

Recommendation: Approve the draft byelaw for further development

1. The emergency byelaw: 'Restrictions on fishing for bivalve molluscan shellfish 2016' came into force on 2nd February 2016. To avoid a gap in protection for the District a full byelaw must be in force within 1 year.
2. To achieve this deadline the Authority has made this byelaw top priority in its byelaw work. A draft proposed byelaw is at Annex A.
3. The draft uses a 'flexible permit byelaw' model incorporating the most recent advice from MMO and Defra (attached Annex B) on the use of sub-delegated powers.
4. The draft also uses flexible permit dredge prohibition byelaws made recently by Northumberland and Southern IFCAs. These byelaws can be found on respective websites. This model of byelaw was approved by TSB at the May meeting.

**CEO
2nd June 2016**

North Western Inshore Fisheries and Conservation Authority

Marine and Coastal Access Act 2009

Byelaw 11 Permit to dredge 2016

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. "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);
 - c. "dredge" means a dredge, scoop, pump or mechanical device which is not a trawl or beam trawl and any ancillary hydraulic equipment that is operated from a vessel or vehicle which is designed for or capable of taking sea fisheries resources;
 - d. "IFCO" means an Officer appointed under MACAA S 165;
 - e. "inboard, lashed and stowed" means dredges aboard a vessel used for fishing which are stored so they cannot be used or deployed from the vessel.
 - f. "MACAA" means the Marine and Coastal Access Act 2009;
 - g. "nominated person" means a person nominated by a permit holder and named on a permit to carry and use a permit for a relevant vessel or vehicle;
 - h. "obstruct" means an offence under MACAA S 292;
 - i. "permit" means a permit issued by the Authority in accordance with this byelaw.

Prohibitions

2. A person must not use a dredge for the exploitation of sea fisheries resources unless:
 - a. from a relevant fishing vessel or vehicle and
 - b. in accordance with a permit issued to them and
 - c. the permit holder or a nominated permit holder is present on the vessel or vehicle when the dredge is in use or being transported.
3. A dredge must not be carried by or attached to a fishing vessel unless it is inboard, lashed and stowed.
4. This byelaw shall 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 scientific, management, stocking or breeding purpose.

Permit conditions

5. A permit:
 - a. is issued by the Authority to a named person ("the permit holder") or a nominated person in respect of a named relevant fishing vessel for which the permit holder is an owner or a shareholder ("the named vessel") or a legally registered vehicle for which the person is an owner or a shareholder ("the vehicle").
 - b. is not transferable:
 - i. From the permit holder or nominated persons to any other person or,
 - ii. From the relevant fishing vessel or vehicle to another vessel or vehicle;
 - c. must be carried by the permit holder or a nominated person aboard the relevant vessel or vehicle at all times when the dredge is aboard the relevant vessel or vehicle and produced for inspection when requested by a warranted IFCO,
 - d. must be surrendered to the Authority if no longer required.
6. The Authority may in accordance with the review procedure in this byelaw:
 - a. attach conditions to a permit;
 - b. vary or remove conditions attached to a permit;
 - c. limit the number of permits issued.
7. An application for a permit must be made using the forms available from the Authority providing all the information requested on the form.
8. A permit is valid for the period specified on the permit.
9. Permit holders must file catch returns with the Authority no later than the 5th day of the month following such information on catches and fishing effort for the previous month as the Authority may require. Nil returns may be required. Permit holders not filing returns may have their permits suspended by the Authority until returns have been filed.
10. Vessels used in accordance with this byelaw must have a functional electronic ship identification system showing at all times of fishing the name, registration number, location, speed and direction of the vessel.
11. The Authority must be notified by phone, text or email at least 2 hours prior to commencement of fishing under a dredge permit. Notification must include the name of the permit holder, vessel name or tractor registration, date and time of fishing.
12. On receipt of the information in paragraph 19, the Authority may set permit conditions or revoke permits including:
 - a. specified dates,
 - b. specified times and/or tides,
 - c. specified areas,
 - d. specified species,
 - e. specified types of dredge,
 - f. specified maximum number of dredges per vessel;
 - g. specified daily or periodic catch limits.
13. Failure to notify the Authority of any change in the information provided to obtain a permit during the period when the permit is valid is an offence against the byelaw.
14. Use of a permit to fish constitutes agreement to the conditions attached to the permit.
15. Contravention of a permit condition constitutes a contravention of this byelaw.
16. A fee of no greater than £2000 is payable for each vessel or vehicle named on a permit prior to use upon application.
17. The Authority may charge a fee of £50 to issue a replacement or amended permit.

Review procedure

18. 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 make a decision whether to attach, vary or remove any permit condition based on the consultation responses obtained in accordance with paragraph 18a and the information listed in paragraph 19;
 - 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.
19. The information includes any one or more of the following:
 - a. Information and advice received from permit holders;
 - b. scientific and survey information gathered by the Authority or provided to the Authority by such other bodies organisation or person as the Authority shall think fit;
 - c. advice provided by Cefas or Natural England or such other body 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.

Revocation of byelaws

20. North Western and North Wales Sea Fisheries Committee Byelaw 12 (Restrictions on fishing for bivalve molluscan shellfish) is revoked.

Explanatory Note

(This note does not form part of the byelaw)

This byelaw prohibits the use of dredges for fishing within the District without a permit as well as the use of a dredge of design not approved by the Authority.

The byelaw defines the requirements for obtaining a permit, the conditions which may be attached to a permit and a procedure by which additional permit conditions may be attached to a permit or varied or removed from a permit by the Authority.

Draft Defra/MMO Policy Note: IFCA Byelaws and Sub delegation

Summary

We are aware that there are continued concerns around uncertainty in relation to the sub delegation of powers from the face of IFCA byelaws to associated permit conditions, notices and other forms of sub-delegated decision making; in particular relating to spatial restrictions that IFCAs may wish to apply via permit conditions.

Sub-delegation is when a byelaw delegates the right to define the specific details of the restriction from the face of the byelaw to an associated permit condition or notice. There is concern that continued uncertainty on this issue could delay management of 'red risk' issues in EMS sites, and in the longer term inhibit IFCAs' ability to effectively protect MPA features and to manage key fisheries resources in their districts.

This paper sets out the Defra/MMO position with regard to the sub-delegation issue, but IFCAs should consider getting their own legal advice on this.

1. Defra/MMO position

It is our view that:

- 1.1. Initially, IFCAs should always consider using their byelaw making powers. Sub-delegation should not be used as a means to bypass the byelaw making procedure;
- 1.2. IFCAs can use permit conditions and notices to fill out detailed elements of the byelaw and these can be made/reviewed/amended by the IFCAs, provided that:
 - a) It is made clear on the face of the byelaw what conditions/provisions are to be dealt with by permitting or notices;
 - b) Specific limits are applied to the conditions or sub-delegated detail on the face of the byelaw in so far as is possible;
 - c) The reason/trigger for the sub-delegation is clearly justified (particularly with respect to spatial closures to protect European Marine Sites and Marine Conservation Zones);
 - d) Associated with the byelaw there are formal operational procedures which set out the process, and circumstances, by which the IFCA will make/review/amend the conditions or notices that contain the detailed matters sub delegated from a byelaw. It is important that procedures are transparent, fair and always followed by the IFCA.

2. Key points

- 2.1 In the first instance, IFCAs should always consider using their byelaw-making powers, and only look at sub-delegation options such as permitting where they have good operational reasons for doing so and where this is consistent with the Marine and Coastal Access Act.
- 2.2 **The sub-delegation of matters from the face of the byelaw to permits or notices should not be used as a means to bypass the byelaw-making procedure – sub-delegation should be employed only where appropriate to provide IFCAs with a level of flexibility that will benefit the work they do as inshore fisheries managers and is consistent with the Marine and Coastal Access Act.**

- 2.3 IFCAs will be advised to seek and consider their own, independent legal advice when they have particular concerns around introducing permitting or notices in particular areas or cases.
- 2.4 Where IFCAs decide to use sub-delegation, it is important to specify as much information as possible regarding the conditions that will trigger the operational procedures for making/reviewing/amending sub-delegated matters.
- 2.5 IFCAs **must** set out the operational procedures they will follow (e.g. flow chart etc) when making, reviewing and amending management detail sub delegated from the byelaw.
- 2.6 IFCAs may decide to outline their operational procedures on the face of the byelaws, but it would not always be necessary to do this for all of the procedural detail; rather it may be more helpful to set these out in an associated document/ for example, the committee or sub-committee standing orders or a standalone management 'charter' or guidance.. If this approach is taken, there should be a clear cross-reference to the associated document on the face of the byelaw and the associated document should be publicly available so it is clear what processes apply.
- 2.7 Operational procedures, where appropriate, should bring together and formalise the standard procedures that the IFCAs operate to discharge existing legal obligations (e.g Assessments in line with obligations under Article 6(3) of the Habitats Directive).
- 2.8 IFCAs should consider including appropriate review clauses for byelaws and for any permits/notices. In the case of EMS, MCZs and sites where features change frequently, a regular review may be necessary.
- 2.9 We consider that it is important to provide transparency and as much information as possible to ensure the fairness of procedures. Operational procedures should provide clarity to those who will be affected and to those who have an interest in such amendments, enabling them to understand and, if appropriate, question IFCA decisions in relation to sub-delegated matters.
- 2.10 **Permit byelaws and the obligations under the Habitats Regulations.** Considered that the act of issuing or changing permits associated with a byelaw is consistent with the definition of a plan or project and as such is subject to the obligations set out in Article 6(3) of the Habitats Directive, therefore a screening for likely significant effect is required (and if necessary an Appropriate Assessment), unless the IFCA is able to satisfy itself (with advice from Natural England) that changes are connected with or necessary to the conservation management of the site.
- 2.11 As IFCA byelaws are being used to ensure the UK complies with its obligations under the Habitats Directive, a reference to this fact should be included in the explanatory note to byelaws which affect EMS.