

**North Western Inshore Fisheries and Conservation Authority**

**Marine and Coastal Access Act 2009**

**Byelaw 3 Cockle and mussel fisheries 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.

**Version 01.03.16**

**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) "business model" means a descriptive representation of the operation of the business including method of obtaining cockles or mussels, the revenue stream and business processes;
  - c) "cockle" means a shellfish of the species *Cerastoderma edule*;
  - d) "CSFC District" means the District of the Cumbria Sea Fisheries Committee abolished in 2011;
  - e) "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);
  - f) "first sale" means cockles or mussels that have been gathered from a fishery within the District that have been or are being sold, transported, marketed, exposed or offered for the purposes of sale for the first time;
  - g) "fishery" means an area of sea, seabed, exposed estuary, seashore or other marine environment;
  - h) "foreshore gatherers safety training certificate" means a valid document issued by a Seafish Industry Group Training Association (SIGTA), or a trainer approved by NWIFCA, certifying that the person named on the certificate has completed a safety training course approved by SIGTA or NWIFCA for inter-tidal shellfish gathering;
  - i) "gangmaster" means a person licensed under the Gangmasters (Licensing) Act 2004 (2004 c.11);
  - j) "gathering" includes all activities related to fishing by hand of cockles or mussels within or from a fishery including harvesting, taking, moving and transporting;
  - k) "gathering permit" means a permit issued by the Authority in accordance with paragraph 17 of this byelaw;
  - l) "IFCO" means an officer appointed under section 165 of MACAA;

- m) “Limited company” means a limited company as defined in the Companies Act 2006 (2006 c.46);
- n) “MACAA” means the Marine and Coastal Access Act 2009;
- o) “mussel” means a shellfish of any species of the genus *Mytilus*;
- p) “nominee group” means a group of Byelaw 11 permit holders who have had their business model approved by the Gangmaster Licensing Authority (GLA) (Gangmaster (Licensing) Act 2004);
- q) “NWSFC District” means the District of the North Western Sea Fisheries Committee abolished in 2011
- r) “partnership” means a trading entity registered as a partnership with HMRC;
- s) “protected area” means a Marine Conservation Zone (MCZ) designated under MACAA; or a Special Area of Conservation (SAC) designated under the Habitats Directive (Council Directive 1992/43/EEC) or a Special Protection Areas (SPA) designated under the EC Birds Directive (Council Directive 2009/147/EEC);
- t) “regulatory notice” means a notice issued by the Authority in accordance with paragraph 41 of this byelaw;
- u) “representative of a nominee group” is a person who is designated to register as representing a nominee group;
- v) “restricted area” means an area, within a protected area, defined within a regulatory notice and for which a management measure has been introduced by that regulatory notice;
- w) “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;
- x) “sole trader” means an individual registered as such with Her Majesty’s Revenue and Customs (HMRC);
- y) “trading permit” means a permit which authorises a person to engage in first sale of cockles or mussels and is issued in accordance with paragraph 30 of this byelaw;
- z) “waiting list” is the list administered by NWIFCA of those persons who have correctly applied for a gathering permit under Byelaw 3 (revoked under this byelaw) and continued under this byelaw, and are awaiting issue of a gathering permit;

## **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.
3. A person must not gather cockles or mussels except:
  - a) by hand or using hand-held rakes;
  - b) in the case of cockles by using crams, rakes, spades, tamps or jumbos;
  - c) by using buckets, sacks, net bags, ton bags and other such containers ordinarily used for the storage of cockles and mussels.
4. A person must not use a net bag for gathering cockles.

5. A person must not have in their possession retain, transport or store;
  - a) any cockle or mussel gathered in breach of this byelaw;
  - b) any cockle or mussel gathered in breach of a regulatory notice;
  - c) any cockle gathered from within that part of the District managed under the Dee Estuary Cockle Order 2008 (SSI 1472 of 2008) without being in possession of a licence to fish issued under that Order.
6. 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.
7. A person must not gather cockle from a fishery on or between the 1<sup>st</sup> May and the 31<sup>st</sup> August in any year.
8. A person must not engage in first sale except in accordance with a trading permit.
9. A person must not take or use on a mussel bed, a sledge, vehicle or other contrivance which is likely to crush or loosen the mussels or loosen the foundations of the bed, without a written authorisation issued by the Authority.
10. A person must not disturb, dig in or erect any structure on or in a mussel bed for any purpose without a written authorisation issued by the Authority.

### **Exemptions**

11. Paragraph 2 does not apply to a person gathering less than 5kg of cockles and 5kg of mussels during a calendar day.
12. 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.

### **Minimum Landing Size**

13. A person must not take from a fishery a cockle which will pass through a gauge having a square opening of 20mm measured across each side of the square.
14. A person must not take from a fishery a mussel less than 45mm in length.
15. A person must not place fished cockles into a container unless they have been retained by a rigid riddle designed to retain cockles which will not pass through a gauge having a square opening of 20mm measured across each side.
16. Compliance with the requirements of paragraphs 13 -15 will be assessed by an IFCO measuring representative random samples of at least 50 cockles or mussels per sample.

### **Gathering Permit Conditions**

17. Gathering permit holders must:
  - a) comply with any Regulatory Notice;
  - b) only engage in first sale with a trading permit holder;
  - c) hold a gathering permit valid from the previous 1<sup>st</sup> September to the next 31<sup>st</sup> August;
  - d) not use a permit after the date of expiry;
  - e) file returns to the Authority, not later than the 5<sup>th</sup> day of each calendar month, for the previous calendar month, including nil returns, or more frequently if required by the Authority. Returns must be completed on a correct valid NWIFCA fishing effort form

- providing all the information requested on the form. Gathering permits may be suspended by the Authority until returns have been filed;
- f) notify the Authority of any changes of name or address;
  - g) hold a valid foreshore gatherers safety training certificate;
  - h) not obstruct pursuant to MACCA s292(4) an IFCO carrying out a relevant function pursuant to MACCA s287;

- 18. Failure to comply with any of the gathering permit conditions constitutes a breach of this byelaw.
- 19. Gathering permits are not transferable.

### **Renewal**

- 20. A permit holder must apply to renew a gathering permit by the 1<sup>st</sup> December in the year in which the permit expires.
- 21. Applications for permit renewal must be made on the correct valid permit renewal form and must include a foreshore gatherers safety training certificate valid on the date of renewal and payment of the annual fee of £500.

### **Applications**

- 22. The Authority may offer a maximum of 10 new gathering permits each year to the first 10 applicants on the waiting list.
- 23. Persons are entitled to 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;
  - d) Proof that the applicant is at least 13 years old.
- 24. New permits will be issued from the waiting list when the applicant has provided:
  - a) Payment of the fee of £500;
  - b) A valid foreshore gatherers safety training certificate course;
  - c) Evidence to the satisfaction of the Authority that the applicant has successfully registered for payment of tax with HMRC in the current or previous tax year;
  - d) A National Insurance number;
  - e) 2 passport photographs taken in the last year.
- 25. The fee will be varied in accordance with the Consumer Price Index on the 1<sup>st</sup> December each year.
- 26. When applicants under the age of 16 reach the top of the waiting list they will remain immediately below the top 10 places in date order until they reach the can provide the requirements in paragraph 24.
- 27. If an offer of a permit from the waiting list is declined or not accepted within 4 weeks of the offer being sent by the Authority, the applicant will be deleted from the waiting list and the permit offered to the next person on the waiting list.

### **Transitional Arrangements**

- 28. A holder of a 2015/16 permit issued under NWIFCA Byelaw 3 Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*) (revoked by this byelaw), is entitled to renew that permit as a gathering permit under this byelaw for the year 2016/17 if a complete application is made within the time limit in paragraph 20.

29. 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 NWIFCA Byelaw 3 may apply to the Authority for written consent to fish for cockles or mussels in the CSFC District without being in possession of a gathering permit under this byelaw.
30. A person who provides evidence to the satisfaction of the Authority that they fished for cockles or mussels in the area of the Dee Estuary outside the NWSFC District may apply to the NWIFCA for written consent to fish for cockles or mussels within that area of the Dee Estuary without being in possession of a gathering permit under this byelaw.
31. All obligations of this byelaw apply to consents issued under paragraphs 28 or 29. No fee is payable for consents issued under paragraphs 29 or 30.
32. The transitional arrangements in paragraphs 29 and 30 will cease 5 years after the date of this byelaw coming into force.

### **Trading Permit Applications**

33. A trading permit may be issued subject to paragraphs 33 to 37 to a person providing evidence that they are:
  - a) a sole trader;
  - b) a Gangmaster;
  - c) representing a nominee group;
  - d) representing a limited company; or,
  - e) representing a partnership.
34. A trading permit will be issued to applicants providing:
  - a) a completed valid trading permit application form;
  - b) proof of the applicant's identity containing a photograph taken in the last year;
  - c) proof of the applicant's address such as a utility bill dated within the last 3 months;
  - d) a nominated address at which the records required under the permit conditions will be kept if different from c);
  - e) proof of the nominated address, such as a utility bill dated within the last 3 months if different from c);
  - f) a description of the applicant's intended business model;
  - g) in the case of a limited company or partnership evidence of the valid company number and VAT number if applicable;
  - h) in the case of a Gangmaster a copy of their gangmaster licence;
  - i) in the case a sole trader evidence that the individual has registered as self-employed;
  - j) in the case of an individual representing a nominee group evidence from the Gangmaster Licensing Authority (GLA) that the business model is approved.
35. Applications from individuals that fulfil multiple criteria will be decided at the discretion of NWIFCA.

### **Trading permit conditions**

36. A holder of a trading permit must:
  - a) engage in first sale with individuals holding a valid gathering permit in compliance with this byelaw, gathering permit conditions and any Regulatory Notice issued pursuant to this byelaw;

- b) file sale notes with the Authority, no later than the 5<sup>th</sup> day of the following month reporting all first sale for the previous month;
- c) maintain records of first sale for a minimum of two years;
- d) account separately within their records first sale from shellfish gathered outside the district;
- e) make records required in c) and d) available for inspection by IFCOs at all reasonable times;
- f) not obstruct pursuant to MACCA s292(4) an IFCO carrying out a relevant function pursuant to MACCA s287;
- g) immediately notify the Authority of any changes of their name, address or any information entered on an application form pursuant to this byelaw;

37. A trading permit is not transferable and failure to comply with the trading permit conditions constitutes a contravention of this byelaw.

### **Renewal**

38. Trading permits are valid from the 1<sup>st</sup> September to the 31<sup>st</sup> August in the following year.

39. A trading permit must be renewed at least one calendar month before it expires.

40. Applications for permit renewal must be made on a valid correct permit renewal form.

### **Regulatory Notices**

41. The Authority may issue regulatory notices to:

- a) promote the sustainable exploitation of cockles or mussels;
- b) further the conservation objectives of protected areas;
- c) establish restricted areas defined with co-ordinates in latitude and longitude, and commencement and expiry dates where the 5kg catch allowance without a gathering permit pursuant to paragraph 10 is suspended.

### **Restricted Areas**

44. Restricted areas may be designated for all or parts of protected areas in the district where:

- a) The Authority has reason to believe that there is excessive demand for cockles or mussels;
- b) the presence of persons who do not hold a gathering permit would prevent effective enforcement or;
- c) the Authority has reason to believe that there is a risk of illegal fishing by persons who do not hold a gathering permit.

### **Regulatory Notices: Procedures and Conditions**

45. When issuing, varying, reviewing or revoking a regulatory notice the Authority must:

- a. define and explain the change in writing;
- b. use all available relevant data and evidence from permit holders, surveys, partner bodies, research and other sources;
- c. consult in writing with permit holders and such other stakeholders, organisations and persons as appears to the Authority to be representative of the interests likely to be substantially affected by the proposed regulatory notice;
- d. notify permit holders in writing of any decision to issue an regulatory notice and its content
- e. review any regulatory notice at least once every four years.

46. Contravention of any provision of a regulatory notice constitutes a contravention of this byelaw.

### **Revocation of Byelaws**

47. NWIFCA Byelaw 3 (Permit to fish for Cockles (*Cerastoderma edule*) and Mussels (*Mytilus edulis*) is revoked.
48. 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.
50. Cumbria Sea Fisheries Committee Byelaw 18 (Shellfishery temporary closure) is revoked.

### **Explanatory Note**

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