

# NWIFCA TSB Quarterly Meeting: 5<sup>th</sup> November 2024

REPORT NO.  
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## BYELAW 3 – YOUNG PEOPLE ISSUE

**Purpose:** To set out options for how we can improve the prospects for young people to enter our hand-gathered cockle and mussel fisheries.

**Recommendations:** Members vote to instruct officers to begin implementation of the recommended options, namely:

- A 'use it or lose it' policy for permit holders
- Prioritisation of young people on waiting list
- A handover scheme for permit holders to nominate young people to take on their permit

### 1. Introduction

This paper sets out options for the Authority to consider in increasing the ability of young people to gain experience of, and ultimately access to, the district's hand-gathered cockle and mussel fisheries. Given these fisheries are regulated by the Authority through its Byelaw 3, the paper will look at ways in which the Authority could amend its policies regarding the implementation of this Byelaw, as well as potentially amend the byelaw itself. As such, the paper is split into two sections, the first looking at options to update the Authority's Byelaw 3 policies, which in theory could be enacted relatively quickly as they would not involve any material change to the Byelaw itself. The second section focusses on longer-term options for amending the Byelaw text with the aim of improving young people's prospects. However, as these would involve material changes to the Byelaw, this would require a review of the Byelaw with associated consultation of stakeholders, followed by a formal request to Defra to make any proposed amendments.

In formulating this paper, I presented a draft version to our Byelaw Working Group (BWG) who then discussed it further at a meeting on 17<sup>th</sup> October. The paper was then amended on the back of feedback from BWG members, namely with respect to looking to implement the abovementioned three policies. As such, the recommendations herein are those of the BWG for TSB to consider.

### 2. Short-Term Options

The Authority's Byelaw 3 sets out the framework around which the district's hand-gathered cockle and mussel fisheries are managed. This is primarily via a permit regime which enables a select number of individuals (currently 150) to fish the North West's cockle and mussel beds. These fisheries are then managed dynamically via flexible permit conditions, which can be changed to suit the prevailing environmental and / or socio-economic conditions for specific beds. However, the Byelaw does not in and of itself describe every policy or procedure the Authority must follow in its implementation of the permit scheme and, as such, the Authority has developed these over time. It also therefore has discretion to review and readily amend such policies and procedures that are not prescribed in the Byelaw, or indeed, create new policies and procedures.

What follows is an analysis of different options for improving the prospects for young people entering the North West's cockle and mussel fisheries.

## 2.1 'Use It or Lose It'

Of the current cohort of 150 Byelaw 3 permit holders, the vast majority fish the district's cockle and / or mussel beds on a regular basis in any given year, depending on how many, and which, beds are open. However, officers are aware of a small number of individuals who do not regularly fish but renew their permits each year regardless. This restricts the socio-economic benefits the fisheries could provide to the wider community and limits opportunities for individuals on the waiting list. In recent years, usually fewer than five individuals a year do not renew their permits, and so turnover of the waiting list is limited, with very few new entrants to the fisheries each year.

The Authority could instate a 'use it or lose it'-type policy which required permit holders to demonstrate they are active within the fisheries. Permit holders are required to submit monthly returns of their fishing activity, and so these returns could be used as a basis for determining whether someone is active in the fisheries and whether they are eligible to have their permit renewed.

The Authority would need to define what the minimum level of activity required was; this could be based on a minimum number of days fishing or a minimum amount of cockles and / or mussels gathered. Preference would be for a minimum number of days, as average daily quantities gathered can vary markedly between gatherers and would not be a wholly reliable indicator of levels of activity. In defining any minimum level of activity, the Authority would need to be mindful of the number of cockle beds open to permit holders<sup>1</sup>, as this would affect the number of days individuals might fish in any given year, indeed whether they fished at all. For example, in the 2023/24 season, only one cockle bed was opened by the Authority (the Penfold bed at Southport) and, as this was of limited interest to fishers, only a relatively small number of gatherers fished the bed. This meant that a significant number of usually active Byelaw 3 permit holders were inactive during the entire 2023/24 season. However, when there are significant cockle fisheries open with the district, it would be possible to define a minimum activity level that fishers needed to meet to be eligible for renewal the following year.

Any such 'use it or lose it' policy would have to include an appeals process for permit holders that were found to have not reached the required minimum level of activity. This is because, in any given year, there can be a multitude of reasons why an individual might not be active within the fisheries, such as due to illness, injury or other personal circumstances. In informing a permit holder that they were not eligible to renew their permit due to inactivity, the Authority would have to afford them the right to appeal its decision. This would probably require an appeals panel made up of appropriate Authority members who would hear the individual's case and arbitrate on officers' decision not to renew.

### Strengths:

- Increases turnover of permit holders, increasing potential for waiting list members, including young people, to access the fisheries
- Increases the fisheries' socio-economic contributions by having more active permit holders

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<sup>1</sup> Mussel beds are permanently open, and only closed by exception.

- Provides clear eligibility criteria for permit holders for their continued access to what are effectively exclusive fisheries
- Increases the overall collective knowledge and experience within the industry by virtue of increasing the number of active fishers

#### Weaknesses:

- Open to abuse by inactive permit holders submitting false returns to 'prove' activity
- In isolation, does not necessarily guarantee more young people entering the fisheries, just those at the top of the waiting list, regardless of age
- Requires the Authority to set minimum levels of activity each year, depending on which cockle beds are open
  - Could not be implemented in years where no / few cockle beds were opened
- Increases effort on the fisheries with more active fishers
- Requires an appeals process with a level of subjectivity for a panel to arbitrate over decisions taken
  - Needs members' buy-in and requires consistency in decision-making

### **BWG Recommendation: ADOPT THIS POLICY**

#### 2.2 Split Permits

The Byelaw 3 regime provides for permits to be issued to 150 individuals allowing them to fish cockles *and* mussels across the district. Whilst many of these beds are in the same intertidal areas of the North West coast, they are two separate fisheries for two different species. Many of the Byelaw 3 permit holders routinely fish exclusively for cockles and do not regularly, if ever, fish mussels. Conversely, there are a limited number of permit holders who fish exclusively for mussels.

A policy could be created that effectively splits the Byelaw 3 permit regime into two parts, with a permit to fish either cockles or mussels, or both. In implementing such a policy, it is envisaged that some permit holders would just take a cockle permit, and some would just take a mussel permit, although it is likely that the majority of the 150 fishers would still want both. In the event fishers only took one of the two proposed permit types, the surplus permits for this fishery could then be offered to individuals on the Byelaw 3 waiting list. For example, if, upon implementation of this policy, ten individuals informed the Authority they only required a permit to fish mussels, ten people on the waiting list could be offered a permit to fish cockles exclusively. This would not increase the overall number of fishers permitted to access each fishery, but would increase the number of Byelaw 3 permit holders overall.

In implementing such a policy, the Authority would need to decide how to divide the costs of a Byelaw 3 permit. The current charge of £500 for a permit is defined in paragraph 24 of the Byelaw, and therefore could not be changed without a formal amendment to the Byelaw itself. However, the £500 charge could be split between the two permit types. Rather than a 50:50 split of £250 for each element, it is proposed that a charge of £400 is levied for a permit to fish cockles, with £100 for mussels. This is broadly representative of the economic benefit fishers gain from the two fisheries. Separate charges would need to be made, otherwise there would be no incentive for fishers *not* to take either element of the permit, if the charges were £500 regardless.

### Strengths:

- Increases turnover of permit holders, increasing potential for waiting list members, including young people, to access the fisheries
- Increases the fisheries' socio-economic contributions by having more active permit holders
- Increases the overall collective knowledge and experience within the industry by virtue of increasing the number of active fishers

### Weaknesses:

- In isolation, does not necessarily guarantee more young people entering the fisheries, just those at the top of the waiting list, regardless of age
- Increases effort on the fisheries with more active fishers
- Minor enforcement risk of fishers accessing fishery for which they're not permitted
- Due to limited costs for each element, fishers would potentially just renew for both regardless of whether they're active in both fisheries (particularly in relation to mussels)
- Likelihood that few, if any, permit holders would just want a mussel permit, and therefore does not significantly increase the chances of young people accessing the district's *cockle* fisheries

### **BWG Recommendation: DO NOT ADOPT THIS POLICY (little value for work required)**

#### 2.3 Prioritise Young People on Waiting List

There are currently 163 people on the Byelaw 3 waiting list. As described above, the average turnover of permit holders is less than five per year, and those further down the waiting list face the prospect of waiting years, even decades, for a permit to fish cockles and mussels in the district<sup>2</sup>. The above 'use it or lose it' option has the potential to increase this turnover rate, and therefore decrease the anticipated waiting times for everyone, including young people. However, it does not prioritise young people explicitly.

The Authority could adopt a policy that sought to prioritise young people on the waiting list, giving them preference over older people when it came to taking up vacated permits. After defining who constituted a 'young person' on the waiting list, the Authority could then prioritise these individuals for a permit when one became available. This prioritisation could come in various guises, from an outright reordering of the waiting list to place young people at the top, to a less extreme approach whereby *some* new permits were offered to young people on the waiting list but others were still offered to those at the top, regardless of age. The issue here is with the Authority effectively 'moving the goalposts' on its waiting list policy, whereby it has always been run on a 'first come, first served' basis. This would mean waiting list members who were not classed by the Authority as 'young' would be disadvantaged to some extent at the expense of young people, and would face longer waits for a permit than they would otherwise have had. This could lead to potential legal challenges from affected individuals.

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<sup>2</sup> At the current rate, the last person on the waiting list might expect to wait more than 30 years to get a permit.

#### Strengths:

- Explicitly increases the number of young people entering the fishery
- Provides greater incentive for young people to join the waiting list

#### Weaknesses:

- Preferential treatment of young people further down the waiting list presents a risk of legal challenge to the Authority by those who would ultimately miss out
  - The Authority would need to seek legal advice to ensure such a policy would even be lawful, due to potential discrimination issues
- The Authority would need to define who a young person is and, in doing so, identify those who fell outside that definition but were within it at the time when they joined the waiting list
- Any potential positive impact is constrained by the limited turnover of permits (this policy would perhaps need to be implemented in conjunction with a 'use it or lose it' policy to maximise its impact)

#### **BWG Recommendation: ADOPT (subject to legal advice)**

##### 2.4 Endorsee Scheme

This proposal would involve current Byelaw permit holders being able to nominate (endorse) somebody to fish on their permit on their behalf at times when they weren't able to do so. This is similar to a scheme that Natural Resources Wales have implemented in the Dee cockle fishery.

This would enable non-permit holders (including young people) to gain some knowledge and experience of the district's cockle and mussel fisheries, and would maximise the socio-economic benefits of the fisheries by ensuring others can take advantage of fishing opportunities that would otherwise be lost.

This does however come with difficulties. Without any parameters over who endorsees might be, such a scheme could create problematic scenarios for the industry and the Authority, particularly with respect to the potential for permit holders to effectively 'farm out' their work to endorsees, with the risk of potential gangmastering issues. Such a scheme would require the relevant permit holder to be able to demonstrate a relationship of some form to the endorsee and would perhaps even need to go one step further and require that the endorsee is a young person and directly related to the permit holder. Even then, this would not fully resolve issues around endorsed young people developing their experience of the fisheries, as they would not be able to go out *with* the permit holder (e.g. their father) who is endorsing them, only *instead* of them. This is because, under the current wording in Byelaw 3, we cannot have more than 150 permit holders and therefore the permit holder could not fish at the same time as the young person they have endorsed.

There are also health and safety risks around such a scheme, with a young person with little or no experience accessing the fisheries and potentially without an experienced fisher to shadow, as that fisher is likely to be the permit holder endorsing them.

#### Strengths:

- Explicitly increases the number of young people entering the fishery (albeit temporarily)

- Provides some opportunities for young people to develop their knowledge and experience of the fisheries

Weaknesses:

- Limited impact due to temporary nature of such endorsements
- Could lead to gangmastering-related issues
- Health and safety issues with endorsees accessing a fishery without an experienced chaperon to shadow
  - Endorsees would need to acquire a foreshore gatherers' safety training certificate (removes potential for short-notice endorsements unless endorsee already has this)
- Authority would need to define the relationship that a permit holder must have with their endorsee and, if necessary, request conclusive proof

**BWG Recommendation: DO NOT ADOPT (no permanent benefit, safety risks associated with young people going out onto fisheries without an experienced chaperon)**

## 2.5 Handover Scheme

This is similar to the above Endorsee Scheme, but instead of a permit holder nominating a young person to fish on their permit temporarily, they would nominate someone to take their permit permanently, with them then exiting the fishery entirely. Officers have anecdotal evidence that some older Byelaw 3 permit holders are reluctant to give up their permit when they have no say over who will take it in their stead (*i.e.* it simply goes to the next person on the waiting list). Therefore, if permit holders could nominate who took their permit, they might be inclined to give it up. This would increase the socio-economic potential of the fisheries by having relatively inactive fishers replaced by more active fishers.

However, there are foreseeable risks around adopting such a policy. The Authority would need it to require that an outgoing permit holder can demonstrate that their nominee has some relationship to them (*e.g.* direct familial relationship such as child or grandchild). Otherwise, we might end up in a situation whereby outgoing permit holders nominate their permits to the 'highest bidder', which is not an acceptable scenario. Furthermore, this policy creates a risk of legal challenge for the Authority, as it disadvantages those on the waiting list who are not young people. It would mean waiting list members who were not classed by the Authority as 'young' would be disadvantaged to some extent at the expense of young people, and would face longer waits for a permit than they would otherwise have had. This could lead to potential legal challenges from affected individuals. It could also be argued that, in all likelihood, if this policy was implemented, every single permit holder who was willing to relinquish their permit would wish to nominate a specific person to take it over from that. To that end, the waiting list would be rendered entirely meaningless, as new permit holders would be created based on their relationship to outgoing ones, not on their position on the waiting list.

Strengths:

- Explicitly increases the number of young people entering the fishery
- Provides greater incentive for young people to join the waiting list

- Increases turnover of permit holders, increasing potential for waiting list members, including young people, to access the fisheries
- Increases the fisheries' socio-economic contributions by having more active permit holders
- Increases the overall collective knowledge and experience within the industry by virtue of increasing the number of active fishers

Weaknesses:

- Potentially renders the waiting list obsolete by having nominated new permit holders
- Authority would need to define the relationship that a permit holder must have with their handover nominee and, if necessary, request conclusive proof
- Health and safety issues with endorsees accessing a fishery without an experienced chaperon to shadow
- Preferential treatment of young people presents a risk of legal challenge to the Authority by those on the waiting list who would ultimately miss out
  - The Authority would need to seek legal advice to ensure such a policy would even be lawful, due to potential discrimination issues

**BWG Recommendation: ADOPT (subject to legal advice)**

**3. Longer-Term Options (Byelaw Review)**

In setting out the above options, consideration has been given to what is achievable in the short- to medium-term, as those options would not require any change to Byelaw 3 itself. To some extent, the wording within Byelaw 3 constrains the Authority's ability to increase the potential for young people to enter into the district's cockle and mussel fisheries. In order to remove this constraint, a formal Byelaw 3 review would need to be undertaken and agreed changes made to it. It is proposed that such a holistic formal review is undertaken in the summer of 2025<sup>3</sup> which will include, amongst other things, looking at fundamental changes that could be made to the Byelaw to address the young people issue.

Proposals falling out of this review could include:

- Increasing the overall number of permits (e.g. to 200), with a set number of these additional permits being set aside for young people
- Allowing for an apprenticeship scheme whereby a pre-defined number of young people are able to acquire an apprentice-type permit to fish, in addition to the 150 permit holders already fishing
- Reprioritising / reordering the Byelaw 3 permit waiting list to abolish the first come, first served basis upon which it is currently ordered and recasting it on the basis of some form of points-based system.

These are just some of the longer-term options that the Authority could explore as part of a formal review of Byelaw 3 in 2025; there will be other options besides that can be brought to the table. The varying strengths and weaknesses of these options are similar to some of those set out in Section

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<sup>3</sup> There is a requirement to review the Byelaw after four years anyway, which would be by June 2026.

2 of this report, and would need to be considered carefully in terms of the legal, environmental and socio-economic ramifications, amongst other things.

*Mark Taylor, CEO, North Western Inshore Fisheries and Conservation Authority, 25<sup>th</sup> October 2024*