

## **Welsh Government Activity: Update**

### **Background**

The Welsh Government has carried out a number of activities that are relevant to the Association since the last meeting in December. This report provides a brief report on these activities to inform discussions at the Association meeting.

### **Recommendations**

1. That the Association considers its response to the items reported below.

### **1. Meetings & Correspondence**

- 1.1 Since the last Association meeting, representatives of the Association and the Bangor Mussel Producers Association have met with the new Minister for Natural Resources. This meeting took place on the 25<sup>th</sup> February in Cardiff.
- 1.2 The meeting with the Minister was very businesslike. The industry representatives pledged support for the Welsh Government's strategic objectives for aquaculture, including the doubling of shellfish production by 2020. Concerns were raised that the problems associated with the creation of new Fishery Orders in Wales presented a threat to the attainment of these objectives.
- 1.3 The MSFOMA representatives tabled two documents for the Minister's information. The first of these was a letter from Andrew Oliver, setting out his interpretation of legal issues raised by WG officials (attached at Appendix A of this report). The second document was a summary of the "Legal Logjams" that WG officials have identified over the past few years (Attached at Appendix B).
- 1.4 The Minister took an active interest in the concerns raised by the MSFOMA representatives, and pledged to look into them. When pressed for a timescale for action, he indicated that he was overseeing a busy legislative schedule comprising 3 Government Bills, and that he was unable to make a specific commitment, but reiterated his commitment to act.
- 1.5 Following the meeting, MSFOMA wrote to the Minister to thank him for the meeting (see Appendix C). No response has been received, but a meeting with WG officials is due to take place in Porth Penrhyn in mid-April which will provide an opportunity to follow up on the commitments made at the meeting in Cardiff.

### **2. Menai Strait West Fishery Order Proposal**

- 2.1 The Menai Strait (West) Fishery Order was established in 1978 for a period of 30 years. This Fishery Order provided the basis for the development of some oyster and mussel farming activity in the western Strait. Unfortunately the Order lapsed in 2008, preventing the further development of these businesses. The operators who had been working in this area before 2008 have been progressing an application for a new Fishery Order to set the foundations for developing sustainable shellfish cultivation in the western Menai Strait.

- 2.2 Progress with the creation of a new Fishery has been delayed by concerns raised by WG lawyers. These arise from the WG perception that a Fishery Order cannot be granted for a period of more than 7 years within an area that has been designated a Special Protection Area or a Special Area of Conservation, and thus must be managed in accordance with the requirements of the EC Habitats
- 2.3 At the meeting with the Minister in Cardiff in February, WG officials re-stated the view that a Fishery Order in a European Marine Site can endure for no more than 7 years. MSFOMA representatives asked that they should review this stance in the light of the recent legal advice from Andrew Oliver (Annex A of this report); and also asked that WG should take a decision on this matter soon, so that MSFOMA could determine its formal response to any decision taken.
- 2.4 No further information has been received since the meeting with the Minister in February.

MSFOMA Secretariat  
March 2015

**Annex A:** Letter from Andrew Oliver to Chair of MSFOMA providing legal advice.

**Andrew Jackson**

The Law Specialists

**FIRST CLASS**

Dr S Utting  
Menai Strait Fishery Order Management Association  
Port Penrhyn  
Bangor  
LL57 4HN

**Our Ref:** ACO/db/44102/1

**Your Ref:**

**Date:** 23 February 2015

**BY POST AND EMAIL**

Dear Dr Utting

**Potential Menai Strait (West) Fishery Order**

I have been asked to confirm advice previously given regarding difficulties being encountered by MSFOMA in connection with the approval of an application for a fishery order in the Western Menai Strait.

As previously advised the legal basis of shellfish cultivation is the Sea Fisheries (Shellfish) Act 1967 (the "1967 act"). Whilst this Act dates back nearly 50 years, it has recently been amended by the Marine and Coastal Access Act 2009 and has therefore been subject to a very recent review of its terms.

The 1967 act empowers the fisheries minister to create "fisheries orders" that create private shell fishing rights thereby allowing sustainable cultivation practices to replace wild harvesting.

From the information I have seen it would appear that the Welsh Government has received advice from its legal advisors that to grant such an order in the western Menai Strait under the 1967 act for a period of more than 7 years would be unlawful. I gather that this is because this is considered to be contrary to obligations imposed upon the Welsh Government under EU legislation for the protection of the European Marine Site in the Menai Strait.

Having considered this matter very carefully, I conclude that there is no clear legal obstacle to creating a new Fishery Order in a European Marine Site. I base this view on my consideration of the responsibilities of the Grantee of a Fishery Order with respect to European Marine Sites; the implications of a ruling by the European Court of Justice; the powers of the Welsh Government under the Marine & Coastal Access Act 2009; and finally the Government of Wales Act 2006.

In order to assist you in your meeting with the Welsh Minister then I would make the following more detailed comments which will hopefully clarify the situation.

**1. Responsibilities of the Grantee of a Fishery Order**

When a Fishery Order is created under the 1967 Act, the power to manage the area covered by the Order is conferred on a "Grantee", who can be either a person or an organisation. In the case of the proposed Menai Strait (West) Fishery Order, the Grantee would be MSFOMA.

Because the Grantee of a Fishery Order is a position created under a public Act, the Grantee also has responsibilities with respect to European Marine Sites. The key legislation in this respect is

the Conservation of Habitats and Species Regulations 2010 (SI 2014/490), and in particular regulation 7. Pursuant to regulation 7(1) it is stated that the competent authority includes:-

- (a) Any Minister of the Crown (as defined in the Ministers of the Crown Act 1975), government department, statutory undertaker, public body of any description or person holding a public office;
- (b) The Welsh Ministers; and
- (c) Any person exercising any function of a person mentioned in sub paragraph (a) or (b)

It is clear from this definition that the Welsh Ministers are to be regarded as a competent authority. However, it is equally clear that MSFOMA would also be a competent authority. This is because regulation 7(1)(c) states that a competent authority can be any person exercising any function of a person mentioned in sub paragraphs (a) or (b) of regulation 7(1). That includes any person holding a "public office". Public office is defined in regulation 7(3)(b)(ii) as an office created or continued in existence by a public general Act or by legislation passed by the national assembly for Wales.

The duties of competent authorities are set out in regulations 8 and 9, in particular there is a duty on a competent authority under a regulation 9(1) to exercise its functions to secure compliance with the requirements of the Directives (being *inter alia* the habitats directive). In this way any grantee of an order under the 1967 act, including MSFOMA, is therefore required to protect the marine site.

On the basis that the grantee (in this case MSFOMA) is under a statutory duty to comply with the habitats directive, I can see no reason why the Welsh ministers should object to granting an order for a period longer than 7 years. It is especially the case given that the 1967 act states that an order can be granted for a maximum of 60 years (section 1(3)). It is my opinion that when the 1967 act was reviewed during the making of the Marine and Coastal Access Act 2009 the 60 year period set out in the 67 act was not disturbed on the basis that there was sufficient protection for Marine Sites under the 2010 regulations, as well as the power of the Secretary of State to review orders under the 67 act.

In the circumstances I can therefore see no legal reason why the Welsh Government should impose a 7 year limit on the granting of an order when the statutory time limit is 60 years. It also appears perverse that the Welsh Government are imposing such conditions when their counterparts in England have, it would seem, approved the making of orders for much longer periods as recently as this calendar year.

## **2. European Court of Justice – "Waddensee Ruling"**

The actual judgement of the Waddensee case (*Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (C-127/02)*) is complex but in essence the Waddensee test states that any plan or project not directly connected with or necessary to the management of a Marine Site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.

It is also clear from the judgement that the Habitats Directive must be applied to projects and activities affecting the environment as equally to existing activities, as well as new activities. It therefore seems wrong in law to argue that the effect of the Habitats Directive is limited to the creation of a new fisheries order for the Western Menai Strait when there is in fact an existing

order which is equally as affected by the Waddensee ruling in operation for the Eastern Menai Strait

The rationale for the Eastern Menai Strait not falling foul of the Waddensee Ruling is, in my view answered by the examination of the existing legislation requiring compliance with the Habitat's Directive set out above under item (1).

**3. Welsh Government Powers under the Marine & Coastal Access Act 2009**

You have asked me to confirm your understanding that the Welsh Government has the power under the Marine & Coastal Access Act (the "Marine Act") to manage fishing activity within a Fishery Order. I gather that Welsh Government officials had been of the view that this was not possible.

I can confirm that there are powers set out in S.155 et seq of that Marine Act that enable IFCA's to manage fisheries using byelaws. There are, of course, no IFCA's in Wales. The Marine Act was written with this in mind, and I note that under S.189 of the Marine Act, "*the Welsh Ministers may by order make any provision in relation to Wales which the authority for an IFC district [i.e. an IFCA] may make for that district by a byelaw...*".

The existence of this power should provide the Minister with further comfort. Not only is the grantee of a fishery obliged to comply with the requirements of the Habitats Directive, the Minister has the power to make a byelaw to prevent harmful activities from occurring even if the Grantee does not discharge their duties.

**4. Government of Wales Act**

Finally I am aware that the Welsh Government legal advisors have indicated that section 80 of the Government of Wales Act 2006 imposes special responsibilities on Welsh Ministers. Having reviewed this piece of legislation I can not see that the Welsh Ministers have any more different or onerous obligations imposed upon them than the UK Ministers and again this therefore begs the question as to why in England there seems to be no issue with the making of appropriately worded orders for a period of longer than 7 years, yet in Wales there seems to be an insistence that 7 years is a maximum period that can be granted.

In the circumstances I can still see no good legal reason why an appropriately worded order can not be made under the 1967 Shellfish Act for the Menai Strait West for a period of longer than 7 years.

I trust this letter assists but if you require any further information please do not hesitate to contact me.

With best wishes.

Yours sincerely



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## **Annex B:** Summary of “Legal Logjams”.

### **DELIVERING THE WELSH GOVERNMENT’S AQUACULTURE GOALS LEGAL LOGJAMS**

#### **Background**

The Menai Strait is the site of the UK’s largest mussel producing area, which employs 23 local people and generates over £9M in export trade per year for the Welsh economy. All of the shellfish farming activity takes place within the Conwy Bay and Menai Strait Special Area of Conservation, and the industry enjoy a good relationship with Natural Resources Wales.

The legal basis of shellfish cultivation is the Sea Fisheries (Shellfish) Act 1967. This empowers the Fisheries Minister to create “Fishery Orders” that privatise shellfishing rights, and allow for sustainable cultivation practices to replace wild harvesting. The Fishery Order that is the basis of cultivation in the eastern Menai Strait is due to expire in 2022.

The industry are keen to build on the success of the shellfish farming in the eastern end of the Menai Strait by reinstating shellfish farming areas in the western Menai Strait. Progress has been delayed by legal logjams, which we have summarised overleaf. If these can’t be solved, then the Welsh Government’s goals for aquaculture growth will not be delivered.

#### **We support the Welsh Government’s goals**

The Welsh Government has set out its intention to double shellfish aquaculture production by 2020. We support this goal. From a practical perspective it is both realistic and attainable.

Unfortunately a series of legal logjams have halted progress with the development of the shellfish industry in recent years. WG goals will only be attained if the shellfish industry, politicians and officials are able to tackle these legal logjams. If they are not, there will be no shellfish cultivation in the Western Menai Strait, and the sustainable businesses and jobs in the eastern Menai Strait will come to an end in 2022. The Welsh Government Strategy will not be delivered, and the Welsh Government will also have failed to deliver one of the requirements of the EC Regulation establishing the Common Fisheries Policy<sup>1</sup>.

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<sup>1</sup> See, for instance, the obligations for Member States set out in Article 34 of EC Regulation 1380/2013.

### Legal logjams

We have summarised below the legal logjams that have been cited by WG officials. Our own lawyers have provided us with advice on many of these issues, and we have summarised the basis of this advice.

Issue	WG View and Basis	MSFOMA View & basis
<b>Is MSFOMA a “competent authority”?</b> Competent authorities have certain legal duties and responsibilities to protect European Marine Sites.	<b>No.<sup>2</sup></b> Legal Basis of view not stated (Professional Privilege cited).	<b>Yes.</b> This is clearly set out in the Conservation of Habitats and Species Regulations 2010 by virtue of Regulation 7(3)(b)(ii). Duties of Competent Authorities are set out in Regulations 8 & 9. This is not unusual. Other non-statutory bodies (such as Network Rail and Dwr Cymru) are “competent authorities”.
<b>Duration.</b> Can the WG make a Fishery Order for more the 7 years in a European Marine Site?  If 7 years is the limit, then it is impossible to secure the economic investment needed to develop a productive Fishery Order.	<b>No.</b> <i>“To comply with our Habitats Directive Obligations, that [7 years] was also the maximum period over which the Welsh Ministers could consider granting the proposed Order.”<sup>3</sup></i>  No clear or consistent legal or scientific basis has been presented to support this view.	<b>Yes.</b> There is no legal basis for constraining the duration of a Fishery Order in the Habitats Directive. There is no scientific basis to underpin a period of 7 years as the maximum duration. The Grantee of a Fishery Order has a duty, as a “competent authority” to protect the European Marine Site. The Minister has the power under existing legislation to either rescind the Fishery Order or implement byelaws to prevent harm arising.
<b>Waddensee Ruling</b> If it is illegal to make a new Fishery Order for more than 7 years, are existing Fishery Orders illegal.	<b>?</b> Official and WG lawyers seem to have been unaware of this.	<b>Yes</b> The Waddensee ruling by the ECJ indicates that the Habitats Directive applies to existing activities as well as new activities in equal measure. So if the Menai West operation would be illegal, any other Fishery Order in a European Marine Site lasting more than 7 years would also be illegal.

<sup>2</sup> E-mail from Bill Somerfield to MSFOMA, 26<sup>th</sup> November 2014 in response to our letters of 31<sup>st</sup> and 27<sup>th</sup> October 2014.

<sup>3</sup> Letter from Bill Somerfield to MSFOMA, 18<sup>th</sup> June 2014

Issue	WG View and Basis	MSFOMA View & basis
<b>New legislation</b> Will the changes proposed in the WG Environment Bill improve the situation	<b>Yes.</b> The Minister will be able to revoke an Order if it causes harm to the marine environment.	<b>No</b> All of the changes that would have made a difference are reported to have been vetoed by WG lawyers. The only proposal to have survived is a power of the Minister to revoke a Fishery Order (which essentially duplicates existing powers.
<b>Being Welsh</b> Does the Government of Wales Act make any difference to the application of EC legislation in England & Wales?  If it does, then the Welsh industry is at a competitive disadvantage to England.	<b>Yes</b> The Government of Wales Act 2006 gives Welsh Ministers special responsibilities, different to and more onerous than English Ministers. <sup>4</sup>	<b>No.</b> The effect of §80 this Act is to make WG Ministers accountable to Europe in the same way as UK Ministers are (since the UK is the Member State, and Wales is not). It does not create a different level of responsibility or accountability.
<b>Welsh Byelaws</b> Does the Minister have the power to make a byelaw to prevent a fishing activity in a Fishery Order?	<b>No.</b> This was cited by a WG official as a key constraint on making Fishery Orders in European Marine Sites	<b>Yes.</b> This power of the Welsh Minister is set out in the Marine & Coastal Access Act 2009 at §189 (relating to powers under §155 et seq).
<b>WG Fisheries Strategy</b> Can WG achieve the Fisheries Strategy goal of doubling shellfish aquaculture production by 2020?	<b>?</b>	<b>Yes</b> But only if all of these logjams are removed.

MSFOMA  
February 2015

<sup>4</sup> Telephone conversation between James Wilson and Jodi Massey from WG, June 2013.



## **Annex C: Letter from James Wilson to Minister, March 2015**

### **Menai Strait Fishery Order Management Association**

Porth Penrhyn, Bangor, LL57 4HN

Carl Sargeant, AM  
Minister for Natural Resources  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

March 2015

Dear Minister

#### **Shellfish farming in the Menai Strait**

Thank you very much for meeting with representatives from MSFOMA last week. We very much appreciated the opportunity to discuss the challenges currently facing shellfish farmers in Wales with you.

We were particularly pleased that you were able to hear our concern that the main challenge to the delivery of the Welsh Government and EC objectives for developing shellfish aquaculture in Wales is the interpretation of marine fisheries and environmental legislation by the WG legal department. We are frustrated that our competitors elsewhere in the UK and in Europe do not face the same difficulties. The swift resolution of this problem is vital for the development of the Welsh shellfish farming industry, and to safeguard existing jobs and skills in rural Wales.

We were delighted with your assurance that you would look into this problem, and look forward to hearing news of progress. We hope that the list of legal issues and the recent advice from our lawyer that we tabled at the meeting will help you in this regard.

During the course of the meeting you mentioned the busy legislative programme that you have been tasked to deliver, and we appreciate that your time is very limited. Nevertheless we hope that you will be able to dedicate some of your time to this matter, as dozens of livelihoods in Wales depend on the resolution of the logjams that are presently delaying the delivery of the Welsh Government Strategy commitment to double shellfish aquaculture production by 2020.

We very much look forward to meeting you again to discuss progress. I understand that you are due to be attending the Seafood Expo in Brussels in May, and we look forward to welcoming you to the Seafood Wales stand.

In the meantime, please do not hesitate to contact me if you have any queries about the matters we discussed.

Yours sincerely

JAMES WILSON  
Member, MSFOMA  
cc. Rhun Iddon, A.M.

Menai Strait Fishery Order Management Association  
Company registered in England and Wales No. 07163689

## **North West Inshore Fisheries and Conservation Authority Activity**

### **Background**

The North West Inshore Fisheries and Conservation Authority (NWIFCA) is responsible for managing sea fisheries, including mussel fisheries, in the coastal waters lying between the Dee and the Solway Firth. This area includes the UK's largest seed mussel resource, which is vital to the ongoing success of the Menai Strait mussel fishery. This report provides a brief update on NWIFCA activities that could have an impact on the Menai Strait mussel fishery.

### **Recommendation**

1. That the Association should note that the NWIFCA has formally set aside proposals for a Morecambe Bay Fishery Order in favour of management through byelaws.
2. That the Association should note that the NWIFCA has established a new "Bivalve Mollusc Working Group" and that it is also proposing to develop a new "Regulation of bivalve mollusc fisheries" byelaw.
3. That progress with the proposed new vessel size byelaw is noted.

### **1. IFCA Meetings**

- 1.1 Since the last meeting of the Association the IFCA Technical, Scientific and Byelaws Sub-Committee has met (a special meeting on the 16<sup>th</sup> December 2014 and a scheduled meeting on the 10<sup>th</sup> February 2015) and a Quarterly meeting took place on the 13<sup>th</sup> March 2015. Some of the matters that are relevant to the Menai Strait mussel fishery that were discussed at these meetings are summarised briefly below.

### **2. Morecambe Bay Seed Mussel Fishery**

- 2.1 Concerns have been raised by participants in the dredge fishery about the way that this resource had been managed during 2014. The key concerns were that there had been delays in the opening of the fishery, and about the policy basis and implementation by the IFCA.
- 2.2 In response to these concerns, the IFCA has established a new working group, the "Bivalve Mollusc Working Group" that will provide a forum for all sectors and which is intended to facilitate and expedite management of the seed mussel resource in Morecambe Bay.
- 2.3 The Association is advised that the members of the Bangor Mussel Producers Association invited representatives of the IFCA aboard the Mare Gratia on the 9<sup>th</sup> February 2015 to observe dredging activity at first hand. A verbal report on this visit will be presented to the Association meeting.

### **3. Morecambe Bay Fishery Order**

- 3.1 The NWIFCA has been working on proposals to establish a new Fishery Order for all of Morecambe Bay for the past 9 years. The proposed new Fishery Order would cover all of Morecambe Bay and would establish a Regulated Fishery for cockles and mussels, as well as providing opportunities for shellfish cultivation within Several areas in the Bay.
- 3.2 At the TSB meeting on October 31<sup>st</sup> the Chief Executive of the NWIFCA submitted a report proposing that the IFCA should not progress with a Fishery Order but should instead use its byelaw making powers under the Marine & Coastal Access Act 2010 to manage mussel and cockle fisheries in Morecambe Bay.
- 3.3 At a special meeting of the IFCA subsequently held on 16<sup>th</sup> December 2014, it was resolved that “Future management of shellfisheries in Morecambe Bay and the NW District be progressed under byelaw.” To expedite this decision, the IFCA has proposed to establish a “Bivalve Mollusc Working Group”, and has promulgated proposals for the membership and terms of reference for this group (attached at Annex A).

### **4. Proposed new vessel size byelaw**

- 4.1 At the Technical, Scientific & Byelaws Sub-Committee meeting in February 2015, Officers presented a revised version of this byelaw. A copy of the revised byelaw is attached at Annex B of this report.
- 4.2 The wording of the byelaw has been considerably simplified. Text relating to the management of the seed mussel dredge fishery in Morecambe Bay has been removed, and it is now proposed that a new byelaw, the “Regulation of bivalve mollusc fisheries” byelaw should be developed for this fishery.
- 4.3 The revised vessel size byelaw addresses the concerns previously raised by this Association, and does not seem to have the same unintended consequences as earlier drafts.
- 4.4 The status of the revised byelaw is not clear. Minutes of the February TSB meeting have not yet been published and there is no evidence that the new byelaw has been formally “made” by the IFCA itself. If and when the new byelaw is “made”, it will be advertised for consultation before coming into force. There will be an opportunity for this Association to scrutinise and comment upon the proposed new byelaw at that point.
- 4.5 No information is presently available about the proposed new “Regulation of bivalve mollusc fisheries” byelaw. Progress with this proposal shall be kept under review by the Association.

### **5. Marine Protected Areas**

- 5.1 A presentation about Marine Protected Areas (MPAs) was given to the March IFCA meeting by Chris Lumb from Natural England. As well as providing a useful review of the current MPAs in the IFCA District that have been established by the UK Government under national and international legislation, this presentation

highlighted the value of the MPAs created by the IFCA to protect wildlife within the District.

- 5.2 Members of the Association are advised that there are proposals to create some new MPA areas along the coast of north-west England. In particular, it is proposed that the Morecambe Bay and Duddon Estuary Special Protection Areas (SPAs) should be combined, and that Marine Conservation Zones (MCZs) should be designated to the West of Walney Island and at Allonby Bay on the Solway Firth.
- 5.3 Underlying these proposals is a recognition that the management of shellfisheries must be compatible with MPA objectives. It is clear that this will require some kind of management plan for shellfisheries in Morecambe Bay. The development of such a plan has potential implications for the seed mussel dredge fishery, and it will be important to keep this under review.

MSFOMA Secretariat  
March 2015

## **Annex A: Proposed Objectives and Terms of Reference for the NW-IFCA Bivalve Mollusc Working Group**

### **BIVALVE MOLLUSC WORKING GROUP**

**Purpose:** to provide Members with Terms of Reference (TOR) for the proposed Bivalve Mollusc Working Group (BMWG)

#### **Bivalve Mollusc Working Group - Terms of Reference – 11<sup>th</sup> February 2015**

##### **Vision Objective and Status of the Group**

###### Vision:

To foster good relations between the various sectors with an interest in bivalve mollusc shellfish in the NWIFCA District, and to encourage co-existence and agreed sustainable management regimes between all sectors.

###### Objectives:

- 1) To ensure bivalve mollusc resources are managed sustainably;
- 2) To balance the social and economic benefits of fisheries activity against the statutory duty to protect designated marine habitats and species from such activities;
- 3) To balance the interests of all stakeholders with an interest in those fisheries;
- 4) To annually agree a plan for fair access to and sustainable exploitation of those resources by all sectors;
- 5) To support the decision making of the NWIFCA TSB sub-committee, by providing information and recommendations on the management of mussel and cockle fisheries in the NWIFCA District.

###### Status of the group:

Non-statutory, voluntary. Make recommendations to NWIFCA via TSB. Not decision making or regulatory. NWIFCA will take account of outputs of this group.

The Bivalve Mollusc Working Group (BMWG) exists to foster good relations between the various sectors with an interest in bivalve molluscs (initially mussels in Morecambe Bay but including cockles and other species as the need arises) in the NWIFCA District, and to encourage co-existence between all sectors.

The BMWG meetings will provide a forum for NWIFCA, Byelaw 3 permit holders, seed mussel industry, nature conservation and other stakeholders to discuss issues relating to the fisheries, and to discuss, agree and plan on an annual basis how the resources should be best managed, in accordance with the IFCA duties of managing resources sustainably, and the NWIFCA's adopted Sustainability Principles.

It will provide a mechanism for all sectors to input into the management of these resources, provide a means for better understanding of each sectors interests and concerns, and provide a mechanism for informing where data gaps exist and research requirements lie.

It will provide a mechanism for annually agreeing a plan for fair access to and sustainable exploitation of those resources by all sectors.

The group is facilitated by NWIFCA, which also provides the secretariat. As yet there is no budget for this group which must be run from current NWIFCA resources. The group should urgently seek any funding and sponsorship required.

The BMWG will be initially chaired by a NWIFCA Officer (CEO or deputy) and supported by NWIFCA Science Officers.

The BMWG should seek an independent chair with knowledge and expertise in bivalve mollusc fisheries and the marine environment.

Meetings will be held four times a year initially in Camforth but this may be varied by the group according to its work programme. Agenda items and papers (where necessary) must be circulated by email in advance of the meetings to allow verification. Discussions and recommendations from meetings will be noted (ie. no formal minutes will be taken) and meetings will be recorded whenever possible.

#### **Membership of BMWG**

Membership of the group consists of representatives from the following sectors and organisations. The number of representatives from each sector is initially set and is indicated in brackets:

- Byelaw 3 permit holders (2)
- Seed mussel dredge fishery (2)
- Natural England (1)
- Shellfish buyers (1)
- Aquaculture (1)
- NGO representation – eg. RSPB, WLT, Arnside and Silverdale AONB (3)
- Science expertise – eg. Bangor Uni, Liverpool Uni, Lancaster Uni, University of Cumbria (2)

Depending on the location of the fisheries the group will need to adapt, and possibly grow in size while continually ensuring a balance of representation from all sectors. Nominations for new members will be publicised and welcomed, and the group is committed to ensuring that membership is representative of the issues being explored by BMWG.

Industry representatives must represent all viewpoints in their sector and not act in self-interest.


Representatives must have a commitment to a consensus approach to decision making. Outcomes and recommendations from the BMWG will be taken to the TSB, who may agree to assign delegated powers to Officers in relation to specific fisheries.

BMWG members make a commitment to attendance of and participation in the group, and the representatives of each sector will be expected to participate in all meetings and be actively involved in work undertaken by the group. The continuity of individuals attending meetings is integral to the momentum and success of the group's work.

**Mandy Knott**  
**Senior Scientist**  
**11<sup>th</sup> February 2015**



## Annex B: Proposed new NWIFCA Byelaw 2: Vessel & Gear Restrictions

<b>NORTH WESTERN INSHORE FISHERIES AND CONSERVATION AUTHORITY</b>		
<a href="http://www.nw-ifca.gov.uk">www.nw-ifca.gov.uk</a>		E-mail: <a href="mailto:office@nw-ifca.gov.uk">office@nw-ifca.gov.uk</a>
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**ANNEX A**

**MARINE AND COASTAL ACCESS ACT 2009**

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 hereby makes the following byelaw for that District.

**NWIFCA BYELAW 2**

**VESSEL AND GEAR RESTRICTIONS**

**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. 2010/2200);
- b) "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 (S.I. 2010/2200);
- c) "the 1983 baselines" means the baselines as defined in Article 3(6) of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010/2200);
- d) "the 3 mile limit" means a line drawn 3 nautical miles seaward of the 1983 baselines;
- e) "engine power" means the power of the engine of a vessel as recorded on its Certificate of Registry as issued by the Registrar of Shipping and Seamen;
- f) "listed vessel" means a vessel registered with the Authority in accordance with paragraph 14;
- g) "overall length" has the same meaning as in regulation 1(2) of the Merchant shipping (Registration of Ships) Regulations 1993 (SI 1993/3138).

**Prohibitions**

2 No person shall use a vessel exceeding 15 metres overall length to fish for or take sea fisheries resources within that part of the District seaward of the 3 mile limit.

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3. No person shall use a vessel exceeding 10 metres overall length to fish for or take sea fisheries resources within that part of the District landward of the 3 mile limit.
4. No person shall use a vessel with an engine power exceeding 221 KW to fish for or take sea fisheries resources within the District.
5. No person shall use any towed net, dredge or other appliance from a vessel to fish for or take sea fisheries resources within the NWIFCA District except:
  - (a) a single trawl or seine fitted with a single cod-end and utilising one pair of otter boards;
  - (b) a single beam trawl; or
  - (c) when fishing for or taking shrimp or prawn of the species *Pandalus montagui*, or genera *Crangon spp.* or *Palaemon spp.* no more than two nets at any one time.

#### Exemptions

6. 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.
7. This byelaw shall not apply to a person using a vessel to fish for or take sea fisheries resources solely by means of rod and line or handline.
8. This byelaw shall not apply to a person using a vessel to fish for, dredge, transport or relay bivalve molluscs taken from within the District in accordance with a permit or authorisation issued by the Authority.

#### Historic access rights

9. Paragraphs 2, 3 and 4 do not apply to a person using a vessel that:
  - (a) is registered on a historic access rights list ("the list") maintained by the Authority; or
  - (b) is used in accordance with paragraphs 10 to 12.
10. Any vessel registered on the list will be issued with a permit valid for the lifetime of that vessel granting permission for that vessel to fish in those parts of the District to which it held entitlement prior to the date of the introduction of this Byelaw.
11. A vessel may be registered on the list if:
  - (a) an application to register the vessel is made by an owner of the vessel before the end of 6 months from the date of this byelaw being confirmed by the Secretary of State; and
  - (b) the Authority is satisfied by evidence that the vessel has been used to fish for or take sea fisheries resources within the District on at least 60 days within a period of 24 months immediately prior to the date of this byelaw being confirmed by the Secretary of State.



12. Newly constructed or purchased vessels exceeding the length restrictions set out in paragraphs 2 and 3 or the engine power restriction under paragraph 4 may be placed on the list provided that:-
  - (a) The owner can demonstrate that prior to the date of this byelaw being made, they had entered into an enforceable financial commitment to construct or purchase that vessel which complied with the relevant legacy regime; and
  - (b) The owner can demonstrate that the date of delivery prevented compliance with the provisions of this byelaw.

#### Revocation

13. The byelaws entitled 'Byelaw 3 – Size limit of boats allowed inside the District', 'Byelaw 13 – Multi-rigged trawling gear' and 'Byelaw 15 – Vessels with a registered engine power > 221 KW' made by the Cumbria Sea Fisheries Committee and in force immediately before the coming into force of this byelaw are revoked.
14. The byelaw entitled 'Byelaw 9 – Mechanically propelled vessels – maximum length' made by the North Western Sea Fisheries Committee and in force immediately before the coming into force of this byelaw is revoked.

#### *Explanatory note*

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

*This byelaw restricts the maximum length and engine power of fishing vessels that may be used within the 3 mile limit to 10 metres overall length, and within the 3 and 6 mile limit to 15 metres overall length.*

*The byelaw provides for a number of exemptions to the restrictions, and in particular exempts those fishing vessels registered with the Authority based upon their historic access to the District.*