



**Kent and Essex
Inshore Fisheries and Conservation Authority**

MARINE AND COASTAL ACCESS ACT 2009

WHELK FISHERY FLEXIBLE PERMIT BYELAW

The Kent and Essex Inshore Fisheries and Conservation Authority in exercise of its power under section 155 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

INTERPRETATION

- 1) In this byelaw-
 - (a) “the Authority” means the Kent and Essex Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Kent and Essex Inshore Fisheries and Conservation Order 2010 (S.I. 2010/2190);
 - (b) “category one permit” means a permit as described in paragraph 5;
 - (c) “category two permit” means a permit as described in paragraph 6;
 - (d) “the District” means the Kent and Essex Inshore Fisheries and Conservation Authority District as defined in Articles 2 and 3 of the Kent and Essex Inshore Fisheries and Conservation Order 2010;
 - (e) “flexible permit conditions” means those permit conditions specified in annex 1;
 - (f) “relevant fishing vessel” means a fishing boat registered in accordance with Part II of the Merchant Shipping Act 1995 and the regulations made under that Act and in respect of which a fishing licence is held that has been issued by an appropriate national authority such as; the Marine Management Organisation, Marine Scotland, Natural Resources Wales, the Department of Agriculture, Environment and Rural Affairs or the successor in function as applicable to any of the aforementioned authorities;
 - (g) “use” in relation to whelk pots means any part of the process of setting, operating or hauling pots used to fish for whelks (*Buccinum undatum*) at sea;
 - (h) “vessel” has the same meaning as specified in Section 262(2) of the Marine and Coastal Access Act 2009; and
 - (i) “whelk pot” means a pot or trap set for the purpose of catching whelks.
- 2) This byelaw comes into force on the date on which it is confirmed by the Secretary of State.

PROHIBITIONS

- 3) A person must not use a whelk pot within the District other than in accordance with a category one permit or a category two permit.

EXEMPTIONS

- 4) This byelaw does not apply to a person performing an act which 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, stocking or breeding purposes.

PERMITS

Permit Categories

- 5) The Authority may authorise the use of whelk pots by issuing a category one permit. A category one permit:
 - (a) is issued to a named person (“the permit holder”);
 - (b) is issued in relation to a relevant fishing vessel (“the permitted vessel”); and
 - (c) is subject to the permit conditions in paragraphs 12 to 27 and any flexible permit conditions attached in accordance with paragraphs 28 to 30.
- 6) The Authority may authorise the use of whelk pots by issuing a category two permit. A category two permit:
 - (a) is issued to a named person (“the permit holder”);
 - (b) is issued in relation to a vessel (“the permitted vessel”); and
 - (c) is subject to the permit conditions in paragraphs 12 to 27 and any flexible permit conditions attached in accordance with paragraphs 28 to 30.

Applying for a Permit

- 7) An application for a category one permit or a category two permit must be made using the forms which are available from the Authority's office or website.
- 8) A person applying for a category one permit or a category two permit may nominate up to two persons as their representatives (“nominated representatives”) using the forms which are available from the Authority's office or website.
- 9) No more than one permit will be issued per permitted vessel.
- 10) The following fees will be charged for each permit and each tag, all fees are payable prior to issue:

Fee	Category one permit	Category two permit
Permit fee	£100	£30
Tag fee	30p per tag	

- 11) A permit and associated tags:
 - (a) are not transferable between the permit holder and another person; or
 - (b) between the permitted vessel and another vessel; and
 - (c) are valid from the date of issue until the following 31 March.

PERMIT CONDITIONS

- 12) Only a permit holder or nominated representatives may use a category one permit or category two permit.
- 13) Only a permit holder or nominated representative can haul a permit holder's whelk pots unless agreement is obtained from the Authority for another person to haul the permit holder's whelk pots.
- 14) Each permit holder or nominated representative may set no more than the maximum number of whelk pots specified in the whelk permit held.
- 15) No permit holder or nominated representative may set a whelk pot within the District that does not have a tag issued to that permit holder by the Authority, or approved by the Authority, attached to it in a clearly visible position.
- 16) The whelk permit and tags are not transferable and must be surrendered to the Authority immediately if no longer required by the permit holder.
- 17) All tags will be issued each year for each new permit in changing colours, each permit holder is required to attach new tags when they are issued. The initial issuing or replacement of tags will be at a cost as specified in paragraph 10, payable by the permit holder.
- 18) A permit holder or nominated representative must not set a whelk pot that is fitted with a tag that has previously been notified as lost.

Lost Whelk Pots and Tags

- 19) If a permit holder loses some of their pots and tags, they may submit a written claim for replacement tags within 21 days of the loss.
- 20) A claim to the Authority to replace any tags lost must:
 - (a) be in writing;
 - (b) be made within 21 days of the loss of the tags;
 - (c) include: the time, date and position of the lost whelk pots; and
 - (d) specify the numbers of each of the lost tags.
- 21) The cost of replacement tags will be paid by the permit holder.
- 22) Claims for the replacement of less than 10% of tags issued to the permit holder will be considered by the Authority's Chief Officer.

- 23) Claims for the replacement of more than 10% of the tags issued to the permit holder will be considered by an Authority panel made up of the Chairman, Vice Chairman and Chief Officer of the Authority.
- 24) If a permit holder considers that a claim made in accordance with paragraph 22 or 23 has not been properly dealt with then an appeal must be made in writing by the permit holder to a full Authority meeting.

Catch Returns

- 25) A permit holder must submit a monthly catch return ("a catch return") to the Authority containing the following information:
 - (a) the catch;
 - (b) the effort;
 - (c) the number of whelk pots used;
 - (d) the area fished; and
 - (e) all such other information as the Authority may require.
- 26) A catch return must be submitted on the prescribed form. The forms are available from the Authority's office or website.
- 27) A catch return for any given month must be submitted no later than the fifth day of the following calendar month, regardless of whether any catch was taken in the given month.

FLEXIBLE PERMIT CONDITIONS

- 28) The Authority may attach, remove or vary flexible permit conditions, for the purpose of performing its statutory duties, which fall within one or more of the following categories:
 - (a) gear restrictions;
 - (b) catch restrictions; and
 - (c) time and effort restrictions.
- 29) The Authority may attach, remove or vary a flexible permit condition following a review conducted in accordance with the review procedure set out in paragraphs 31 to 33.
- 30) Failure to comply with a flexible permit condition constitutes a contravention of this byelaw.

REVIEW PROCEDURE

- 31) The Authority will review flexible permit conditions not less than once every three years from the date they come into force.
- 32) In reviewing the flexible permit conditions the Authority will:

- (a) 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 any change to the flexible permit conditions;
 - (b) decide whether to attach, remove or vary flexible permit conditions based upon that consultation and the information listed in paragraph 33; and
 - (c) following a decision of the Authority, permit holders will be notified in writing and flexible permit conditions will be amended as necessary at no cost to the permit holder.
- 33) The information for the purposes of paragraph 32(b) 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 deems fit;
 - (c) scientific advice provided by Centre for Environment Fisheries and Aquaculture Science or such other bodies, organisations, or persons as the Authority deems fit;
 - (d) an impact assessment of any proposed changes;
 - (e) advice given by Natural England or such other bodies, organisations, or persons as the Authority shall deem fit; and
 - (f) material information from any other relevant source.

TRANSITIONAL ARRANGEMENTS

- 34) Until 31 March 2022, a permit issued under the Whelk Permit Byelaw made by the Authority, and in force immediately before the making of this byelaw, shall constitute a permit for the purposes of, and subject to, this byelaw.

REVOCATION

- 35) The byelaw with the following title made by the Authority in exercise of its powers under section 155 of the Marine and Coastal Access Act 2009 and in force immediately before the making of this byelaw is hereby revoked:
- (a) 'Whelk Permit Byelaw' made on the 18 January 2013.


I hereby certify that the above byelaw was made by the Kent and Essex Inshore Fisheries and Conservation Authority at their meeting on the 30 November 2020.



Clerk

Kent and Essex Inshore Fisheries and Conservation Authority.
Paragon House, Albert Street, Ramsgate, Kent, CT11 9HD

The Secretary of State for Environment, Food and Rural Affairs, in exercise of the power conferred by section 155(3) of the Marine and Coastal Access Act 2009, confirms the Whelk Fishery Flexible Permit Byelaw made by the Kent and Essex Inshore Fisheries and Conservation Authority.



Colin Faulkner
Deputy Director,
External Fisheries Negotiations & Trade Policy

A Senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs

Date: 03 August 2021

Explanatory Note (not part of byelaw)

This byelaw prohibits the setting of whelk pots without a permit and restricts the number of whelk pots that may be set by a permit holder or nominated representatives.

The byelaw also introduces a requirement to riddle the whelks which are caught to ensure that small whelks are returned to the seabed and specifies a minimum landing size of 53 millimetres shell length with a 5% undersize tolerance.

The flexible permit conditions of this byelaw will be reviewed by the Authority at least every three years.

ANNEX 1 - FLEXIBLE PERMIT CONDITIONS

TIME AND EFFORT RESTRICTIONS

- 1) The maximum number of whelk pots which may be used inside the District with a category one permit is 300.
- 2) The maximum number of whelk pots which may be used inside the District with a category two permit is ten.

GEAR RESTRICTIONS

Whelk pot construction

- 3) All whelk pots must include at least ten escape holes in the sides of the pot. These holes must not be blocked or obstructed in any way when the pot is set on the seabed.
- 4) The escape holes must be of a size that a round bar, the diameter of which is 25 millimetres, will pass freely through the hole.

Marking of gear

- 5) Each string or shank of whelk pots must be marked by a floating buoy or dahn flag, of at least 30 centimetres in diameter or minimum dimension, at each end. Each of these buoys or flags shall be clearly marked with the whelk permit number under which authorisation the whelk pots are set, as well as the Port Letters and Numbers of the vessel.

Riddling of whelks

- 6) Following the hauling of each string of whelk pots, whelks must be riddled across a riddle which shall be designed and operated so that the retained whelks are in contact with the riddle for its full length.
- 7) The riddle must consist of parallel bars, with a minimum spacing between bars of 25 millimetres.
- 8) For the purposes of paragraphs 6 and 7, a 'riddle' is a fixed or moving flat or cylindrical apparatus which can effectively separate and reject whelks which pass between the bars.

CATCH RESTRICTIONS

- 9) A person must not remove from the fishery, retain on board, tranship or land whelks which measure less than 53 millimetres shell length, but must return them immediately to the sea.
- 10) By way of derogation from paragraph 9, an allowance of no more than 5% by weight of a representative sample may measure less than the specified size. A representative sample will consist of no less than three samples of 5 kilograms in weight, with each sample being taken from different parts of the catch.
- 11) Any whelks on board or landed from a vessel which:
 - (a) holds a permit to use whelk pots within the District under a category one permit or a category two permit; and
 - (b) during a single fishing trip, retains whelks caught both within and outside of the District;

must be clearly separated into those whelks retained from whelk pots outside the District and those retained from whelk pots within the District and must be marked accordingly.