

Appendix 4



Kent and Essex Inshore Fisheries and Conservation Authority

MARINE AND COASTAL ACCESS ACT 2009

WHELK FISHERY FLEXIBLE PERMIT BYELAW 2020

The Authority for the Kent and Essex 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.

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 (SI 2010 No 2190);
 - (b) “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 (SI 2010 No 2190);
 - (c) “category one permit” means a permit as described in paragraph 5;
 - (d) “category two permit” means a permit as described in paragraph 6;
 - (e) “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.
 - (f) “use” in relation to whelk pots means any part of the process of setting, operating or hauling pots used to fish for whelks at sea
 - (g) “whelk pot” means a pot or trap set for the purpose of catching whelks

PROHIBITIONS

2. No person shall use a whelk pot within the District other than in accordance with a category one permit or a category two permit.
3. Any whelks on board or landed from a relevant fishing 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 the same fishing trip has used whelk pots within the District and outside of the District;

shall be deemed to have been taken from the District; unless the whelks retained from pots outside the District are stored separately from those retained from pots inside the District and must be marked accordingly.

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, breeding or fisheries management 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) permits the use of a “maximum number of whelk pots” to be as specified in paragraph 1 of the flexible permit conditions;
 - (b) is issued to a named person (“the permit holder”);
 - (c) is issued in relation to a named relevant fishing vessel (“the named vessel”);
 - (d) is subject to the permit conditions in paragraphs 19 to 28 and any flexible permit conditions attached in accordance with paragraphs 29 to 32.
- 6. The Authority may authorise the harvesting of whelks by issuing a category two permit. A category two permit:
 - (a) permits the use of a “maximum number of whelk pots” to be as specified in paragraph 2 of the flexible permit conditions;
 - (b) is issued to a named person (“the permit holder”);
 - (c) is issued in relation to a named relevant fishing vessel (“the named vessel”);
 - (e) is subject to the permit conditions in paragraphs 19 to 28 and any flexible permit conditions attached in accordance with paragraphs 29 to 32.

Applying for a Permit

- 7. A person may not apply for a category one permit or a category two permit if they:
 - (a) Already hold either a category one permit or a category two permit for the same year; or
 - (b) Are already named on a category one permit or a category two permit as a representative of the permit holder for the same year.
- 8. No more than one permit will be issued per relevant fishing vessel.
- 9. An application for a category one permit or a category two permit must be made using the forms available from the Authority's office or its website.

10. A person applying for a category one permit or a category two permit may nominate up to two persons as their representatives (“nominated representatives”), provided that a person nominated is not:
- (a) A category one permit holder;
 - (b) A category two permit holder; or
 - (c) Already nominated as a representative on a category one permit or a category two permit.
11. The following fees will be charged for each permit which is payable prior to issue:

| Fee | Category One Permit | Category Two Permit |
|------------|---------------------|---------------------|
| Permit fee | £100 | £30 |
| Tag cost | 30p per tag | |

12. A permit:
- (a) is not transferable between the permit holder and another person or between the named vessel and another vessel; and
 - (b) is valid from the date of issue until the following 31st March.

PERMIT CONDITIONS

13. A category one or category two permit may only be used by the permit holder or a nominated representative using the named vessel, and no other person, other than a nominated representative, shall haul any permit holders whelk pots without firstly obtaining the agreement of KEIFCA.
14. Each permit holder may set no more than the maximum number of whelk pots for the whelk permit held by that person.
15. No permit holder shall set a whelk pot within the District that does not have a tag issued to that permit holder by KEIFCA, or approved by KEIFCA, attached to it in a clearly visible position.
16. Each string or shank of pots must be marked by a floating buoy or dahn, of at least 30cm diameter or minimum dimension, at each end. Each of these buoys shall be clearly marked with the whelk permit number under which authorisation the pots are set, as well as the PLN of the vessel.
17. The whelk permit and tags shall not be transferable and must be surrendered to KEIFCA immediately if no longer required by the person it was issued to.
18. All tags will be reissued every year in changing colours. The reissue or replacement of tags will be at a cost of 30 pence per tag.

Lost 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. This claim should include the time, date and position of the loss together with the numbers of the lost tags. The cost of replacement tags will be paid by the applicant. Claims for replacement of less than 10% of tags will be considered by the Chief Officer. Claims for more than 10% of tags will be considered by an

Authority Panel made up of Chairman, Vice Chairman and Chief Officer. Any appeals must be made in writing by the permit holder to a full Authority meeting.

20. No permit holder shall set a whelk pot that is fitted with a tag that has previously been notified as lost.

Catch Returns

21. The permit holder must submit to the Authority no later than the 5th day of each month a completed form provided by the Authority containing such information in regard to catches and fishing effort as the Authority may require, which will include accurate information regarding the quantities of whelks taken, the area fished and the number of pots used.

FLEXIBLE PERMIT CONDITIONS

22. The Authority may attach, remove or vary flexible permit conditions which fall within one or more of the following categories:
 - (a) Gear restrictions;
 - (b) Catch restrictions;
 - (c) Spatial restrictions;
 - (d) Time and effort restrictions;
 - (e) Electronic monitoring equipment
23. 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 28 and 29.
24. The flexible permit conditions that apply until the first review pursuant to paragraphs 28 and 29 are those set by the Authority taking into account the Impact Assessment that accompanies this byelaw and all other material considerations.
25. Contravention of a flexible permit condition constitutes a contravention of this byelaw.

REVIEW PROCEDURE

26. The Authority shall review flexible permit conditions not less than once every three years as follows:
 - (a) the Authority shall 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, remove or vary a flexible permit conditions based upon that consultation and the information listed in paragraph 29; and
 - (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.
27. The information for the purposes of paragraph 28(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 shall think fit;
- (c) Scientific advice provided by CEFAS or such other bodies, organisations, or persons as the Authority shall think 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 think fit;
- (f) Material information from any other relevant source.

REVOCATION

28. The byelaw with the following title made by 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 and in force immediately before the making of this byelaw are hereby revoked:

- (a) 'Whelk Permit Byelaw' made on the 18th January 2013.

29. The byelaw with the following title made by the Kent and Essex Inshore Fisheries and Conservation Authority in exercise of its power under section 157 of the Marine and Coastal Access Act 2009 and in force immediately before the making of this byelaw are hereby amended as follows:

- (a) The minimum size of the common whelk specified in the schedule to the 'Fish, Mollusc and Crustacea Emergency Byelaw 2019' is deleted from the schedule.

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

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 2020 made by the Kent and Essex Inshore Fisheries and Conservation Authority on
XXXXXXXXXXXXXXXXXX

The said Byelaw shall come into force on 1st April XXXX

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

Date:

Explanatory Note (not part of byelaw)

The purpose of this byelaw is to provide protection against over exploitation of whelk stocks within the Authority's district by prohibiting the setting of whelk pots without a permit and restricting the number of whelk pots that may be set. The technical requirements of this byelaw will be reviewed by Kent and Essex Inshore Fisheries and Conservation Authority at least every 3 years.

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FLEXIBLE PERMIT CONDITIONS

TIME AND EFFORT RESTRICTIONS

1. The maximum number of pots which may be used inside the District with a Category 1 permit is 300.
2. The maximum number of pots which may be used inside the District with a Category 2 permit is 10.

GEAR RESTRICTIONS

Whelk pot construction

3. All whelk pots must include at least ten (10) escape holes in the sides of the pot. These holes must be not be blocked or obstructed in any way when the pot is set on the seabed.
4. These escape holes must be of a size that a round bar, the diameter of which is 25 millimetres, will pass freely through the hole.

Riddling of whelks

5. Following hauling of each string of 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.
6. The riddle must consist of parallel bars, with a minimum spacing between bars of 25 millimetres and a minimum bar diameter of 16 millimetres

CATCH RESTRICTIONS

7. No person shall remove from the fishery, retain on board, tranship or land whelks (*Buccinum undatum*) which measure less than 53 millimetres shell height, but shall return them immediately to the sea.
8. 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 kg in weight, with each sample being taken from different parts of the catch.