



**Eastern  
Inshore Fisheries and Conservation Authority**

**MARINE AND COASTAL ACCESS ACT 2009 (c. 23)**

**The Wash Emergency Byelaw 2018**

The Authority for the Eastern Inshore Fisheries and Conservation District in exercise of its powers under sections 155, 156 and 157 of the Marine and Coastal Access Act 2009 makes the following emergency byelaw for the District.

**Interpretation**

1. In this byelaw:
  - a) 'the Authority' means the Eastern Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Eastern Inshore Fisheries and Conservation Order 2010 (SI 2010/2189);
  - b) 'fishing' includes prop-washing which is the practice of turning a vessel in tight circles to aid the fishing of cockles; digging for bait; the shooting, setting, towing and hauling of fishing gear; gathering sea fisheries resources by hand or using a hand operated implement; and catching, taking or removing sea fisheries resources and 'fish' is to be construed accordingly;
  - c) 'named representative' means a person who has been granted permission to fish from a vessel by the owner of that vessel, and has been nominated by the owner of that vessel for the purposes of paragraph 10;
  - d) 'owner' means the majority shareholder of a vessel as recorded on the certificate of registry for that vessel granted under the Merchant

Shipping Act 1995 (c.21) and the Merchant Shipping (Registration of Ships) Regulations 1993 (SI 1993/3138), or the certificate of registry for that vessel in the Channel Islands or Isle of Man;

- e) 'prescribed species' means any of the species specified in the Wash Fishery Order 1992 (SI 1992/3038);
- f) 'registered vessel' means a vessel:
  - i. registered under Part II of The Registry of Shipping and Seaman as governed by the provisions of the Merchant Shipping Act 1995 and the Merchant Shipping (Registration of Ships) Regulations 1993, or in the Channel Islands or Isle of Man; and
  - ii. in respect of which there is a valid fishing licence issued under the Sea Fish (Conservation) Act 1967 (c.84);
- g) 'regulated fishery' means the fishery managed by the Authority under the provisions of the Wash Fishery Order 1992 (SI 1992/3038);
- h) 'The Wash Marine Protected Areas' means any of the following conservation designations as they apply within the Wash restricted area':
  - i. A site of special scientific interest, within the meaning of Part 2 of the Wildlife and Countryside Act 1981 (c.69);
  - ii. A national nature reserve declared in accordance with section 35 of that Act;
  - iii. A Ramsar site, within the meaning of section 37A of that Act;
  - iv. A European marine site, within the meaning of the Conservation (Natural Habitats, &c) Regulations 1994 (S.I.1994/2716);
- i) 'the Wash Restricted Area' means the area or areas between eastern and southern boundaries of the Wash Fishery Order 1992 (SI 1992/3038) and the western and southern boundaries of the several fishery of the le Strange Estate as defined in the judgement of Mr David Halpern QC sitting as a deputy High Court judge and handed down by the High Court on the 27<sup>th</sup> July 2018 and bounded at the North East by a line drawn between a point with the latitude

52°58.80'N and a longitude 0°32.02E and another point with the latitude 52°58.48'N and a longitude 0°32.50'E.

- j) 'total allowable catch' means the quantity of cockles that can be fished determined by annual surveys and the Management Policies for the regulated fishery.
- k) 'vessel' means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) and a hover craft or any other amphibious vehicle, used or capable or being used as a means of transportation on water;
- l) 'Wash Restricted Area Permit' means a permit issued under paragraph 5 granted for the fishing of the prescribed species within the Wash restricted area.

## **Prohibitions**

- 2. A person must not fish for any of the prescribed species from within the Wash restricted area unless:
  - a) that person is the holder or a named representative of a Wash Restricted Area Permit; and
  - b) from a vessel which is named on that Wash Restricted Area Permit.
- 3. The Regulations made under Article 7 of the Wash Fishery Order 1992 apply within the Wash restricted area and to persons fishing under the Authority of a Wash Restricted Area Permit.
- 4. Failure to comply with the Regulations made under Article 7 of the Wash Fishery Order 1992 so far as they apply within the Wash Restricted Area is an offence against this byelaw.

## **Permits**

- 5. The Authority may issue a Wash Restricted Area Permit to the owner of a registered fishing vessel.
- 6. A vessel may be named on a maximum of one Wash Restricted Area Permit.

7. Any change in legal or beneficial ownership of a registered fishing vessel after the issue of the Wash Restricted Area Permit will result in the cancellation of the permit issued on which that vessel is named.
8. Wash Restricted Area Permits will be valid for 12 months from the date of issue.
9. Wash Restricted Area Permits are not transferrable between persons or vessels.
10. An application for a Wash Restricted Area Permit must be made using printed forms available from the Authority. These forms will require applicant and vessel details. The applicant may nominate up to 2 persons as their named representatives whose details must also be entered on the application form.
11. The Authority may restrict the number of Wash Restricted Area permits issued and may set criteria to restrict eligibility for a Wash Restricted Area Permit in accordance with the procedure set out in Schedule 1.
12. The Authority may suspend the issuing of Wash Restricted Area Permits for a period or for periods of time not exceeding until the following 1<sup>st</sup> June if there is an enhanced risk to stocks or if there is a risk to site integrity in relation to any of The Wash Marine Protected Areas.
13. A fee will be charged for each Wash Restricted Area Permit which must be paid prior to the issuing of the permit. The fee for a Wash Restricted Area Permit is £44.

### **Opening and Closing the Fishery**

14. The Authority may open the fishery in conjunction with the regulated fishery following annual stock surveys to establish the Total Allowable Catch and having ascertained the fishery would not result in an adverse effect in relation to any of The Wash Marine Protected Areas.
15. The Authority may close the fishery or parts thereof within the Wash Restricted Area for a period of time or for periods of time if there is an enhanced risk to stocks or if there is an enhanced risk to site integrity in relation to any of The Wash Marine Protected Areas.
16. The Authority may close the fishery if the annual Total Allowable Catch has been expended.

### **Flexible permit conditions**

17. The Authority may attach to permits flexible conditions which fall within one or more of the categories listed in paragraph 18. Such conditions will mirror the annual licence conditions for licences issued under the Wash Fishery Order 1992 for the regulated fishery.
18. The categories referred to in paragraph 17 are:
  - a) vessel design restrictions;
  - b) catch restrictions;
  - c) fishing gear restrictions;
  - d) fishing effort restrictions;
  - e) spatial restrictions;
  - f) time restrictions;
  - g) vessel monitoring device requirements.
19. The Authority may issue, vary or revoke flexible permit conditions following a review conducted in accordance with the procedure set out in Schedule 1.
20. Failure to comply with a flexible permit condition is an offence against this byelaw.

### **Coming into force and duration**

21. The byelaw comes into force on the 27<sup>th</sup> July 2018 and remains in force, unless revoked or extended, until the 26<sup>th</sup> July 2019.

I hereby certify that The Wash Emergency Byelaw 2018 was made under section 157 of the Marine and Coastal Access Act (c.23) by the Chief Executive Officer, in consultation with the Chair and Vice Chair of the Eastern Inshore Fisheries and Conservation Authority in accordance with the scheme of delegations under the Constitution and Standing Orders for the Authority, on the 27<sup>th</sup> July 2018.

The said byelaw comes into force on the 27<sup>th</sup> July 2018.

Julian Gregory

Chief Executive Officer

Eastern Inshore Fisheries and Conservation Authority

6 North Lynn Business Village, Bergen Way, King's Lynn, Norfolk PE30 2JG

## **Schedule 1**

### **Procedure**

1. The procedure for restricting the number of Wash Restricted Area Permits issued and setting criteria to restrict the eligibility for a Wash Restricted Area Permit as referred to in paragraph 11, must include the following steps:
  - a) acquisition of relevant available evidence including:
    - i. scientific and survey data, and scientific advice provided by the Authority, the Centre for Environment, Fisheries and Aquaculture Sciences or such other persons as the Authority thinks fit;
    - ii. advice given by Natural England or other external authorities, organisations, persons or bodies as the Authority thinks fit; and
    - iii. information from any other relevant source including that which is relevant to effective enforcement;
  - b) consultation by such methods as the Authority considers appropriate with such stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by the proposed changes;
  - c) undertaking an impact assessment relating to the proposed changes;
  - d) consideration by the Authority of all information arising from subparagraphs (a) to (c) above.
2. The Authority must review flexible permit conditions annually. The procedure for issuing, varying or revoking flexible permit conditions as referred to in paragraph 19, will be the procedure agreed by the Authority for issuing, varying or revoking licence conditions for licences issued under the Wash Fishery Order 1992 for the regulated fishery.
3. The Authority must review restrictions of the issuing of Emergency Wash Permits no less frequently than every four years after the date that a restriction on the issuing of Wash Restricted Area Permits has taken effect.

4. The review of restrictions on the issuing of permits will be in accordance with the formal operational procedures agreed by the Authority and will include the steps set out in paragraph 1.
5. Where restrictions on the issuing of permits or flexible permit conditions are issued, maintained, varied or revoked Wash Restricted Area Permit holders will be notified in writing.



## **Explanatory Note**

(This note does not form part of the byelaw)

This emergency byelaw is intended to replicate the provisions of the Wash Fishery Order 1992 in the Wash restricted area. It requires people who fish for cockles within this area to obtain a Wash restricted area permit. They are also required to fish in accordance with any flexible permit conditions issued by the Authority.

Wash restricted area permits are valid for 12 months and a fee is payable to the Authority for the issuing of a permit which is £44.

The number of Wash restricted area permits which will be issued by the Authority can be restricted. The Authority can also set criteria to determine which applicants are eligible for a permit.

To limit the number of permits or to introduce, vary or revoke eligibility criteria the Authority will carry out a consultation with potentially affected stakeholders and produce an Impact Assessment, which will be considered by the Authority.

The issuing of permits may be suspended until the following 1<sup>st</sup> June if there is an enhanced risk to stocks or if there is an enhanced risk to site integrity of the marine protected areas of the Wash.

The fishery within the Wash restricted area may only be opened following stock surveys and completion of a Habitats Regulations Assessment. The fishery or parts of the fishery may be closed for a period or for periods of time if there is an enhanced risk to stocks or if there is an enhanced risk to site integrity of the Wash and North Norfolk Coast SAC and/or The Wash SPA. The fishery may also be closed when the Total Allowable Catch has been expended.

This byelaw also allows the Authority to impose flexible permit conditions which will reflect best available evidence. These permit conditions will be used to protect fisheries and the environment and to ensure long-term, sustainable fisheries.

Flexible permit conditions and eligibility criteria introduced at the same time that the emergency byelaw was made reflect the provisions of the Wash Fishery Order 1992. This is because the intention of the Order was to have effect on all the Wash apart from the Le Strange private fishery. The eligibility criteria and flexible permit conditions directly reflect the provisions of the Order and associated management practice and are based upon relevant scientific and other advice and have been the subject of consultation.