

By: Assistant Chief Fishery Officer  
To: Kent and Essex IFCA – 15<sup>th</sup> August 2014  
Subject: Cockle Fishery Biosecurity Emergency Byelaw  
Classification: Unrestricted

---

Summary: To consider the making of a cockle biosecurity emergency byelaw

---

**1. Background**

Following the last Authority meetings, significant progress has been made with development of the wording for a single permit byelaw to replace the existing six byelaws which manage the outside area cockle fishery. The Authority has approved the development of measures to allow smaller scale cockle fishing in this area, alongside the existing larger cockle fishing vessels as well as the introduction of biosecurity measures. Draft wording of the byelaw has been sent to the MMO and a response is awaited.

**2. Unforeseen issues**

When developing new legislation, an assessment of the new legislation on the existing regulatory landscape is carried out once the byelaw wording reaches a final draft stage. It is not possible to do this sooner as the wording has not yet been developed.

When this assessment was carried out it was found that some of the existing byelaws which also apply to the area of the Thames Estuary Cockle Fishery Order 1994 and provide mitigation of impacts on MPAs as part of the Habitat Regulations Assessment, aren't encompassed within the Regulating Order itself. If the existing byelaws were to be revoked with the licence conditions and regulations of the TECFO in their current form, management measures essential to the sustainability of the TECFO and to the compliance with the Habitats Regulations would be lost. To remedy these issues will take time as well as changes to the regulations and licence conditions of the TECFO.

A second potential issue with the proposed new legislation also was raised during this assessment. Permits for cockle fishing have already been issued for the 2014 fishery, and there is uncertainty as to whether permit holders may assert legitimate expectation and whether revocation of those permits would create a possibility of legal challenge. This resulted in consideration being given to the making of an Emergency Byelaw.

The Emergency Byelaw has been passed to our KCC Legal Advisor for their consideration and the response was positive.

- 3.** An initial Impact Assessment (attached at **Appendix A**) was undertaken and a draft byelaw was constructed. The Chairman and Vice Chairman were consulted on the 22<sup>nd</sup> July 2014 as required under the emergency byelaw procedures approved by the Authority. The Chairman and Vice Chairman, in discussions with the Chief Fishery Officer, felt that there was an urgent need for the byelaw as the Authority had previously expressed its desire to open the fishery in 2014 to enable fishermen to work the ground to ensure the continued economic viability of the outside area fleet following four years of the fishery not being opened. The Authority was minded last year to open the fishery in 2013, subject to certain conditions and these are the conditions which have been written into the Emergency Byelaw. The permit holders from both inside and outside of the Thames have expressed their wish previously for the outside cockle fishery to be opened this year (attached at **Appendix B**).
- 4.** The byelaw was then passed to MMO for consideration by their legal department and the changes they suggested were encompassed within a final draft. The byelaw was then made on 5<sup>th</sup> August 2014 and a copy of the Emergency Byelaw is attached at **Appendix C**.
- 5.** The purpose of the Authority having the opportunity to discuss and approve the Emergency Byelaw at this point is that, if the Authority is minded to approve the Emergency Byelaw, this gives the industry sufficient time prior to the start of the fishery to prepare for the fishery. This will include organising the gear aboard the vessels, ordering the new bags which they will require (as these could take 4 – 6 weeks to be delivered) and arrangement of landing locations and logistics due to the period of time since the fishery was last open.

**Recommendation:** To **DISCUSS** and **APPROVE** the actions taken