

By: Dominic Bailey, Assistant Chief Fishery Officer

To: Kent and Essex Inshore Fisheries and Conservation Authority – 22 May 2018

Subject: **BLACKWATER, CROUCH, ROACH AND COLNE ESTUARIES MARINE CONSERVATION ZONE NATIVE OYSTER FISHERY FLEXIBLE PERMIT BYELAW**

Classification Unrestricted

**Summary:**

Members are presented with the draft Byelaw (Appendix A), draft Management Plan (Appendix B) and associated Impact Assessment (Appendix C) for approval.

**Recommendation:**

The Authority is asked to **APPROVE** the making of the Byelaw taking account of the Impact Assessment provided as well as the comments from Natural England.

**Background**

Following on from previous reports to the Authority on progress, officers have been working with stakeholders on the development of a management measure for the Blackwater, Crouch, Roach and Colne Estuaries MCZ (BCRC) since early 2017. Below is a list of the meetings and consultations which have formed the pre-consultation phase of the creation of this byelaw and which have been undertaken so far:

- Industry meeting - 20<sup>th</sup> Feb 2017 -> *Industry questionnaire*
- Stakeholder workshop - 30<sup>th</sup> March 2017
- Feedback to the May Authority meeting - 23<sup>rd</sup> May 2017
- Follow-up stakeholder meeting – 6<sup>th</sup> July 2017
- Follow-up industry meeting – 16<sup>th</sup> August 2017
- Written consultation – Sept-Oct 2017
- Feedback to the September Authority meeting – 15<sup>th</sup> September 2017
- Technical Panel – 30<sup>th</sup> November 2017
- Management of the restoration box - local stakeholder meeting – 11<sup>th</sup> December 2017
- Technical Panel to develop byelaw wording – 7<sup>th</sup> February 2018
- Written consultation on draft byelaw wording – 29<sup>th</sup> March 2018

- Feedback from MMO on draft byelaw and IA wording – 24<sup>th</sup> April 2018
- Draft byelaw May Authority meeting – 22<sup>nd</sup> May 2018
- Start the legal byelaw making process

As can be seen, the pre-consultation phase for this byelaw has been significant and robust. Officers have gone to great lengths to ensure that all statutory organisations and stakeholders have had ample opportunity to feed into this draft byelaw and associated documents.

Members will recall that they have been provided with notes from all Stakeholder and Technical Panel meetings. The recommendations of these meetings, approved at IFCA meetings since May 2017, have been used to develop the draft byelaw, management plan and impact assessment that is before you today. This will be added to by the formal consultation process which will follow the making of this byelaw.

### **Progress since the last Authority meeting**

At the January 2018 Authority meeting, members were informed of the holding of a Technical Panel meeting on 7<sup>th</sup> February 2018 and the draft agenda for that meeting. At this meeting stakeholders were led through the draft byelaw and management plan line by line and their comments noted and incorporated into the current drafts of the byelaw and management plan (minutes in Appendix D).

Following the meeting, the redrafted copies of the byelaw and management plan, along with the draft Impact Assessment were circulated to all stakeholders and attendees of the Technical Panel meetings for comment. The three documents were also sent to the MMO for informal comments and feedback prior to the formal byelaw making process.

The overall feedback from the industry and local stakeholders at the Technical Panel meeting was positive with discussions regarding the wording and specific details of that wording being a definite priority and of great importance to those stakeholders and the industry. The written consultation resulted in three responses being received, one from Essex University (Appendix E) who have been a key partner throughout the development of management and restoration activities within the MCZ and one from Mr William Baker (Appendix F), an oyster fisherman and as with Essex University a key partner in the development of this byelaw. The third response was from Natural England which is attached as Appendix G. Natural England raised several issues with regard to the draft byelaw and management plan which are addressed below. Reference in Natural England's response is made to a letter dated 16 October 2017, this is also provided to Members as Appendix H.

In respect of queries and concerns raised within this latest feedback. As noted previously, the development of the byelaw and management plan has been undertaken in close consultation with stakeholders. At each step the proposals of officers have been shared with stakeholders with the results of these discussions being fed back to Members as recommendations, which have also been made available to all concerned.

The issues raised in the responses referred to as Appendix F and G are answered as follows:

## **William Baker**

### **Byelaw wording**

#### **Gear Restrictions – Paragraph 25(a)**

*"Dredge width of 2.4 m is 7 ft 10.488 in My dredges are 4ftx2 = 8ft so will make these obsolete because of being over 1.5 over This may be a problem as many people have 4ft dredges "*

The byelaw has been amended to accommodate this issue. The dredge width is now set at 2.5m

### **Management Plan**

#### **Harvesting Trips – Section 22**

*"No detail of time length per trip ,24 hour ,12 hour or less ( I will strongly object to a 24 hour trip) "*

This is addressed within the Time and Effort Restrictions within the Flexible Permit Conditions and will form part of the discussion of the Expert Group in the planning phase of opening the fisheries

## **Natural England**

### **Byelaw wording**

#### **Minimum Size - Paragraph 20:**

*"... Natural England considers that oysters should have reached maturity and have reproductive capability before being considered as minimum size. Setting a ring size at 70mm is in line with Natural England's conservation advice which states that Native Oysters usually reach sexual maturity at about 3 years, or approximately 70 mm. This would allow for regeneration of the population prior to removal of sexually mature individuals. Subsequently, Natural England advises that it would be preferable that 70mm remains as the minimum size unless sufficient and new evidence supports the lowering of this size is produced. This evidence will need to be reviewed, considered and agreed upon by Natural England to determine if a lower size can be deemed to be an ecologically robust minimum size. We welcome that this element of management would be included in the management plan for agreement by the expert group however the above is Natural England's current view"*

The minimum size of Native Oysters across the KEIFCA district is currently 70mm and has been so since 2006 when the current byelaw was made by the then Sea Fisheries Committee. KEIFCA consider that as a default this is a

suitable and evidenced minimum size. However, as KEIFCA have experienced with other fisheries in the District, the ability to respond to environmental and stock fluctuations is important and indeed essential for the sustainable management of a shellfish population.

Paragraph 20 of the Byelaw provides for a reduction in minimum size if the specified criteria in the management plan are met. Section 26 of the Management Plan then provides certain criteria which must be met in order to reduce minimum size. The first of these criteria is that a significant proportion of the stock (60%) must be within 10mm of the minimum size and the density of oysters must be in excess of 6 per m<sup>2</sup>

This was in direct response to the presence of *Bonamia ostreae* (an oyster parasite which spreads at increased densities. More information on this subject can be found in the Impact Assessment) in the BCRC oysters and the concerns of the oyster industry. *Bonamia* can result in widespread mortality of Native Oysters and maintaining a limit on densities is following CEFAS advice with regards to management of oyster fisheries. It was felt that this measure was also very applicable to the MCZ to try and prevent possible large-scale deterioration of the population through *Bonamia* infection which would be opposite to the aim of restoration.

This reduction in minimum size in response to increased densities and risk of disease transfer within a protected stock also enables KEIFCA to fulfil its duties under the Marine and Coastal Access Act 2009 Section 125 (2), which requires every public authority to exercise its functions in the manner which the Authority considers best furthers the conservation objectives of the MCZ, or where this is not possible, exercises them in the manner which least hinders the achievement of those objectives.

The byelaw aims to maintain the most flexibility possible for a future fishery, taking into account the needs of both the protected features and the needs of the industry, balancing both socioeconomic and environmental objectives. A full Habitats Regulations Assessment and MCZ assessment will be carried out each year, following the stock surveys and decision making processes detailed in the attached documents. All stakeholders, including Natural England, will be involved in those processes. These assessments will contain full details of the proposed management specifics for any particular year. The assessment documents will then be submitted to Natural England for a decision to be made on whether the intended fishery with its attendant management measures would be compatible with the conservation objectives of the sites. This annual assessment process acts as a backstop to future management measures under this byelaw.

## **Vessel Monitoring Systems (VMS) – Paragraph 5(b)**

*"...Would you be able to confirm if vessel monitoring system will be in place on the participating vessels? If so, could this be captured within the associated management plan."*

The byelaw does not currently require vessels taking part in a future fishery for Native Oysters to have a VMS unit fitted. However, the byelaw does provide within the flexible permit conditions for conditions to be made which would make this a requirement in the future. A national inshore VMS (IVMS) project is currently underway which is overseeing development of a standardised system for all under 12m vessels to bring these into line with the over 12m vessels.

## **Exemption of private grounds and notification of any such grounds - Paragraph 8**

*"Do the Kent and Essex IFCA foresee section 8 as a risk to the successful management of the native oyster in the designated areas considered in Natural England's conservation advice for the Blackwater, Crouch, Roach and Colne MCZ?"*

As a result of Natural England's conservation advice for the BCRC exempting private grounds from scope of their advice, the byelaw does not seek to manage those private oyster grounds. Therefore, in order to ensure that enforcement of the byelaw is undertaken in the appropriate areas, the byelaw requires that notification is provided to KEIFCA as to the presence of private grounds along with evidence of that ownership or right.

## **Management Plan**

### **Specified Criteria for Opening – Section 17 and 19**

*"...Natural England cannot support this, specifically the wording 'or (b)'. We previously advised that the site could potentially be opened to fishing based on a stock increase at a site level in the first instance and opening individual management areas would be a secondary consideration. We recognise that there may be other reasons relating to oyster health for thinning stock but not for removal for sale. Therefore point (a) must happen before (b) and as such we request that you remove the 'or' and replace with 'and', alternatively (b) should be removed. "*

Section 17 of the Management Plan lays out the criteria required for the fishery to be opened. It appears to be well understood that a significant increase over the entire MCZ would be a clear criteria for allowing harvesting of some of the Native Oyster population (Section 17a). However, the BCRC is in excess of 460 km<sup>2</sup> with an extremely large variation in potential oyster stock size between different parts of the site.

As a result, the site has been divided up into nine areas based upon KEIFCA experience of managing shellfish stocks over large areas and local industry

knowledge of where Native Oysters have been found historically. It is highly possible or indeed likely that there could be large variations in stock size between areas, where one area could have a significant increase in stock size whilst the others could not have any increase, purely as a result of favourable environmental conditions in that one area for oyster settlement and growth. This resulted in the addition of a secondary condition which could lead to opening of a fishery, which is specified in Section 17b of the Management Plan.

It is important to note that the stock meeting this condition in itself would not be sufficient to open the fishery, but that long term stability or improvement in the stock (Section 17c) and absence of any biosecurity considerations (Section 17d) also would be required alongside 17a or 17b to result in the fishery being considered for opening.

*"Section 19 stipulates that 'if there has been a significant increase in a limited part of an area or in neighbouring areas then permitted zones bounded by specific coordinates may be established for a limited period to provide for harvesting.' This appears to link to the above statement, 17b, and therefore NE cannot support it."*

Section 19 of the Management Plan provides for the reality that the nine areas, whilst based on local expert knowledge, are arbitrary lines in an evolving, changing ecosystem and that as oysters will not be aware of the presence of areas and lines, that a discreet population could develop between areas. This section would allow specific and temporary areas to be created to allow fishing where stocks are higher whilst continuing to prohibit harvesting in parts of those areas where stocks are not as high.

The byelaw aims to maintain the most flexibility possible for a future fishery, taking into account the needs of both the protected features and the needs of the industry, balancing both socioeconomic and environmental objectives. A full Habitats Regulations Assessment and MCZ assessment will be carried out each year, following the stock surveys and decision making processes detailed in the attached documents. All stakeholders, including Natural England, will be involved in those processes. These assessments will contain full details of the proposed management specifics for any particular year. The assessment documents will then be submitted to Natural England for a decision to be made on whether the intended fishery with its attendant management measures would be compatible with the conservation objectives of the sites. This annual assessment process acts as a backstop to future management measures under this byelaw.

### **Management Principles – Section 1**

*"Section 1 of the management plan stipulates that 'Native Oyster harvesting under this byelaw will be managed in line with the following management plan which is approved by Natural England as part of the Habitat Regulations Assessment required for this fishery under the Habitats Regulations.' This is the*

*first time we have had sight of this document although NE have attended workshops where management has been discussed. We stress that whilst the management plan contains aspects of an Habitat Regulations Assessment (HRA), more information is required. Due to the nature of the site and the overlapping designations, the gear type and controls, including monitoring, should ensure that the conservation objectives of the Blackwater, Crouch, Roach and Colne Marine Conservation Zone (MCZ), Essex Estuaries Special Area of Conservation (SAC) and relevant Special Protected Areas (SPA) and Ramsar sites are not hindered or significantly impacted.*

*Natural England recommended in our letter dated 16<sup>th</sup> October 2017 that a shadow HRA was drafted alongside the byelaw which has not been produced. An HRA and MCZ Assessment will need to be conducted using best available evidence to demonstrate whether significant impacts will be caused by the fishery and therefore affect the achievement of the conservation objectives (for multiple designations), including consideration of in-combination (with other activities) effects. This will need to be submitted to Natural England before opening a fishery."*

KEIFCA is very clear on the requirements of fisheries operating inside Marine Protected Areas. The Management Plan will form part of the future assessments for an oyster fishery in the same way that the Regulating Order, regulations and licence conditions form part of the HRA for the Thames Cockle Fishery. A shadow HRA was considered by officers following Natural England's suggestion, however there is no precedent for this and it has proven extremely difficult to construct such a document without real world information on stock size, number of participants etc. As a result, KEIFCA will write full HRA and MCZ assessment documents on an annual basis, which will be submitted to Natural England to consider whether the opening of a fishery would be in line with the conservation objectives for the site.

## **Opening of the Fishery – Section 12**

*"Natural England will require a copy of the methodology and specific criteria planned to be used to determine this to ensure that this criteria falls in line with our sampling standards. We would welcome additional discussions around the specified criteria and how it is intended to extrapolate sampling effort into management prior to the annual assessment. We welcome the use of a TAC. We are interested specifically to know how sampling effort will be extrapolated to give site-wide estimates and how, subsequently, this will be used to determine where fishing will occur and whether TACs will be set per management area or across the whole site."*

In light of Natural England's requirement that surveys 'fall in line with our sampling standards', KEIFCA officers will be requesting from Natural England copies of those sampling standards, along with clarification what is required under those standards. Officer will also be requiring information from Natural

England on what methodologies they would recommend for both surveying and extrapolation of data to both an area and site level.

**The byelaw:**

The draft Byelaw (Appendix A) and Management Plan (Appendix B) and its associated Impact Assessment (Appendix C) have been discussed with the Marine Management Organisation (MMO) who have provided feedback on the wording of it. This proposed Byelaw is now formally presented to you for making.

As required, Members have been given 14 days' notice of the intention to make this Byelaw and in addition were also provided with the associated Impact Assessment which should be considered before making the Byelaw.

If the Byelaw is made it will be necessary to seek the Secretary of State's confirmation of the Byelaw before it is operational. The next stage in this process will be to advertise notice of the Byelaw for two consecutive weeks in publications which target stakeholders affected by it. Notice will also be placed on the KEIFCA website where the full wording of the Byelaw will be available for viewing. Persons wishing to comment or object will be given 28 days to respond to KEIFCA and MMO. Following this, consideration will be given to comments or objections received as set out in Defra guidance.

**Recommendation:**

The Authority is asked to **APPROVE** the making of the Byelaw taking account of the Impact Assessment provided as well as the comments received from Natural England.