

Date: 20 April 2018
Our ref: Native Oyster byelaw consultation 161017
Your ref: Native Oyster Permit byelaw consultation



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VIA EMAIL ONLY

Dear Will,

Native Oyster Draft Permit Byelaw, Management Plan and Impact Assessment Consultation

Thank you for your consultation dated 29 March 2018. The following constitutes Natural England's formal response to the documents submitted as part of this consultation.

Our response below does not preclude the need for a Habitats Regulations Assessment (HRA) and MCZ Assessment and does not bias the outcome of the assessments once reviewed by Natural England.

Firstly, we shall provide comments on the document entitled '**Blackwater, Crouch, Roach And Colne Estuaries Marine Conservation Zone Native Oyster Fishery Flexible Permit Byelaw**'.

Natural England has the following significant comment on the byelaw:

Section 20 discusses the Native Oyster minimum landing size, stating that '*the Native Oyster minimum conservation reference size may, if the criteria outlined in the Management Plan are met, be reduced, down to a minimum of 60mm, or increased, up to a maximum of 80mm, in 5mm increments.*' As advised in our letter dated 16th October 2017, 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.

Further less significant queries are:

In section 5(b), the byelaw stipulates that '*No person shall carry native oysters on board a relevant fishing vessel within the MCZ unless details of the fishing operation have been provided to the Authority including place of fishing and time and place of landing 2 hours prior to the commencement of those activities.*' 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.

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?

Secondly, we shall provide comments and raise questions on the document entitled '**Kent and Essex Inshore Fisheries and Conservation Authority Permitted BCRC Native Oyster Fishery Management Plan**'.

Natural England has the following significant comment to make:

Section 17(a and b) stipulates the conditions that a fishery will be opened explaining if '*the fishery will be opened if either (a) There has been a significant stock increase across the MCZ to the specified tonnage. or (b) There has been a significant increase in stock levels in one of the nine areas.*' 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 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.

Other less significant comments which can form part of a discussion are:

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 16th 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.

Section 10 examines how other fisheries within the restoration box may be subject to voluntary agreements in order to manage activity conflicts within the site. Whilst Natural England backs a voluntary approach, we stress that this is an agreed initial strategy which, whilst we hope to be satisfactory, has a back-up legislative lever if found to be unsuccessful.

Section 11 discusses the different sites to be included with the HRA. Relevant SPAs and Ramsar sites will need to be included in the assessment.

Section 12 stipulates that '*if stock levels do not meet the specified criteria the fishery will remain closed.*' 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.

Section 26 discusses altering the Native Oyster minimum landing size. We refer you to our comment on this within the byelaw section, which explains that given Natural England's conservation advice, our position is that the minimum size should be no smaller than 70mm. This information should be included in the MCZ assessment.

Section 29 to 31 discusses the review process. As stated above, Natural England note that any advice we have provided on the management plan does not predicate the outcome of an HRA and MCZ assessment, which should be conducted annually.

We have not provided comments on the final document entitled '**Blackwater, Crouch, Roach and Colne Estuaries Marine Conservation Zone Native Oyster Fishery Flexible Permit Byelaw: Impact assessment**' as we do not feel that it is our remit and therefore more suitable for other stakeholder groups to advise you on. It is noted that there is information in this document that will be useful as part of the HRA and MCZ assessment.

Additional comments

NE would like to engage early on how surveys will feed into management measures and what management is likely, subject to HRA/MCZ assessments. We are particularly interested in spatial restriction discussions, relating to minimising the impact on the SAC. We are also interested in ensuring that management areas are never devoid of oysters, particularly where they may occur at higher densities and provide a broodstock function. This relates to our comments on 17 (b) of the management plan. As mentioned above, we are happy to discuss at the relevant time whether the TAC and individual boat quotas are set at the site level only or whether there is a following consideration of the TAC at management unit level, thus ensuring that a proportion of oysters always remains within an area. If the site is not resilient, but certain areas are showing higher densities, NE would consider that re-populating spat out to other areas would be more appropriate than removing oysters from the system.

Natural England views progress on the byelaw as taking significant steps on furthering the conservation objectives of the Blackwater, Crouch, Roach and Colne Marine Conservation Zone.

Yours sincerely,

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