



Agenda item B2

From: Will Wright, Chief Officer Kent and Essex IFCA

To: Kent and Essex Inshore Fisheries and Conservation Authority – 30 November 2018

Subject: **Vessel length and engine power byelaw update**

Classification: **Unrestricted**

**Summary:** This paper updates the Authority on the progress made in developing a vessel length and engine power byelaw and makes recommendations as to the wording of the byelaw.

**Recommendations:**

1. Members are asked to **APPROVE** the **RECOMMENDATIONS** of the Technical Panel (Appendix 1).
2. Members are asked to **APPROVE** the **EXEMPTION PACKAGE RECOMMENDATIONS**.
3. Members are asked to **APPROVE** the **DRAFT BYELAW WORDING** (Appendix 2).

**Consultation feedback**

Since the last meeting over 200 consultation documents were printed and distributed by officers around the fishing ports in the KEIFCA district. The intention was to try and distribute the consultation as widely as possible by sending it directly to as many fishermen and fishermen's associations as possible. Booklets were either given to the fishermen themselves or left in plastic bottles on boats. The consultation was also promoted on the KEIFCA e-bulletin and website.

Initial informal feedback from the industry has been positive and some members of the industry have requested we progress with speed. In total there were eight

written replies and the most significant comment from the industry concerned grandfather rights. From the consultation replies additional options were suggested regarding vessel maximum vessel length options (10m and 15m). Comments on engine power ranged from support of the current wording, to the need to include other factors including types of vessel propulsion, gear box measures, propeller size and propeller pitch metrics, as well as having a different requirement for mono hulled vessels and catamarans. Replies also commented on the application of engine power to the whole fleet or to towed gear vessels.

### **Technical Panel consideration of the feedback**

The replies received really helped inform and positively shape the byelaw and thoroughly examined the proposals put forward in the consultation document, whilst also providing additional options that had previously not been considered. Using the initial options put forward in the consultation document, as well as options that had been proposed as part of the consultation replies, the Technical Panel worked through the questions posed in the consultation document at their meeting on 10 October. The Technical Panel used both the written replies as well as heard oral evidence and opinion from members of the fishing industry. The meeting felt very collaborative and although some of the issues discussed were complex, considerable progress was made and there is now an agreed set of recommendations (see Appendix 1) that have been translated into the legal wording of a byelaw (see Appendix 2).

### **Actions following Technical Panel meeting**

Flowing from the meeting there are now two significant steps/issues to address. The Technical Panel required firstly that officers further develop sunset clause options and review available evidence that could help inform these options and, secondly, to gather feedback on the wording of the byelaw and the associated Impact Assessment from stakeholders.

### **Duration of a sunset clause**

#### ***Background***

Sunset clauses are a commonly used tool in drafting legislation as well as a clause in contracts.

- A sunset clause is a provision in a Bill that gives it an expiry date once it is passed into law. Sunset clauses are included in legislation when it is felt that Parliament should have the chance to decide on its merits again after a fixed period.
- The sunset clause in a contract is the provision that spells out how long a party will accept claims for incidents that took place while the policy was in force.

Within the vessel length and engine power byelaw the objective of the sunset clause is to add an end date at which an exemption would finish. In some part this is a reaction to the length of time, over 20 years, that a handful of vessels have remained exempted in previous byelaws (Table 1).

Byelaws		Year byelaw made	Vessels with exemption	Current Number vessels with exemption		
KESFC	>17m	1997	18	21 yrs later	3	
SSFC	>14m	1999	26	19 yrs later	6	

***Issues to consider when discussing the sunset clause***

The decision needs to be rational and proportionate and include the possibility that vessels currently in build would be impacted by this decision. It must also be taken into consideration that this is not the only exemption clause/ requirement in the byelaw.

In developing a clear rationale for the duration of a sunset clause, it is fair to assume that the longer the exemption period the longer a business will have to plan and adapt, and potentially the less impact this should have on the business. There is however a point in the future where the Authority would look to review the byelaw and potentially develop a new byelaw and it would make sense for the sunset clause to expire before this. If this did not happen then it might make more sense to include a clear review byelaw date rather than extend an exemption further.

*Government policy - DEFRA 25 year environment plan*

In developing a rationale for the duration of the sunset clause it is useful to consider this in the context of the Government’s 25 year environment plan targets:

- *We want to improve the UK’s air and water quality and protect our many threatened plants, trees and wildlife species.*
- *Our environment plan sets out our goals for improving the environment within a generation and leaving it in a better state than we found it. It details how we in government will work with communities and businesses to do this.*

Within the plan the government sets clear time specific targets for change

- *meeting legally binding targets to reduce emissions of five damaging air pollutants; this should halve the effects of air pollution on health by 2030*
- *ending the sale of new conventional petrol and diesel cars and vans by 2040*
- *working towards our ambition of zero avoidable waste by 2050*
- *working to a target of eliminating avoidable plastic waste by end of 2042*

In setting targets and time limits the Government are helping create the future landscape for business to work within, whilst giving time for business to adapt. This concept of setting legally binding long-term targets is a very similar concept to applying a sunset clause for the exempted vessels in the proposed byelaw;

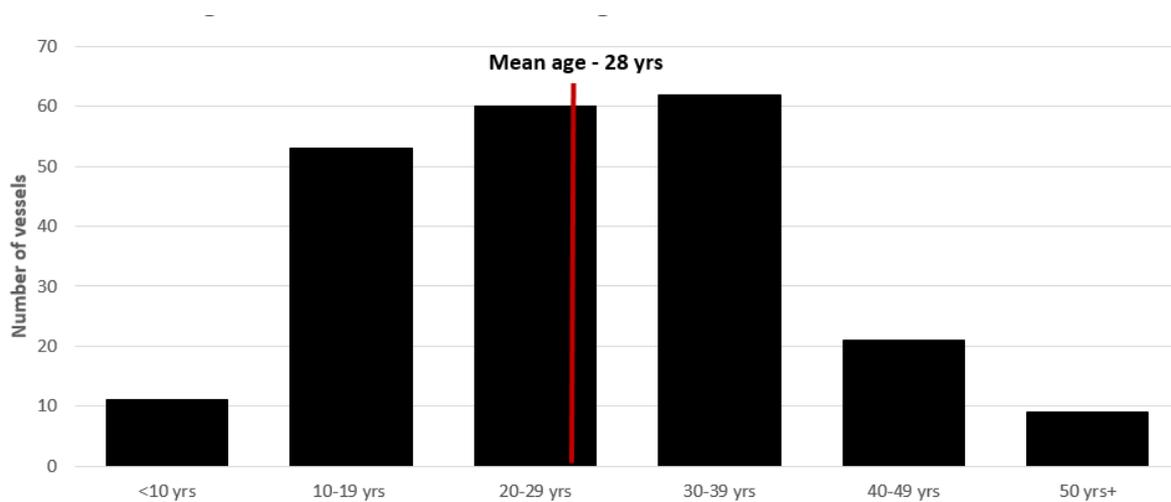
indeed the 25 year environment plan also sets marine focused targets, of which IFCAs would be one of the delivery bodies.

- reversing the loss of marine biodiversity and, where practicable, restoring it
- increasing the proportion of protected and well-managed seas, and better managing existing protected sites
- making sure populations of key species are sustainable with appropriate age structures
- ensuring seafloor habitats are productive and sufficiently extensive to support healthy, sustainable ecosystems

The proposed vessel length and engine power byelaw does help contribute towards a number of these targets. Setting a sunset clause would give the businesses that have invested in the current vessel set ups that would be exempted by the new byelaw, a significant period to recoup their investment and reprofile their business to meet this future requirement.

### **Potential impact on the exempted businesses of the sunset clause**

Whereas with cars or vans a 10 to 15 year-old vehicle would be old, fishing vessels generally have a much longer working life with vessels over 50 years old being a small but significant component of the fleet. One of the reasons for this is that the initial build cost is significant, and it is much cheaper to re-fit a vessel than to build a new one.



**Fig. 1 The aggregated age distribution of licenced fishing vessels in the KEIFCA district.**

Fishing vessels, especially those working in the inshore area tend to be old (Fig.1) with an average age of 28 years. However, vessels are regularly sold or move in and out of the district and there is a significant trade in second hand vessels. Although these are useful figures to help understand the industry, every fishing business is different, and the impact of a sunset clause would depend on the finance profile of the business.

To put this in context it is a relatively common occurrence that businesses will use a loan or a mortgage to purchase a vessel, and there are specialist

companies that provide this service for fishing boats. As with any loan agreeing a loan can depend on a credit score rating, the amount of deposit (usually 15 - +30%) and the repayment time; generally, 10 years but can be up to 20 years or sometimes longer (usually, the larger the boat, the longer you have to pay it off). It should also be noted that the exempted vessels can still fish outside the district and still make a living.

### **Options**

Within the Technical Panel meeting a number of different durations of a sunset clause were discussed

**Option 8c(i)** – Add a 10 year sunset clause (until 2028/9) that gives an exemption for a set period.

**Option 8c(ii)** – Add a 15 year sunset clause (until 2032/33) that gives an exemption for a set period.

**Option 8c(iii)** – Add a 20 year sunset clause (until 2038/39) that gives an exemption for a set period.

From further analysis a further option could be considered

**Option 8c(iv)** – Set a byelaw review date which is, at the latest, fifteen years after the byelaw is made to assess the appropriateness of the exemption criteria. *(This would give most flexibility in addressing any vessels that are still exempted and would apply the sunset clause in the same manner that it is used in national legislation).*

There is no natural cut off point to base the timing of a sunset clause but a balance between setting a meaningful time limit to the clause and giving a business the ability to derive a return on its investment and adapt to the new regulations. The impacts of setting a sunset clause are relatively minor on a fleet scale but are very significant to the handful of business (five to eight boats) that it could impact. The scale of the impact on individual vessels could also vary significantly depending on the financial profile of the business, but this is very difficult to profile or develop estimates to inform decision making as there are a small number of vessels in this category and the period of the proposed sunset clause options are long.

One factor that does need to be taken into consideration especially if longer time periods was a chosen option is that it could severely limit the flexibility of the Authority in the future. A longer time period (20-25 years) could be viewed as setting an expectation which the Authority would be required to honour (i.e. there would be an expectation that an exempted vessel could work in our district for the next 20-25 years).

## The package of exemption measures

At the Technical Panel meeting there was agreement that the best way of framing the exemption section of the byelaw was to have a package of measures rather than one specific measure. It is within this context that the decision regarding a sunset clause would be made. By agreeing a clear definition of ownership (option 8b) and a much higher requirement of proof of working in the district than the previous byelaw (or any other vessel length byelaws in England) this is already a very strong package. Including a review date into the byelaw would give the Authority the most flexibility in time limiting an exemption but in a manner that would best reflect and respond to the variation of business models.

### Exemption package recommendations

**Option 8b** – Issue an exemption only if the vessel remains in the same legal and beneficial ownership as on the date of the byelaw being made

*Eastern IFCA refers to the definition to the 'majority shareholder of a vessel as a recorded on the certificate of registry for that vessel*

*Any permit will be cancelled if there is **'any change in legal or beneficial ownership of a registered vessel'** after the issue of the permit.*

*North Western IFCA provides that a vessel which exceeds its stipulated vessel length restrictions continue to fish within their district provided, amongst other things, **'the vessel remains in the same legal and beneficial ownership as on the date of this byelaw being made.'***

**Option 8d(ii)** – Issue a two yearly exemption based on previous years exemption and proof of fishing within the district using vessel tracking and log book records (VMS) minimum 100 hours fishing within a 2 year period. Fishing could be defined as <6 knots per hour.

**Option 8c(iv)** – Set a byelaw review date which is, at the latest, fifteen years after the byelaw is made to assess the appropriateness of the exemption criteria. *(This would give most flexibility in addressing any vessels that are still exempted and would apply the sunset clause in the same manner that it is used in national legislation).*

### Next steps in the byelaw making process

Date	Actions
<b>30 Jan 18</b>	KEIFCA agreed to start to develop a new vessel length and engine power byelaw to rationalise the current 4 legacy byelaws that currently exist in the district.
<b>22 May 18</b>	A draft consultation document was developed and approved by KEIFCA.
<b>25 Jun - 18 Aug 18</b>	Initial stakeholder byelaw consultation (dissemination of consultation documents to fishing industry)
<b>10 Oct 18</b>	Technical panel meeting
<b>30 Nov 2018</b>	Present recommendations to KEIFCA quarterly meeting
<b>10 Dec 18 - 10 Jan 19</b>	Send out agreed preliminary byelaw wording and draft Impact Assessment to stakeholders for feedback and comment
<b>30 Jan 19</b>	Members review feedback from the draft byelaw wording and Impact Assessment consultation. If necessary, the byelaw and Impact

	Assessment can be amended.
<b>21 May 19</b>	Members make byelaw

**Recommendations:**

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