

NOTES of a Technical Panel meeting of the **KENT & ESSEX INSHORE FISHERIES AND CONSERVATION AUTHORITY** held at Gravesham Borough Council, Windmill Street, Gravesend, Kent, DA12 1DD on 10 October 2018 at 1pm

Present: Cllr J Lamb (Southend BC), Mr J Nichols (MMO), Mr A Rattley (MMO), Ms B Chapman (MMO), Cllr T Hills (KCC), Cllr A Bowles (KCC)

Apologies: Mr P Wexham (MMO), Cllr R Binks (KCC)

In Attendance: Mr J Cook (Clerk), Dr W Wright (CIFCO), Mr D Bailey (ACIFCO), Mrs D O'Shea (Office Manager), Mrs K Woods (Admin Assistant), Mr H Hurst (Fishery Officer)

The Technical Panel met to discuss the options and wording of the key components of a new vessel length and engine power byelaw taking into account the responses provided through the consultation process and to make recommendations in respect of:

- the maximum vessel length in the KEIFCA district and which vessels it should apply to
- the maximum engine power (and any derating) in the KEIFCA district and which vessels it should apply to
- how KEIFCA should address vessels currently working in the district which would exceed the limits of the byelaw (grandfather rights, sunset clause etc.)

Declaration of Interests:

No declarations of interest were declared

Key Points considered by the meeting

BACKGROUND

The Panel received a presentation from the Chief Officer (CIFCO) outlining the key issues of the byelaw and discussed the proposed options set out in the consultation document and the responses to it. Two hundred copies of the consultation document were distributed across the district to fishermen, angling shops and Fishermen's Associations during a 10 week period June-August; 8 responses were received.

MAXIMUM VESSEL LENGTH

Option 1a) ≤ 14m (original proposal in consultation document) – the Panel was advised that the industry considered this a good descriptor of the inshore fleet, it

would bring KEIFCA in line with Sussex IFCA and was already used for the cockle fishery, it was likely to affect no more than 3 - 4 vessels

Option 1b) ≤ 10m (proposed by Kent Wildlife Trust in response to consultation) – the Panel was advised that this would affect 10-15% vessels currently working in the district, KEIFCA used this in oyster permit legislation to describe artisanal/micro fishery. This size would potentially result in a larger number of applications for exemptions which could create issues with monitoring those exemptions.

Option 1c) ≤ 15m (proposed by Interfish in response to consultation) – the Panel was advised that this was not a standard length used by the industry, the MCA used it for coding vessels and it was originally the cut off point for VMS

The Panel discussed the options and commented that:

- catamaran and mono-hull vessels would be impacted differently by length restrictions
- any vessel needed to be sizeable and safe to carry out the work required from it; 14m seemed reasonable
- whilst keen to benefit the marine environment by a reduced vessel size, it is important to get buy in from all fleet
- feedback from the Kent and Essex coast was that fishermen were happy with the proposal and didn't want a vessel size larger than 14m

The Panel recommended Option 1a)

WHO SHOULD VESSEL LENGTH BYELAW APPLY TO?

Option 2a) all vessels – the Panel was advised that general feedback from industry supported this option, it would make the legislation simpler and mirror Sussex IFCA's vessel length requirements

Option 2b) just towed gear – the Panel was advised that the inherited Eastern JSFC vessel length byelaw specified towed gear and that vessels towing gear had a larger impact foot print

The Panel discussed the options and agreed that the legislation should be kept as simple as possible in order to enable the industry to comply with it and KEIFCA to enforce it.

The Panel recommended Option 2a)

MAXIMUM ENGINE POWER

The Assistant Chief Officer (ACIFCO) advised the Panel that engine power is the maximum power that an engine can put out and this can be expressed in kilowatts

(kW) or horsepower (hp). Generally, the engine & propeller were considered together in terms of engine power. An engine may be de-rated for a number of reasons; speed, load carrying or fuel burn and in general terms the lower the rate of an engine the less weight of gear could be towed. The current KESFC byelaw stated maximum engine power as 221 kW (equivalent to 300hp) and 99% of vessels in the district were below this engine size. KEIFCA have had experience of some vessels above this limit which have either de-rated their engine or moved outside of the district.

Option 3a) use the wording already developed for engine power but review the fine detail (original proposal in consultation document) – the Panel was advised that the industry already knew and used this legislation. It had originally been introduced to mitigate against the impact of beam trawlers in the district.

Option 3b) re-write the engine power wording to include gear box, propeller size and propeller pitch as part of a description (proposed by Terry Stimpson in response to consultation) – the Panel was advised that this could make the byelaw too complex and detailed to enforce and that it would introduce unnecessary additional legislation if engine power already achieved most of the requirements

Option 3c) a different engine power limit for mono-hull and multi-hull vessels (proposed by Terry Stimpson in response to consultation) – the Panel was advised that this would move away from simple legislation affecting all specified vessels in a similar way and would move away from an accepted, standardised way of measuring engine power of vessels

The Panel discussed the options and considered that options 3b) and 3c) would give too many possible options and make the legislation and interpretation too complicated. A mono-hull vessel could have one or two engines, there were different types of engine (outboard/inboard) and to describe all of the possible variables within the legislation would be difficult and open up the possibility of unfairly treating one person against another.

The Panel recommended Option 3a)

Option 4a) total engine does not exceed 221 kilowatts – this could increase the number of exemptions required

Option 4b) total engine does not exceed 221 kilowatts or, in the case of de-rated engines, did not exceed 243 kilowatts before derating – the Panel was advised that this was the current KESFC wording, it was understood and used by the industry and was the wording used in the cockle fishery legislation

Option 4c) total engine does not exceed 221 kilowatts or, in the case of de-rated engines did not exceed 300 kilowatts – the Panel was advised that this wording is used at EU level and that effective de-rating would be difficult to reliably enforce

The Panel recommended Option 4b)

WHO SHOULD NEW ENGINE POWER LIMIT APPLY TO?

Option 5a) all vessels - the Panel was advised that this option would make the legislation simpler and help if vessels moved between fishing gears, that quota was the main limit on netting, not engine size and it would give rise to more exemptions and smaller boats which did not have VMS history to use as proof of fishing.

Option 5b) just towed gear vessels - the Panel was advised that legacy byelaws applied to just towed gear vessels and that there was a relationship between engine size and size of gear that could be towed and therefore between engine size and impact on sea bed, but there was a less clear relationship between engine size and static gear impacts.

The ACIFCO explained that engine power was used differently for different fishing gear types and could be compared to a lorry and sports car. A lorry with a powerful engine could move heavy loads but not at speed (towed gear), while a sports car with a powerful engine could move very quickly but couldn't carry weight (static gear).

The Panel discussed the options and commented/asked that:

- if applied to all vessels (Option 5a), potters/netters would be contained to a very small area close to harbour as they needed faster engines to get to other areas which allowed fishing effort to be spread further
- Option 5a) would make it easier for boats to change between using towed gear and static gear, how many boats do both? The ACIFCO responded that it was unusual for boats to alternate between those two fishing types as it would require having two sets of gear onboard. Most of the inshore fleet changed over time, but it was more likely that a vessel would change from trawling to netting as it was cheaper to do so.
- would Option 5b) take more resource? The ACIFCO responded that it would be the same as it is now.

The Panel recommended Option 5b)

EXEMPTIONS

The CIFCO explained that there were currently a small number of vessels, possibly four or five, which would be affected by the new vessel specification byelaw and asked the Panel to consider the wording of an exemption mechanism within the byelaw.

Option 6a) vessels exceeding the proposed byelaw can carry on working under an exemption mechanism (grandfather rights, sunset clause etc.) – the Panel was advised that this option would honour the fact that fishermen have constructed their business within the current regulatory framework; there was strong support for this option in the consultation responses but that there may be an administration cost to the industry and the IFCA

Option 6b) vessels exceeding the proposed byelaw would not be able to carry on fishing in the district after the byelaw comes into force – the Panel was advised that whilst this would mean that the benefits of enacting the byelaw were realised more quickly, it would have a significant financial impact on those affected and could put them out of business over night

The Panel recommended Option 6a)

CRITERIA FOR GRANTING EXEMPTIONS

Option 7a) this byelaw shall not apply [...], provided that the owner has prior to the confirmation of this byelaw fished in the said part of the district, and who has applied in writing for registration with the ICFA within six months from the date of advertisement of this byelaw – the Panel was advised that this was the wording of the current KESFC vessel length and engine power byelaw

Option 7bi) issue a yearly exemption based on a previous year's exemption and proof of fishing within the district using vessel tracking and log book records (VMS) with a minimum of 50 hours fishing within a year. Fishing could be defined as <6 knots per hour – the Panel was advised that based on calculations that a vessel worked between 100-180 days per year, 50 hours represented between 3 to 7% of a vessel's fishing/earning potential for the year

Option 7bii) issue a yearly exemption based on a previous year's exemption and proof of fishing within the district using vessel tracking and log book records (VMS) with minimum 100 hours fishing within a 2 year period. Fishing could be defined as <6 knots per hour – the Panel was advised that this would allow for a vessel being out of action for a length of time due to refit or illness for example and might be a fairer option to industry.

The ACIFCO advised the Panel that VMS was a modern recording system; data from a two hourly ping rate could be reviewed to assess fishing activity based on a vessel's speed. The burden of proof would be with the vessel owner, not KEIFCA, to prove that they had fished.

The Panel discussed the options and commented/asked that:

- who monitored the VMS? The CIFCO responded that each vessel owner would have their own system and KEIFCA could ask that they submit a print

out with a covering letter every year (for Option 7bi) or two years (for Option 7bii) in order to be granted exemption

- VMS alone would not necessarily prove fishing activity as a vessel working guard duty would have a similar VMS report to that of a vessel which had been fishing. Vessel log books and sales tickets would be asked for in addition to a VMS print out
- possibly include a requirement that vessels would need to call in prior to fishing in the district, as the TECFO cockle licence holders do
- when would the one year / two year fishing history start from? The CIFCO and ACIFCO replied that they will take opinion on this but suggested two options:
 - i) as this would be a new byelaw, start from today and back one or two years or
 - ii) wait until the byelaw is in place in 2019, and back one or two years from then

The Panel recommended Option 7bii)

INCLUDE A PIPELINE CLAUSE?

The ACIFCO told the Panel that that he was aware of one vessel currently under construction, and there may possibly be another, which would not comply with the new proposed byelaw. The Panel was shown the byelaw wording used by North Western IFCA:

“Newly constructed or purchased vessels exceeding the length restrictions [...] may be issued with an authorisation [...] provided that:

- a) The owner(s) can demonstrate that prior to this date of this byelaw being made they had entered into an enforceable financial commitment to construct or purchase such a vessel’.”

The ACIFCO told the Panel it was important to ensure that such a vessel was compliant with the existing byelaws at the time the commitment was made.

The Panel recommended the inclusion of a Pipeline Clause

HOW TO ADDRESS VESSELS CURRENTLY WORKING IN KEIFCA DISTRICT THAT WOULD EXCEED THE BYELAW LIMITS

The CIFCO explained to the Panel that other criteria would also need to be considered for an exemption mechanism; vessel ownership and the length of time for which an exemption could apply, known as a ‘sunset clause’.

Vessel ownership – the Panel was advised that the issue of ownership was complex. There were two forms of ownership; legal ownership and beneficial ownership. Legal ownership could be in the name of an individual or a limited

company (corporate ownership) while beneficial ownership referred to anyone who enjoyed the benefits of ownership of the property, usually an economic benefit, without being on the record as being the owner. The wording of the current KESFC vessel length & engine power byelaw provided a loose definition of ownership. The CIFCO asked the Panel to consider the wording used by North Western IFCA (NWIFCA) for their vessel length byelaw: *a vessel which exceeds the stipulated vessel length restrictions may continue to fish provided, amongst other things, 'the vessel remains in the same legal and beneficial ownership as on the date of this byelaw being made'* and Eastern IFCA (EIFCA) for their permit byelaw: *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.*

The Panel discussed possible interpretations of ownership and the implications of these and commented/asked that:

- If ownership of a vessel changed then exemption rights should automatically be lost. It was pointed out, however, that without a clear definition of ownership this would be impossible to enact
- What wording had been used by other regulators and whether a clearer/better definition of ownership was in place elsewhere? The ACIFCO reiterated that ownership was a very difficult issue as a company and an individual would be considered the same in law, and that there were not any better examples than those given already from NWIFCA and EIFCA
- A vessel may be passed down within a family but equally that might not be the case and do Kent & Essex IFCA have the right to determine this?
- Consideration must be given to all other vessels working in the district which may potentially be disadvantaged by this ownership exemption issue and a time limited exemption (sunset clause) may be fairer

The CIFCO reminded the Panel of the legal advice given on this matter by Andrew Jackson Solicitors which was that *'any exemption granted to the affected vessels within the byelaw contains a similar qualifying statement [to that of EIFCA and NWIFCA] which refers to both legal and beneficial ownership. However, the caveat to this advice is that this of course relies on the declaration of any beneficial interest.'*

The CIFCO commented that a multi-option approach would be beneficial as it would get around the difficult issue of vessel ownership definition. Although in isolation the individual elements may be considered simple, a combination of a requirement of evidence of 100 hours fishing over 2 years from VMS logs & sales tickets, proof of ownership and a sunset clause would make tighter regulation.

Sunset clause – the Panel was advised that the inclusion of a sunset clause would give a clear expectation to a vessel owner to adapt their business over time to comply with new legislation, without suffering short term costs or losses. The CIFCO asked the Panel to consider a 10 year, 15 year or 20 year sunset clause.

The Panel discussed the merits and disadvantages of several timeframes for a sunset clause but were unable to reach a conclusion and took advice from the Clerk that further information be supplied and provided to the full IFCA meeting to clarify the justification of use of timeframes in sunset clauses.

RECOMMENDATIONS

The Panel made the following recommendations:

- Maximum vessel length - Option 1a) at or less than 14m
- Who should vessel length byelaw apply to - Option 2a) all vessels
- Maximum engine power - Option 3a) use the wording already developed for engine power but review the fine detail
- Maximum engine power - Option 4b) total engine does not exceed 221 kilowatts or, in the case of de-rated engines, did not exceed 243 kilowatts before derating
- Who should maximum engine power limit apply to - Option 5b) just towed gear vessels
- Exemptions - Option 6a) vessels exceeding the proposed byelaw can carry on working under an exemption mechanism (grandfather rights, sunset clause etc.)
- Criteria for granting exemption - Option 7bii) issue a yearly exemption based on a previous year's exemption and proof of fishing within the district using vessel tracking and log book records (VMS) with minimum 100 hours fishing within a 2 year period. Fishing could be defined as <6 knots per hour
- Pipeline clause - inclusion of a Pipeline Clause
- Vessel ownership – no recommendation made
- Sunset clause – request further information be supplied and provided to the full IFCA meeting to clarify the justification for use of timeframes in sunset clauses

The Chairman thanked all those who had attended the meeting

Meeting closed at 15:15