

By: Chief Fishery Officer

To: Kent and Essex Inshore Fisheries and Conservation Authority –
16 September 2019

Subject: KEIFCA Fish, Mollusc and Crustacea Minimum Size Emergency
Byelaw

Classification: **Unrestricted**

Summary: Report on the emergency byelaw made by KEIFCA to retain minimum size enforceability on recreational fishing

Recommendation:

1. Members are asked to **REVIEW** the information in this paper, as well as the emergency byelaw and its associated impact assessments, and **APPROVE** the making of the byelaw.
2. Members are also asked to **DISCUSS** and provide **COMMENT** on the next steps to be taken.

Background

With the revoking of the EU technical conservation measures EU 850/98 and the introduction of a new technical conservation regulation, EU 1241/2019, the legal advice that IFCAs have been using to apply minimum size (now referred to as Minimum Conservation Reference Size – MCRS) to recreational fishers ceased to be able to be applied from the 13 August 2019. The new legislation now specifically states that the MCRS does not apply to recreational fishers, whereas previously KEIFCA in common with the other IFCAs, had relied upon a legal opinion that the previous legislation applied to all fishers, both recreational and commercial, in order to enforce minimum sizes on recreational fishers. Whilst the new legislation helps address a grey legal area it does mean that apart from the sea bass bag limit there would be no legislation in place to manage the fish and shellfish taken by the recreational or non-commercial sector.

Emergency byelaw process

As the understanding of the new EU 1241/2019 legislation developed, and after receiving feedback from DEFRA, it became clear that new EU or national legislation was unlikely to be developed in the short or medium term to address the change in legislation, despite this being provided for in the new technical conservation regulation. To address this unforeseen and urgent issue, IFCA chief officers started to discuss options including using an emergency byelaw to

maintain the current enforceability of minimum sizes. Following the identification of a potential need for an emergency byelaw, the Chief Officer consulted with the Chairman and Vice Chairman and discussed the merits of the application based upon the Defra emergency byelaw guidance (Fig. 1). After this initial consultation KEIFCA officers then gathered information and completed an initial impact assessment (Appendix 1) which helped lay out the facts surrounding the need for an emergency byelaw. During this process it became apparent that other IFCA's were considering similar action and KEIFCA officers worked with Eastern IFCA, North Eastern IFCA and Northumberland IFCA to undertake detailed assessments and develop wording of an emergency byelaw (Appendix 2).

After meeting with the Chairman and Vice Chairman, a decision was taken to progress with making an emergency byelaw and Authority members were contacted for their feedback, with a view to discussing the matter in full at the 16 September Authority meeting. Throughout the evolving process the Clerk was kept fully informed and reviewed the documentation before the emergency byelaw was signed on the 13 August 2019 and the Secretary of State was notified on the same day. The KEIFCA Fish, Mollusc and Crustacea Minimum Size Emergency Byelaw 2019 was mirrored by the other east coast IFCA's (EIFCA, NEIFCA, and NIFCA) but amended by each IFCA to reflect the species that were caught in their respective districts.

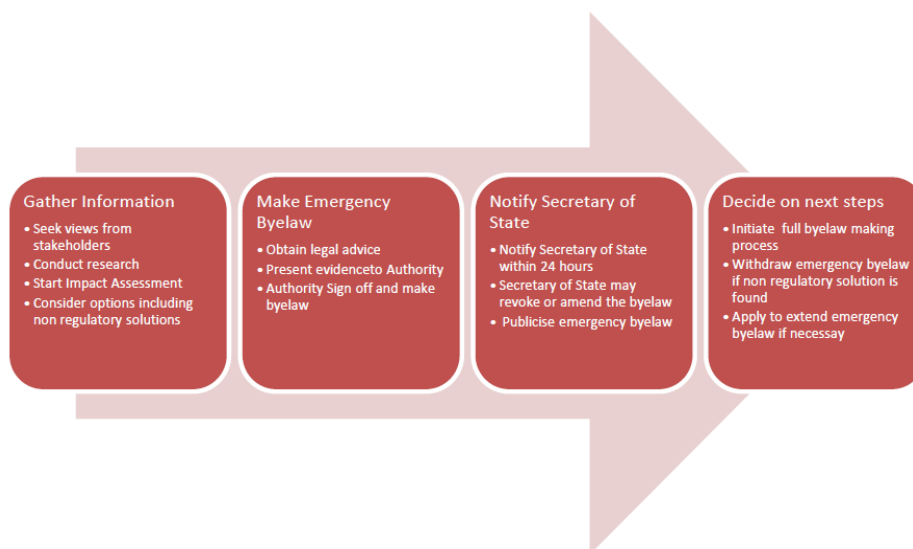


Fig. 1 Diagram showing emergency byelaw making procedure from IFCA Byelaw Guidance (2011).

Since making the emergency byelaw IFCA's have received acknowledgement from DEFRA and the Angling trust has produced a press release covering this issue. Apart from this there has been little additional feedback on or response to either the emergency byelaws made by the IFCA's or the issue which they were created to address.

Advertising the byelaw

Since the byelaw was made and signed by the Clerk on 13th August 2019, KEIFCA officers have taken steps to advertise the byelaw. Notification has been placed on the KEIFCA website, notices have been printed and placed at key

recreational fishing locations and officers have had direct conversations on all of the angling inspections which they have carried out.

KEIFCA review of the emergency byelaw

As the whole emergency byelaw process gathered pace over the summer holidays, best efforts were made to involve the Authority members, but the decision was made to discuss the matter fully, four weeks later at the September Authority meeting.

A principle of emergency byelaws is that they are under constant review and in the light of this members are asked to review the information in this paper as well as the emergency byelaw and its associated impact assessments.

Making a permanent byelaw

While the emergency byelaw buys KEIFCA some time, changing the underpinning EU legislation raises some fundamental questions:

1. How KEIFCA management should fit into the new Landing Obligation principles and legislation. The new Landing Obligation legislation is a seismic change in how we manage our fisheries and focuses effort on what fishermen catch and kill rather than what they land or technical measures to control how they fish. Should our legislation look to achieve the same objectives?
2. What is the best level of management? The new legislation focuses more at regional sea body decisions (North Sea/ North Western Waters) and points to measures like minimum conservation reference sizes being introduced at this level. When managing widely distributed stocks like most fin fish and some shellfish it makes sense to regulate it equally over a large area of its distribution. Failing this, English specific legislation in the form of a Statutory Instrument would bring in legislation for all English waters. Bringing in legislation at this level would provide a much simpler and more consistent approach for users and help avoid IFCAs having to prove where the fish was caught.
3. Should the new legislation be focused at recreational fishers or should it apply to commercial fishermen as well? If the legislation applies to commercial fishers, then the legislation would need to work within the context of the landing obligation both now and into the future. If the regulations are recreational specific how would this fit in with a government future strategic approach to this this sector?
4. If KEIFCA legislation is the only realistic available option should we continue to work with other IFCAs to make a set of standard byelaws? If so, what species should be included and at what sizes?

The art of the possible

From discussions with the other east coast IFCAs there is a strong will to continue to work together and make a permanent byelaw that is as consistent as possible around the coast. Discussions also reflected recent experience from

Northumberland IFCA that a relatively straightforward emergency byelaw which was made into a full byelaw three months later took well over nine months to pass through the MMO and DEFRA byelaw making process and to be signed by the Secretary of State. Given the relatively short amount of time a suggested course of action is to use the current wording and build on the associated species list and minimum sizes. Once we are happy that the current status quo is in long-term IFCA legislation there then could be scoped to explore a wider range of different minimum size or recreational management options.

Recommendation:

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