

By: Dominic Bailey, Assistant Chief Fishery Officer

To: Kent and Essex Inshore Fisheries and Conservation Authority – 31 January 2020

Subject: **Minimum Sizes Byelaw**

Classification Unrestricted

**Summary:**

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

**Recommendations:**

The Authority is asked to **APPROVE** the making of the Byelaw taking account of the Impact Assessment provided

**Background**

At the September 2019 Authority meeting, Members were appraised of changes in legislation over the summer which had resulted in changes to the technical legislation which IFCAs enforce, especially with respect to fish size limits. 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.

**Making a permanent byelaw**

At the November 2019 meeting a draft byelaw and associated impact assessment was provided to members for comment and approval with the aim being to gather comments and return to make the byelaw, following any amendments, at this meeting. This would comprise a first 'phase' of works regarding minimum size management. Once the Authority is happy that the current status quo is in long-term IFCA legislation we could then scope to

explore a wider range of different minimum size or recreational management options.

### **Progress so far**

The conditions which led to the decision to implement the emergency byelaw persist and as such, the risks posed by the changes to EU regulations set out in Regulation (EU) 2019/1241 are maintained. In particular, there is an established risk associated with non-commercial catches not being subject to minimum sizes and with the diminished enforcement capabilities resultant of amended wording (i.e. exclusion of the prohibition of transporting etc. of undersize marine organism). These risks are detailed further in the associated Impact Assessment at Appendix B.

In addition, the removal of the prohibition on the transport etc. of undersize marine organisms for all catches (i.e. including commercial and non-commercial catch) reduces the enforceability of the minimum size regulations by reducing the scope of the offence and providing possible defences.

Emergency byelaws expire within 12 to 18 months of their implementation. The time period for making byelaws can and often does exceed 18 months and as such, there is a risk of a 'gap' between an emergency byelaw expiring and a permanent byelaw being implemented. Given that the risk associated with the issue is established, this could lead to impacts on fish stocks and wider environment and reputational implications on the Authority.

As such, officers continue to recommend replacing the emergency byelaw with a 'like-for-like' replacement, effectively continuing the current status quo to ensure that a protective effect is maintained. The emergency byelaw is however considered to have its limitations.

### **Replacing the emergency byelaw**

Officers have taken on board legacy byelaws which KEIFCA had in place, notably a KESFC byelaw specifying minimum sizes for grey mullet and skates & rays as well as a legacy EA byelaw specifying minimum size for grey mullet. These sizes have been incorporated into the new draft byelaw to enable revocation of the old legislation, this will mean that there is no net increase in the number of byelaws on the KEIFCA statute books. In addition, a number of legacy byelaws which were transferred to Kent and Essex IFCA upon its creation in 2011 have been revoked by the byelaw.

The proposed byelaw establishes a timely general management approach over the entirety of the Kent and Essex IFCA District for managing stocks which either a) are managed, for the purposes of commercial fisheries, at a national or European level, such as quota species or b) are species which have much lower effort and no specific local management system (such as a permit issued by KEIFCA).

It is now ten years since the formation of KEIFCA, and during that time a number of area specific byelaws have been made which introduce permits and manage Marine Protected Areas. This is the first byelaw being made by KEIFCA which covers the entirety of the District and applies to a wide range of species. As a result, this is the ideal vehicle to rationalise and simplify management of lower effort and recreational fisheries to create a management system which is

simple and easy to understand for fishermen and has clear compliance and enforcement outcomes. In addition, many of the byelaws from the three inherited areas (EA, Sussex SFC, Eastern SFJC) have now been revoked or replaced by the organisations which made them originally and, in many cases, do not apply to fisheries or species in the geographical areas which were transferred to KEIFCA.

Table 1 below identifies the revoked byelaws and provides context for their revocation.

<b>Byelaw Title</b>	<b>Reason for revocation</b>
"Minimum Fish Sizes for Certain Species: Scallops, Grey Mullet, Skates and Rays" made on 20 <sup>th</sup> July 2009 by KESFC	Superseded by proposed byelaw
"Byelaw No. 14. Minimum Size of Grey Mullet" made on 7 <sup>th</sup> January 2009 by the Environment Agency, and having effect in relation to the District from the 1 <sup>st</sup> April 2011	Superseded by proposed byelaw
"Byelaw No. 7. Parts of Shellfish" made on 31 <sup>st</sup> January 1996 by Eastern SFJC and having effect in relation to the District from the 1 <sup>st</sup> April 2011	Superseded by proposed byelaw
"Byelaw No. 10. Whitefooted Edible Crab" made on 29 <sup>th</sup> April 1998 by Eastern SFJC and having effect in relation to the District from the 1 <sup>st</sup> April 2011	Existing soft-shelled crab prohibition covers the same issue as this byelaw. In addition, this byelaw applies to an area which comprises less than 0.7% of the KEIFCA District.
"Byelaw No. 5. Prohibition on the use of edible crab as bait" made on 31 <sup>st</sup> January 1996 by Eastern SFJC and having effect in relation to the District from the 1 <sup>st</sup> April 2011	This byelaw applies to an area which comprises less than 0.7% of the KEIFCA District, and was originally introduced due to the importance of Cromer crab in Norfolk to the Eastern SFJC District, which does not apply to the KEIFCA District.
"No. 15, introducing permits for taking lobsters" confirmed on 13 <sup>th</sup> October 1982 by Sussex SFC; and having effect in relation to the District from the 1 <sup>st</sup> April 2011	This byelaw has been revoked by Sussex IFCA therefore there is no permit system now in place and therefore this revocation standardises the two Districts
"Dredging for, fishing for and taking of oysters and clams and removal of cultch" made on the 14 <sup>th</sup> April 1994 by Sussex SFC; and having effect in relation to the District from the 1 <sup>st</sup> April 2011	This byelaw has been revoked by Sussex IFCA therefore this revocation standardises the two Districts
"No.3, introducing a closed period for the taking of periwinkles" confirmed on 6 <sup>th</sup> February 1962 by Sussex SFC. and having effect in relation to the District from the 1 <sup>st</sup> April 2011	This byelaw has been revoked by Sussex IFCA therefore this revocation standardises the two Districts

*Table 1. Identifying revoked byelaws and the reason for their revocation*

The draft byelaw wording (Appendix A) and its associated impact assessment (Appendix B), as amended following comments from members at the November 2019 meeting, are provided attached to this paper.

There also continues to be a significant amount of engagement and discussion between IFCA's on this issue, as a whole IFCA approach is seen to be conducive to a standard, sensible outcome. Sussex and Northumberland IFCA's have already held discussions with the Angling Trust regarding this issue on behalf of IFCA's nationally.

It is anticipated that there will, once the current emergency byelaws have been replaced with long term, stable legislation, be a second phase of works by IFCA's to incorporate locally specific minimum sizes where necessary. However, this will form part of a piece of work which takes into account a future new fisheries bill. In discussions with Government, IFCA's have made this issue a significant priority and outlined the importance of recreational fishing to the inshore environment and economy. Government has indicated that they understand this is a significant issue.

Many of the minimum sizes currently assigned to species are considered by some to be ineffective as they do not capture enough of the pre-spawning population. Minimum sizes are, in theory, intended to protect around 50% of the population which has yet to spawn. The rationale for the minimum size for each species is however complex and often includes an element of negotiation between EU member states in addition to the scientific evidence which underpins what an appropriate minimum size should be.

This is a complex issue, changes to minimum sizes would require a great deal of evidence to determine an appropriate size and the implications of any such changes on commercial catches in the context of the landing obligation would need to be explored. The risk of seeking to cover these issues would be that their complexity requires additional time to work through, increasing the likelihood a delay in implementing a permanent replacement byelaw.

Therefore, it is recommended that these issues are considered in a second phase of work which will sit alongside other KEIFCA priorities and that the replacement byelaw mirrors the effects of the emergency byelaw to ensure that there is a consistent protective effect in the meantime.

### **Informal consultation**

Officers from the four east coast IFCA's undertook an informal consultation to seek the views of potentially affected stakeholders and to inform any refinements to the byelaw.

The Angling Trust commented on the proposal subsequent to the deadline and this has also been taken into consideration. There was general support for the byelaw, including from the Angling Trust which supports the need for enforceable minimum sizes for recreational anglers. In addition, the National Federation of Fishermen's Organisations have indicated that their view hasn't changed since the view provided at the time of implementing the Emergency Byelaw which was to the effect that as the measures maintain the status quo, there will be limited impact. Other comments were raised as follows:

*Unintentionally making it illegal to store / transport etc. catch within the Kent and Essex IFCA district which was caught legally elsewhere* – the concern raised relates to where someone has in their possession a fish which is below the minimum size within the Kent and Essex IFCA district but which was caught elsewhere, where the minimum size is different and was therefore caught legally.

This issue persists only where the minimum size for a marine organism within the Kent and Essex IFCA district is greater than elsewhere. This is considered to be the case for one species only, whelks (*Buccinum undatum*). In this case, the wording of the byelaw takes into account where the whelks were caught from in determining if there is an offence and as such, the issue does not persist.

*The minimum size of some species should be increased* – Representation was made to the effect that the current minimum sizes have only a limited effect in protecting pre-spawning individuals. As set out in the previous section, the limited timescale to replace the emergency byelaw effectively preclude Officers from undertaking a review of the current minimum sizes. This is to be reflected in longer-term workstreams, working collaboratively with other IFCAs.

*Other species should be added to the byelaw* – proposed species include cockles. As set out in the previous section, whilst there may be a driver for changes to the minimum sizes (including implementing such where none presently exists), the approach recommended is to implement a byelaw to effect a continued protective effect in the first instance and seek to address these issues in a second phase of management.

### **Potential impacts on stakeholders**

The proposed byelaw intends to maintain the protective effect of measures which were already in place prior to their amendment at the European level. As such, no additional burdens are placed on commercial or recreational fishing beyond those that already existed. A regulatory impact assessment has been produced which sets this out in more detail in addition to further benefits and rationale for the intervention.

### **Next steps**

After the Authority makes a byelaw, it must be put to formal consultation as per Defra guidance. Once this is completed, the results of the formal consultation are taken into account and amendments to the byelaw are considered.

Once the formal consultation is complete, the byelaw can be formally submitted to the MMO for quality assurance (QA). Further changes may be required as a result of this process also.

It is recommended that the Chief Officer is delegated authority to make amendments to the byelaw pursuant of taking into account the consultation and the MMO formal QA to the extent that such are not considered to alter the intended effect of the byelaw.

It is intended that Officers undertake the process of implementing this byelaw in collaboration with neighbouring IFCAs again to increase transparency and clarity amongst stakeholders and provide as consistent a protective effect as possible. This also has the effect of reducing burdens on each IFCA as development work is not duplicated.

**Recommendation:**

The Authority is asked to **APPROVE** the making of the Byelaw taking account of the Impact Assessment provided