

By: Chief Fishery Officer

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

Subject: **Whelk Minimum Size Emergency Byelaw**

Classification Unrestricted

Summary:

This paper will provide Members with a rationale to make an emergency byelaw for the whelk permit fishery, following feedback from local industry.

Recommendations:

Members are asked to **REVIEW** the initial impact assessment, feedback on the suggestions from the local industry and stakeholders and the wording of the WHELK MINIMUM SIZE EMERGENCY BYELAW 2020.

Members are asked to **AGREE** to make the WHELK MINIMUM SIZE EMERGENCY BYELAW 2020.

Background

Agenda Item B4 outlines the background and the rationale for considering using an emergency byelaw, while this paper addresses the feedback from the industry concerning this suggestion, the wording of the emergency byelaw and an associated initial impact assessment.

As part of the current Whelk Fishery Permit Byelaw, paragraph 26 requires that the technical permit requirements will be reviewed by KEIFCA no less than every three years. Building on the annual report of whelk landings and effort in the district, KEIFCA officers have also worked with the industry to develop and send out a questionnaire (September 2019) and hosted an industry workshop in Ramsgate in December 2019. The focus of this engagement was to discuss current management and review future management options for the whelk fishery. Discussions also looked to address industry concerns over the riddling process and how the requirement for whelks to pass through a 25mm riddle gap

is working in practice. This has led to a proposal for an emergency byelaw which will translate the current riddle size into a minimum shell height size. As such, what follows is the initial impact assessment required by KEIFCA Standing Orders for making of an emergency byelaw. This includes a full and complete consideration of the urgent and unforeseen problem.

Initial Impact Assessment

KEIFCA Emergency byelaw making process (Standing Orders)

"Following the identification of a potential need for an emergency byelaw, the Chief Officer will consult the Chairman and Vice Chairman and discuss the merits of the application based on the defra emergency byelaw guidance. After this initial consultation K&EIFCA Officers will then gather information regarding the issue in question and complete an initial impact assessment which will help to gather the facts surrounding the need for an emergency byelaw. The Chief Officer will then meet with the Chairman and Vice Chairman and decide to

- *Proceed with an Emergency Byelaw.*
- *Call a special meeting of the Technical Panel or a full K&EIFCA meeting.*
- *Take no immediate action but continue to monitor the issue and report to the next scheduled K&EIFCA meeting. "*

Background Summary - *Explanation of why the need to make the byelaw could not reasonably have been foreseen.*

Although the whelk permit byelaw has been in place and enforced since 2012, following comments from the industry at the last three Authority meetings, conversations with the local fishing industry and the feedback from a whelk industry workshop on the 5th December there was strong feeling from the industry that the current approach, and byelaw wording concerning the landing of sizable whelks, needed to be urgently addressed.

The feedback could be summarised as the fishermen needing greater clarity concerning how the landing of sizable whelks could be accurately and reliably assessed by both fishermen and officer to make sure they were being compliant. Feedback from the meeting highlighted the local industries frustration with the current situation and concerns with the consistency and reliability of passing whelks through a riddle with fixed gap. Although the current legislation has been used for the last seven years and is based on Sussex IFCA's legislative wording, the size, the importance of the fishery has increased and along with it the level of enforcement.

The feeling from the industry was that whilst a riddle will separate whelks of different sizes, there is substantial variance even when the same riddle set up is used. In practice this means that the same batch of whelks could be passed over the same riddle but come up with slightly different results in the whelks that had been retained and those that had passed through the riddle. This in

turn has led to a high level of frustration, and at times aggression from the industry with KEIFCA and its officers as well as a loss of faith in the management system and the Authority.

Over the last few years KEIFCA have worked with riddle manufacturers and local fishermen to try and make the riddling process more consistent and accurate by investing in, and developing, mechanical riddles. KEIFCA have worked with engineers to develop and test a riddle in 2018 and then refined the design with a 'mark 2' version in 2019. The outputs from this suggest that the mechanical riddles do help make the process more consistent, however there is still variation which means that results are not repeatable. This has led to the conclusion that there is a limit to how precisely a riddle can sort whelks and an unforeseen situation has occurred where we need to find a different approach to address the reliability concerns raised by the industry.

Current levels of enforcement activity

Achieving high compliance with the whelk permit byelaw legislation is vital as the whelk fishery is an important component of local fishing industries income. From an enforcement perspective the riddling of whelks through a 25mm gap has been an ongoing area of low compliance and a source of significant conflict with the local industry. Moving to a minimum whelk length achieves exactly the same level of protection for the breeding stock as the current management measure, as the riddle gap is a proxy for shell height, but is seen as a more reliable, fair and easily understood and communicated method that, most importantly, is supported by the industry.

With relationships and industry buy-in to management at a critically low level, but with positive engagement and constructive suggestions from the industry, it is important that action is taken quickly. A new full byelaw would take a year or longer to come into force, however if we carry on with the current situation the relationships with the local industry would continue to worsen and achieving compliance would continue to be challenging which would increase the risk to the sustainability of the fishery. Making an emergency byelaw would address this critical short term need and help clarify and improve the current management rules. Running in parallel, effort would then be put into making a new permanent byelaw, which would combine the current permit byelaw, the proposed emergency byelaw and any learning and outcomes from continuing to work with industry.

Options available

1. Do Nothing

Although the current byelaw provides for a minimum size by virtue of the specified riddle width, if new legislation is not put in place and supported by education and enforcement there is a significant likelihood of a continued reduction in the relationship between industry and the Authority. An increased

likelihood of immature whelks being landed would be a logical response to this, as buy-in and community engagement are core principles of the KEIFCA Compliance and Enforcement Strategy. In turn this would lead to the risk of the stock crashing increasing considerably.

2. Make an emergency byelaw that translates the current minimum riddle spacing into a minimum shell height

Shell height is an easily understood metric used by the majority of regulations which manage whelk landing size, including other IFCA byelaws such as Eastern IFCA and the EU Minimum Conservation Reference Size legislation. Part of the current lack of understanding and buy-in from industry regarding the minimum riddle bar spacing is related to the EU shell height MCRS sitting alongside it, which means the industry has to measure two different aspects to ensure full compliance. Translating the riddle spacing into a minimum shell height which in effect, replaces the EU MCRS for the purposes of whelk fishing within the KEIFCA District, would remove this confusion and improve compliance.

Recommended Option – *Option 2. Make an emergency byelaw that translates the current minimum riddle spacing into a minimum shell height*

Agreeing new rules and putting them into new legislation (an emergency byelaw) would mean that the legislation could be most fairly and consistently applied to all permit holders and that all parties would have clarity on what is expected. As an emergency byelaw only lasts up to 18 months, any permanent solution would need to be in the form of a new byelaw which would take into account any learning from the emergency byelaw application.

Recommended emergency byelaw wording

The full wording of a suggested byelaw is presented in Appendix 1. The three main items contained within the byelaw are; a minimum size, a tolerance to deal with the bulk landings which are a feature of whelk fishing, and an inspection process.

Translating riddle spacing to a minimum size

In 2017 the Authority agreed to increase the riddle gap width from 22mm to 25mm. The aim of this management measure was to protect the breeding population and in effect increase the minimum landing size of the whelks, moving it closer to a size at which 50% would have been likely to have bred.

When the flexible permit byelaw was made, the use of a riddle gap width rather than a specific minimum size was adopted as it was the management approach taken by our neighbouring Sussex IFCA.

Feedback from the industry in general and at the meeting suggested translating the riddle gap width into a 25mm minimum whelk width or the equivalent length (53mm) would help clarify the intention of the byelaw.

Although 25mm width is a straightforward translation from the current riddle gap, due to the irregular shape of a whelk the width of a whelk is difficult to accurately and repeatedly measure as it can depend on which angle you measure it. In addition, having a KEIFCA minimum width (25mm) but an EU/UK minimum length (45mm) could cause confusion and legally there is an expectation that regulators would use a standard measurement technique that is already widely used.

KEIFCA officers have measured the length and width of over 10,000 whelks from around the district over the last 3 years and although there is variation, the large size of the sampling does give us a very accurate conversion factor from whelk width to length.

This suggested measure is more repeatable than the riddling process, cheap and simple for both fishermen and KEIFCA officers to apply but also gives fishermen flexibility in developing their own sorting processes which will work on their individual fishing vessel.

Percentage tolerance

Building on feedback from the industry and from testing a number of different riddles, developing a percentage allowance under the minimum size, best represents the accuracy of the whelk riddling process and the bulk-quantities in which whelks are landed. For easy of assessment by both the industry and KEIFCA officers, it is suggested that a percentage by weight rather than number would be used. From initial trials by officers, an allowance between 3-5% would be reasonable. It would still also be illegal to land whelks under the current EU 45mm minimum length.

Inspection process

By developing a clear assessment and inspection process, both fishermen and KEIFCA officers will know what to expect and it will help to make the inspection process as quick, efficient and consistent as possible. It is suggested that a clear method would be developed outlining both the number of samples and the weight of samples taken from different parts of the catch. From initial trials and officer experience taking a minimum number of three samples of about 5kg could be an appropriate level for a reasonable assessment. If required it would always be at the officer's discretion to take more samples.

Estimated costs or impacts of introducing option 2

Industry: As option 2 would directly translate the current riddle size into a shell height, there would be no new costs or additional impacts incurred by the sector as a consequence of the proposed emergency byelaw. This is because the 25mm current riddle size is a proxy for the 53mm proposed shell height - a direct translation from one metric to the other.

Estimated cost of enforcement: KEIFCA would have to advertise the emergency byelaw and reprint our legislation which is issued to permit holders.

Section 157 of the Marine and Coastal Access Act 2009 outlines the ability of an IFCA to make an emergency byelaw. This power can be used when the Authority considers that there is urgent need for the byelaw and that the need to make the byelaw could not reasonably be foreseen.

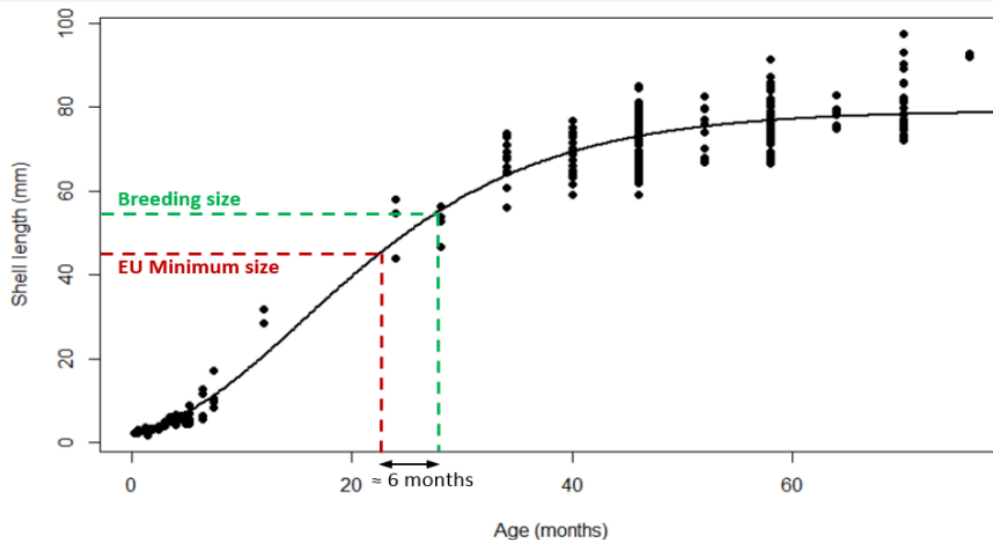
Industry consultation

Following the workshop attended by fishermen and industry representatives, KEIFCA officers sent out a consultation document with the aim of collecting information and thoughts on the proposed measures. Unfortunately, we only received back 6 out of the 38 consultations sent to the whelk permit holders and other stakeholders (Appendix 2). Generally, the feedback from the consultation replies showed a mixed response. Some replies supported the management but with a practical trial phase, while other responses advocated keeping the status quo.

With the short consultation time and the low number of replies it is hard to make sure that we are getting a true representation from the industry. From conversations over the phone with industry leaders in Whitstable and Leigh-on-Sea, the proposed measures were seen as providing a sensible way forward and covered the key points from the meeting but there was concern from fishermen and a feeling that it would be useful to run trials to see how an inspection would work in practice.

In general, consultation replies advocating keeping the status quo highlighted the fundamental disconnect there seems to be in understanding that is at the root of our current problem: that riddle width is used as a proxy of whelk length to manage the fishery.

The decision to increase the riddle gap width from 22mm to 25mm was a challenging decision to arrive at; and was discussed in depth in January 2016 and in January 2017 (where it was voted through unanimously). As the text in the January 2017 management agenda supports and Fig. 9 highlights (taken from the January 2017 paper) the decision to increase the riddle gap was taken with the implicit aim of increasing the length of whelks landed to move the size of the whelks landed closer to the 50% breeding size.



Fig,9 Whelk growth curve illustrating the relationship between shell length and age. The age was determined from the analysis of statolith growth rings in whelks collected within the first six months. A Gompertz growth curve has been fitted to the data. The red intersect line highlights the current EU minimum size and the green line highlights the mean size of maturity for KEIFCA district.

Efforts have been made on a number of occasions to explain this approach to the industry with KEIFCA producing a flyer and KEIFCA officers running through this rationale and this approach with fishermen during inspections. We are however in a position where some fishermen are known to be riddling their catch and then picking out whelks that have fallen through their riddle but are over 45mm and adding them to their bags of landed whelks.

From the officers' point of view the measures suggested in the emergency byelaw are sensible, simple and easy to understand and apply, and would make the job of enforcing the whelk fishery easier.

Reviewing the emergency byelaw and continuing to work with the local industry

From discussions with the local industry, some fishers wanted to see how the new legislation would actually work on the coast. Officers have discussed running trials with members of the industry, however, as is the nature of the whelk fishery in KEIFCA, there is a lot of variation across our district in both the whelks that are caught, and the sorting techniques used to riddle them. Running a specific trial on one boat, on one day, in one port is unlikely to highlight this, so instead it is suggested that we look to review and seek feedback from the industry after a period of 8-10 weeks. This approach also lines up very well with one of the requirements of an emergency byelaw, which is to periodically review the appropriateness of the legislation. Using practical feedback from the fishermen and officers, we would have a better feel for the metrics used in the inspections (number and weight of samples, and the percentage tolerance under the minimum size).

Recommendations:

Members are asked to **REVIEW** the initial impact assessment, feedback on the suggestions from the local industry and stakeholders and the wording of the WHELK MINIMUM SIZE EMERGENCY BYELAW 2020.

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