

APPENDIX B TO AGENDA ITEM B3

<b>Title:</b> Minimum Sizes Byelaw <b>IA No:</b> <b>RPC Reference No:</b> <b>Lead department or agency:</b> Kent and Essex Inshore Fisheries and Conservation Authority <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 09/01/2020		
	<b>Stage:</b> Development/Options		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Other		
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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**Cost of Preferred (or more likely) Option (in 2016 prices)**

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£m	£m	£m	Qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**  
 Changes to European Legislation in relation to minimum sizes of fish and shellfish have diminished the protective effect of these measures by not applying them to recreational fisheries and have diminished the effective enforcement of remaining measures. Intervention is required to maintain the protective effect of the measures lost as result and to ensure that they are enforceable. Preventing or reducing the removal of pre-spawning individuals is an important measure to ensure the sustainability of fish and shellfish stocks within the context of the Marine Strategy Framework Directive.

**What are the policy objectives and the intended effects?**  
 To prevent or limit the removal of pre-spawning fish and shellfish from fisheries to seek to ensure the continued sustainability of fish stocks within the Kent and Essex IFC District and beyond. The intended effects are to prohibit the removal of fish and shellfish which are below the minimum size established within European legislation in relation to commercial and non-commercial fisheries and to enable the effective enforcement of such. Effectively, the proposed measures maintain the effects of Council Regulation (EC) No 850/98 in relation to minimum sizes for catches not subject to the landing obligation.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 0 – do nothing  
 Option 1 – implement minimum size requirements for recreational and commercial catches consistent with measures in place immediately prior to the implementation of Regulation (EU) 2019/1241.  
 Option 1 is the preferred option as it presents no impacts on affected stakeholders and reduces the risk of impacts as a result of the removal of pre-spawning individuals from stocks.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 12/2025

Does implementation go beyond minimum EU requirements?	Yes		
Is this measure likely to impact on international trade and investment?	No		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> n/a	<b>Non-traded:</b> n/a	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Chief Executive: Dr W H Wright Date: 31/1/2020

**Summary: Analysis & Evidence**

Policy Option 1

Description:

**FULL ECONOMIC ASSESSMENT**

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	0		0		<b>0</b>
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
No monetised costs are identified					
<b>Other key non-monetised costs by 'main affected groups'</b>					
No non-monetised costs are identified					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	0		0		<b>0</b>
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
No monetised benefits are identified					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Preventing or limiting the removal of pre-spawning fish and shellfish from stocks will have a beneficial impact on overall stock sustainability with beneficial implications on associated commercial (direct benefit) and non-commercial (indirect benefit) catches. In addition, protection of pre-spawning individuals is in keeping with the requirements of the Marine Strategy framework Directive.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
Effects of the proposed measures are in keeping with and have no additional effects of the associated requirements of Council Regulation (EC) No 850/98. Minimum sizes established in EU legislation are appropriate and have a protective effect.					

**BUSINESS ASSESSMENT (Option 1)**

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:0
Costs: 0	Benefits: 0	Net: 0	

## Evidence Base

### Problem under consideration

Regulation (EU) 2019/1241<sup>1</sup> was published by the European Union on 25 July 2019. These regulations deal broadly with managing fishers, applying an eco-system approach as well as providing for 'regional' management of fisheries across Europe. The intentions of this legislation come from reformed Common Fisheries Policy. Importantly, these regulations revoke and replace the measures implemented through 850/98. Officers have identified some key differences in the legislation compared to 850/98 which have also been confirmed by an independent legal advisor:

- Establishes that the MCRS apply only in relation to commercial fishing;
- Removes the prohibition on the transshipping, landing, transporting, storing, selling and displaying or offering for sale undersize marine organisms;

As a result, IFCA's powers will be significantly diminished. There will be no effective IFCA enforcement regime in respect of undersized fish for recreational fishers and no enforcement in respect of trans-shipment, landing, transporting, storing, displaying and offering for sale. This would cause enforcement issues in circumstances where there is insufficient evidence to demonstrate retention on board a vessel, and it would be almost impossible to enforce against end users such as restaurants and wet fish shops, transport companies, and processors found with fish which are outside the landing obligation below the MCRS.

### Rationale for intervention

#### *The importance of minimum sizes*

The removal of fish only once they have reached a minimum size (usually related to a breeding size) is a common fisheries management measure used around the world<sup>2,3</sup>. As a management measure it is relatively cheap, simple and effective to apply and easy for fishers to understand why this is used as a management measure.

There has been a move away from managing fisheries using a minimum size regime which requires commercial fishers to discard dead, undersize fish. This is set out in the reformed common fisheries policy and implemented through 1380/2013 as the 'landing obligation'. The landing obligation removes the incentive to catch undersize fish through requiring that they are landed and counted against quota but crucially that they are not sold for human consumption. The landing obligation applies to finfish rather than shellfish (crustacea, molluscs) as a reflection of their high incidental mortality – i.e. large percentages of finfish perish after being caught regardless of their being returned to the sea. Enforcement activity of minimum sizes in relation to crustacea and molluscs are important aspects of Kent and Essex IFCA's compliance regime and in particular to the crab, lobster and scallop fisheries throughout the district.

In addition, the landing obligation does not apply to recreational fishing activity. As such, maintaining the disincentive to take and retain undersize marine organisms relies solely on the enforcement of a minimum size by prohibiting their removal. It is also worth noting that rod and line fishers (the primary recreational fishery) generally have higher survivability than other commercial fishing gears (e.g. trawls, static nets etc.) increasing the effectiveness of a minimum size as a management tool.

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1241>

<sup>2</sup> <sup>1</sup>New South Wales Recreational Saltwater Fishing Guide. (2018) NSW Department of Primary Industries. ISBN web 978-1-76058-242-5

<sup>3</sup> 2FLORIDA SALTWATER RECREATIONAL 2019. FISHING REGULATIONS. Florida Fish and Wildlife Conservation Commission. Issued: Jan. 1, 2019

The loss of the ability to enforce minimum sizes would significantly diminish Kent and Essex IFCA's ability to meet its obligations under the Marine and Coastal Access Act 2009 and the Marine Strategy Framework Directive i.e. long-term, sustainable fisheries.

A proposed byelaw is considered the most effect way of achieving this because the use of MMO cross-warrants will enable only the enforcement of minimum sizes through 1380/2013 which significantly diminishes the effectiveness of the enforcement of minimum sizes and would not apply to recreational fishing.

It should be noted that the proposed measures are not intended to conflict with the landing obligation – paragraph 3 of the proposed byelaw applies the prohibition in paragraph 2 (of removing undersize fish etc.) only to catches where the landing obligation doesn't apply.

Kent and Essex IFCA have worked with the three other East-coast IFCAs (Northumberland, NorthEastern and Eastern) to develop the proposed management measure, aiming to ensure that management is as clear and standardised as possible to maintain consistency and improve clarity for stakeholders.

### *Importance of MCRS in relation to recreational fisheries*

Unfortunately, accurate national or regional information about angling activity around the coast and at sea is relatively sparse. Sea Angling 2012<sup>4</sup> was established to find out how many people go sea angling in England, how much they catch, how much is released, and the economic and social value of sea angling. The surveys also met UK obligations under European law to estimate recreational catches of several species including bass and cod. Data were collected from over 11,000 sea anglers in England through an Office of National Statistics (ONS) household survey, face-to-face interviews with anglers by Inshore Fisheries and Conservation Authorities (IFCA), catch diaries and online surveys. The findings give a good national overview of the English angling sector and give a good indication of the amount of annual fishing effort. More up-to-date feedback from the recreational fishing sector suggests that there has been a steady decline in angling numbers since 2012. A summary of the results is set out below:

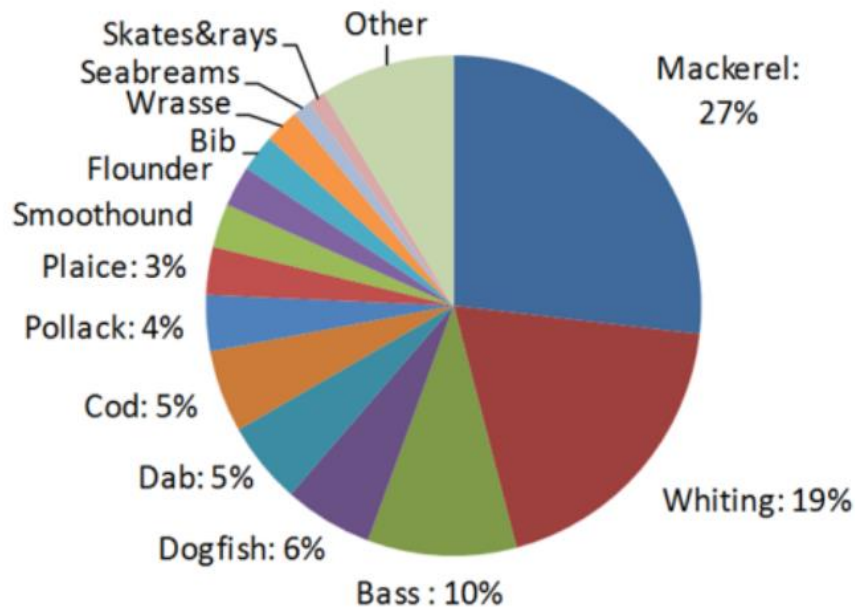
- The surveys estimated there are 884,000 sea anglers in England, with 2% of all adults going sea angling. These anglers make a significant contribution to the economy - in 2012, sea anglers' resident in England spent £1.23billion on the sport, equivalent to £831million direct spend once imports and taxes had been excluded.
- This supported 10,400 full-time equivalent jobs and almost £360 million of gross value added (GVA). Taking indirect and induced effects into account, sea angling supported £2.1billion of total spending, a total of over 23,600 jobs, and almost £980 million of GVA. Angling 2012
- Almost 4 million days of sea angling were recorded over the year.
- Shore fishing was the most common type of sea angling – almost 3 million angler-days compared with 1 million for private or rented boats and 0.1 million on charter boats.
- Anglers had most success on charter boats, catching 10 fish per day on average compared with around 5 from private boats and only 2 from the shore.

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<sup>4</sup> Armstrong M., Brown A., Hargreaves J., Hyder K., Pilgrim-Morrison S., Munday M., Proctor S., Roberts A. & Williamson K. (2012) Sea Angling 2012 – a survey of recreational sea angling activity and economic value in England. Defra - contract MF1221.

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- Shore anglers released around 75% of the fish caught, many of which were undersized, and boat anglers released around 50% of their fish.
- The most common species caught, by number, were mackerel and whiting, (below).



While there are no large recreational shellfish fisheries in our district, there is a small but constant level of activity, with people putting out 2-3 pots at a time or collecting small amounts of shellfish from the shore. Minimum size regulations help manage this activity.

The importance of minimum sizes is also recognised by the recreational angling community. *Angling Trust website*<sup>5</sup> (19/7/19)

*“Minimum landing sizes are used all over the World and are just one of a number of tools used to manage fish stocks. However, as a common-sense approach to conservation and an easy concept to understand (protecting immature fish) they have become particularly favoured by recreational anglers with an interest in conservation and sustainable management of fish stocks.”*

*“The angling Trust encourages all anglers to Give Fish A chance and apply voluntary minimum retention sizes which exceed the EU's and allow all fish retained the chance to have bred at least once.”*

The minimum size legislation also applies to a long list of molluscs and crustacea including, whelks, edible crabs, lobsters and several clam species

### *Effective enforcement of MCRS*

The new regulations require only that catch of marine organisms below the MCRS ‘*shall not be retained on board, but shall be returned immediately to the sea*’<sup>6</sup>. Notwithstanding that this effectively rules out its application to fishing from shore (including what may be commercial fishing), it also removes the prohibition on the transshipping, landing, transporting, storing, selling

<sup>5</sup> <https://www.anglingtrust.net/page.asp?section=163>

<sup>6</sup> Article 15(12) 1380/2013 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1380>

and displaying or offering for sale undersize marine organisms. This would cause enforcement issues in circumstances where there is insufficient evidence to demonstrate retention on board a vessel and would make it almost impossible to enforce against end-users such as restaurants and wet fish shops, transport companies, and processors found with fish which are outside the landing obligation below the MCRS.

Catch inspections typically take place on quaysides as vessels are landing. However, market inspections, inspection on stalls or fish shops and inspections of catch loaded into vehicles or in the process of being loaded are also an important part of the compliance regime and has encouraged best practice – for example, whelk processing factories within the district have instructed delivery drivers to check the sizes of whelk catch prior to loading it into lorries.

The protective effect and effectiveness of enforcement of minimum sizes are therefore greatly diminished by the new regulations.

*Application to all species for which MCRS applies and which are landed within the Kent and Essex IFC District*

The proposed byelaw seeks to replicate the protective effect in place under Council Regulation (EC) No 850/98. To this end, the byelaw applies to species which have an MCRS and are evidenced to have been landed within the Kent and Essex IFC District. This is determined using the Marine Management Organisation landing datasets available for ports within the Kent and Essex IFC District.

Whilst the level of risk is likely to vary between species, the previous regime had a level of protective effect on all species. The impacts of recreational fishing are relatively unknown on a species by species basis. It is considered reasonable to maintain the current protective effect for species which are fished within the district as a reflection of this uncertainty and the precautionary approach advocated through the Common Fisheries Policy.

In addition, the timeframe for implementing the emergency byelaw do not allow for further investigation on a species by species basis. The generality of the byelaw reflects that the urgency of the circumstances do not allow for further investigation or justification of specific provisions. Legal advice has been sought and such legal advice confirmed that this is an acceptable approach.

*Parts of shellfish*

The proposed byelaw also prohibits the removal of shellfish which cannot be measured to determine minimum size. This was also a provision of 850/98, albeit with exceptions for edible crab claws, which would not be enforceable under current IFCO powers.

*General Fisheries Management Approach*

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

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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.

Byelaw Title	Reason for revocation
“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

### Policy objective

The objective of the regulatory intervention is to limit or prevent the removal of pre-spawning individuals from populations of fish and shellfish caught within the Kent and Essex IFCA district.

To achieve this, the proposed regulatory intervention will do the following:

- Prohibit the removal of fish and shellfish below a size which is considered to represent a ‘mature’ fish or shellfish which is likely to have spawned;
- Apply the above prohibition in relation to commercial and non-commercial fishing activity;
- Apply the prohibition to the retaining on board, transshipping, landing, transporting, storing, selling, displaying or offering for sale, any of the species named in the byelaw which are undersize to enable the effective enforcement of the minimum size;
- Require shellfish to be landed ‘whole’, with an allowance for a limited quantity of *Cancer pagarus* detached claws, to enable effective enforcement of the minimum sizes;

- Apply an exemption in relation to using certain fish as bait when they are undersize;
- Apply an exemption in relation to certain small pelagic species to permit 10% of catch to be undersize;
- Apply an exemption in relation to catch subject to the landing obligation (Regulation (EU) No 1380/2013).

The measures are intended to replicate the related measures within Council Regulation (EC) No 850/98 for all catches not subject to the landing obligation and such as they applied immediately prior to the implementation of Regulation (EU) 1240/2019.

### **Description of options considered (including status-quo)**

Two options were considered:

- Option 0 – Do Nothing: Regulation (EU) 1240/2019 had the effect of changing minimum fish and shellfish size provisions as they had been under Council Regulation (EC) No 850/98. In particular, the amended provisions do not apply to non-commercial fishers or fishers operating from unpowered vessels and remove the prohibition on transshipping, landing, transporting, storing, selling, displaying or offering for sale undersize marine organisms. This option is not considered appropriate as it will not effectively protect pre-spawning individuals from fishing mortality and will not enable effective enforcement of the minimum sizes.
- Option 1 – Minimum Sizes byelaw: This measure effectively maintains the status quo immediately prior to the implementation of 1240/2019. It has the effect of maintaining the provisions which had been in place including applying the minimum size provisions to non-commercial fishers and to fishers from unpowered vessels and in relation to activities ancillary to fishing (i.e. transshipping etc.).

### **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

No monetised or non-monetised costs are identified. This reflects that the proposals effectively maintain the status quo which had been in place immediately prior to the implementation of 1240/2019.

No monetised benefits are identified. Non-monetised benefits relate to the protection of pre-spawning individuals from fish and shellfish populations. Removal of pre-spawning individuals can have significant negative impacts on stock health, as populations are unable to replace individuals lost via natural and fishing mortality. Limiting or preventing the removal of pre-spawning fish and shellfish will ensure healthier spawning stock biomass with direct benefits to commercial fishers and indirect benefits to non-commercial fishers and the related industry (i.e. tackle shops, charter vessels etc.). This will also be in keeping with obligations under the Marine Strategy Framework Directive, to ensure stocks are:

1. exploited sustainably consistent with high long-term yields
2. have full reproductive capacity in order to maintain stock biomass and;
3. the proportion of older and larger fish/shellfish should be maintained (or increased) being an indicator of a healthy stock.

### **Rationale and evidence that justify the level of analysis used in the IA**

Given that no impacts are identified from the proposed intervention, the level of analysis within the assessment is considered appropriate.

### **Risks and assumptions**

- Minimum sizes set out in the byelaw will have a protective effect – some of the minimum sizes set out in European legislation are thought to be below that which would be effective to



limit or prevent the removal of pre-spawning individuals. Evaluating the effectiveness of the minimum sizes set internationally is beyond the scope of the current intervention.

- Impacts of using nets with inappropriate mesh sizes – amendments made by 1240/2019 also remove the mesh size requirements on non-commercial fishers in relation to fishing with nets. Bycatch from fishing with nets can be significant and the incidental mortality of fish caught by nets can be significant. The proposed intervention does not implement mesh size requirements on non-commercial fishers (which was in place under Council Regulation (EC) 850/98) and as such, this poses a risk to fish stocks, particularly when fishing happens in rivers and estuaries, as a result of incidental mortality of pre-spawning individuals.

### **Direct costs and benefits to business calculations**

None identified

### **Wider impacts**

Non identified

### **Potential trade implications**

Implications on trade are unknown. However, failing to evidence that fish and shellfish stocks are meeting the criteria of the Marine Strategy Framework Directive may have an impact on trade with European Countries after 2020 (deadline imposed by the directive to meet 'good environmental status').

### **Summary and preferred option and implementation plan**

The preferred option is to implement a byelaw which effectively replicates the minimum size provisions which were in place immediately prior to the implementation of 1240/2019 including their application to non-commercial fishing activity and in activities ancillary to fishing (including transporting, selling etc.).

Given that the proposed intervention is effectively maintaining the status quo, no specific implementation plan is required. Kent and Essex IFCA's engagement plan includes engagement with the non-commercial fishing industry who are broadly aware of the requirement to ensure fish meet a minimum size. Commercial fishers are aware of the minimum size requirements.

Kent and Essex IFCA will publicise the byelaw on the Kent and Essex IFCA website and via social media platforms as well as engaging fishers on the ground during compliance activity.



**Assessment of proposed intervention in relation to the Marine Policy Statement.**

**Annex A: Policy and Planning**

Which marine plan area is the management measure in?

At present, there is no a Marine Plan in place in the KEIFC District

Have you assessed whether the decision on this management measure is in accordance with the Marine Policy Statement and any relevant marine plan?

- Yes, see below

When assessing this byelaw due regard was given to the UK Marine Policy Statement, the byelaws contribute to the following;

- The achievement of sustainable development of marine areas.
- Promote sustainable economic development.
- Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets.
- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.
- Achieve integration between different objectives.
- Recognise that the demand for use of our seas and the resulting pressures on them will continue to increase.
- Manage competing demands on the marine area, taking an ecosystem-based approach.
- Enable the co-existence of compatible activities wherever possible.