



Kent and Essex Inshore Fisheries and Conservation Authority

MARINE AND COASTAL ACCESS ACT 2009 (c.23)

VESSEL LENGTH AND ENGINE POWER BYELAW

The Authority for the Kent and Essex Inshore Fisheries and Conservation District, in exercise of the powers conferred by sections 155 and 156 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

INTERPRETATION

- (1) In this byelaw:
- (a) "the Authority" means the Kent and Essex Inshore Fisheries and Conservation Authority as defined in Articles 2 and 4 of the Kent and Essex Inshore Fisheries and Conservation Order 2010 (SI 2010 No 2190);
 - (b) "the District" means the Kent and Essex Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the Kent and Essex Inshore Fisheries and Conservation Order 2010;
 - (c) "derated" means an engine which has had its power output permanently lowered and is recorded as such on the Transcript of Registry issued by the Maritime and Coastguard Agency;
 - (d) "engine power" means the power output in kilowatts (kW) specified on the Transcript of Registry issued by the Maritime and Coastguard Agency;
 - (e) "fishing gear" means any equipment, instrument or other items designed to take sea fisheries resources;
 - (f) "overall length" means the length of the vessel as specified on the Transcript of Registry issued by the Maritime and Coastguard Agency;
 - (g) "ownership" means both the legal and beneficial ownership of the vessel;
 - (h) "relevant fishing vessel" means a fishing boat registered in accordance with Part II of the Merchant Shipping Act 1995 and the regulations made under that Act and in respect of which a fishing licence is held that has been issued by an appropriate national authority.

- (i) "towed fishing gear" means any beam trawl, otter trawl, multi-rig trawl, pair trawl, demersal trawl, pelagic trawl, anchor seine, Scottish seine, dredge or other similar fishing towed equipment, instrument or other items designed to take, or disturb, sea fisheries resources on the sea bed or in the water column;
- (j) "use" means shooting, setting, moving, towing or dragging the fishing gear on or above the seabed, on the sea surface or anchoring or leaving it on the seabed with or without the intention to take sea fisheries resources;
- (k) "Vessel Monitoring System" means any vessel monitoring system intended to record and report the position, speed and heading of the vessel including any system required by national regulation or deemed acceptable by the Authority.

Commented [MMO1]: The ordinary meaning of 'use' should suffice and a separate definition is not required here.

Commented [DB2R1]: I would disagree. Fishermen in the District routinely will dump fishing gear on the seabed to avoid hauling gear where they shouldn't be using it and also state that they were cleaning gear etc and therefore seek to mitigate against any detected offences. This interpretation is also used in KEIFCA byelaws which have been made recently to protect MPAs including within the Essex Estuaries Bottom Trawling Byelaw and the Bottom Towed Gear Byelaw

PROHIBITIONS

Vessel length for vessels operating all types of fishing gear

- (2) A person must not use any fishing gear from a relevant fishing vessel with an overall length of more than 14 metres.

Engine power for vessels operating towed fishing gear

- (3) A person must not use any towed fishing gear from a relevant fishing vessel which has;
 - (a) in the case of inboard engines, a total engine power of more than 221 kilowatts and where engines have been derated, did not have a total engine power of more than 243 kilowatts prior to derating; or
 - (b) in the case of outboard engines, a total engine power of more than 221 kilowatts.

EXEMPTIONS

Scientific exemption

- (4) This byelaw does not apply to a person performing an act which would otherwise contravene paragraphs (2) or (3), if that act was carried out in accordance with a written permission issued by the Authority permitting that act for scientific, stocking or breeding purposes.

Vessel length and engine power exemptions

- (5) This byelaw does not, subject to paragraphs (8) and (9), apply to a relevant fishing vessel which exceeds the specifications of paragraphs (2) or (3) provided that all of the following conditions are satisfied;
 - (a) an application is received on a biennial basis for exemption, on a form provided for that purpose by the Authority;
 - (b) the relevant fishing vessel has undertaken a minimum of 100 hours fishing activity, and for exemption from paragraph (3) this must be with towed fishing gear, within the District during the two year period prior to application, and was not prevented from doing so by any of the byelaws listed in paragraphs (11) and (12);
 - (c) the overall vessel length or total engine power has not been increased over that stated on the Certificate of Registry on the date that this byelaw came into force;
 - (d) the relevant vessel remains in the same ownership as on the date that this byelaw came into force;
 - (e) written permission, provided by the Authority, is carried on board the relevant fishing vessel at all times whilst operating within the District.

Commented [MMO3]: Para (5) and (6) appear to be a mix of exceptions, transitional provisions and permit type conditions rather than a straightforward exemptions that we are used to seeing – e.g. a scientific exemption.

Para 158 of MCAA 'supplementary provisions' states that the power to make byelaws also includes 'power to provide for exceptions or conditions' Although it is unusual to find a list of conditions attached to an exemption, it is permissible, even though the outcome makes the provision rather complex.

Commented [DB4R3]: I have modified the byelaw wording to combine and simplify the exemptions and transfer the 'pipeline' clause to 'transitional arrangements'

Transitional Arrangements

- (6) If there exists, for the construction of a relevant fishing vessel which exceeds the specifications of paragraphs (2) or (3), a legally binding commitment, such as a signed contract, then an exemption to fish within the District may be granted for a period not exceeding two years from the date that this byelaw came into force. Any such legally binding commitment must have been signed within the two years prior to the date that this byelaw came into force;
- (7) Written permission, provided by the Authority, must be carried on board the relevant fishing vessel at all times whilst operating within the District.

Applying for an exemption

- (8) When applying for an exemption as specified in paragraph (5), a person should provide the following for the relevant fishing vessel:
 - (a) VMS records which prove a minimum of 100 hours fishing in the District in the two years immediately prior to application;
 - (b) Vessel logs relating to the above VMS records;
 - (c) Any documentation, such as catch records and sales notes, which details the fish caught during the above 100 hours, the gear type used and the location where fishing took place;
 - (d) Details of the legal and beneficial ownership of the vessel;
 - (e) Any other information requested by the Authority for the purposes of clarifying the requirements of paragraphs (5) and (6), or if any of the information listed in paragraph (7)(a), (b) and (c) is not available.
- (9) The exemptions provided for in paragraph (5) may contain spatial restrictions which reflect the area in which any record of prior fishing activity was acquired.
- (10) The exemptions provided for in paragraph (5) will be reviewed at a date no later than fifteen years after the date upon which this byelaw is made and then no later than every five years after that.

REVOCATION

- (11) The 'Byelaw Relating to Vessel Size and Engine Power' made on 30th April 1997 by the Kent and Essex Sea Fisheries Committee in exercise of its power under sections 5 and 5a of the Sea Fisheries Regulation Act 1966 and in force immediately before the making of this byelaw is hereby revoked.
- (12) The following byelaws, made by the Authority in accordance with Article 6 of the Marine and Coastal Access Act 2009 (transitional and Saving Provisions) Order 2011 (SI 2011/603) are hereby revoked in so far as they apply to the District:
 - (a) 'Byelaw 12:- Inshore Trawling Restriction' made by the Eastern Sea Fisheries Joint Committee on the 25th July 2001, and having effect in relation to the District from the 1st April 2011
 - (b) 'Byelaw No. 3. Vessel Length' made on 18th April 1996 by the Sussex Sea Fisheries Committee, and having effect in relation to the District from the 1st April 2011
 - (c) 'Byelaw No. 3. Vessel Size and Engine Power' made on 18th February 2009 by the Environment Agency, and having effect in relation to the District from the 1st April 2011

Commented [MM05]: There is no mention here that if a vessel does not fish in the District, the exemption is lost.

Commented [DB6R5]: 5 (a) provides that the exemptions must be applied for on a biennial basis with specified fishing activity in the preceding 2 years. This covers this.

I hereby certify that the above byelaw was made by the Authority at their meeting on the 16th day of September 2019.

Joel Cook
Clerk to the Kent and Essex Inshore Fisheries and Conservation Authority

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Albert Street
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Kent
CT11 9HD

The Secretary of State for Environment, Food and Rural Affairs in exercise of the power conferred by section 155(4) of the Marine and Coastal Access Act 2009 confirms the Vessel Length and Engine Power Byelaw made by Kent and Essex Inshore Fisheries and Conservation Authority on 16th day of September 2019.

Date:

A Senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the byelaw)

This byelaw prohibits fishing with vessels over 14 metres in length within the Kent and Essex District, as well as prohibiting fishing with towed fishing gear (such as trawls and dredges) from vessels with an engine power exceeding 221 kW, and in the case of derated inboard engines, with an engine power exceeding 243 kW before being derated.

The byelaw provides exemptions on a two-year basis for vessels which do not meet the requirements of the byelaw provided that the owner can provide evidence that;

- a) they were in use prior to this byelaw being implemented and;
- b) that any use is greater than 100 hours in each two year period and;
- c) that the length or engine power of the vessel has not changed and;
- d) that the ownership of the vessel has not changed.

The byelaw also provides transitional arrangements for a period of two years where vessel builds have already commenced prior to the byelaw being implemented which would exceed the limitations provided by the prohibitions.

This byelaw is intended to reduce the fishing effort capability which the use of larger vessels enables, as well as minimise the impact of bottom towed gear by limiting the total engine power of a vessel to restrict the weight and size of gear which can be used by fishing vessels.