

Title: XXXII 'Fish, Mollusc and Crustacea Minimum Size Byelaw 2019' IA No: NEIFCA_19_2 Lead department or agency: NEIFCA Other departments or agencies: MMO,NE	Impact Assessment (IA)	
	Date: 18/11/2019	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Secondary legislation	
Contact for enquiries: 01482 393515		
Summary: Intervention and Options		RPC Opinion: N/A

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NA	NA	NA	No	NA

What is the problem under consideration?

Inshore Fisheries and Conservation Authorities's (IFCAs) were previously empowered to enforce minimum sizes in relation to commercial and recreational fisheries imposed by Council Regulation (EC) No 850/98. This legislation was replaced by (EC) No 1241/019 on 14 August 2019 but restricted the application of certain provisions, particularly those relating to minimum conservation reference sizes (MCRS), to commercial operators only, meaning that unlicensed operators could legally land fish and shellfish species below the specified MCRS. In recognition of this issue North Eastern IFCA, Northumberland, Eastern and Kent and Essex IFCAs introduced emergency byelaw regulations to re-establish the MCRS contained within Council Regulation (EC) No 850/98 across their individual districts to ensure continuity of application across the commercial and recreational sectors. Given that annually, North Eastern IFCA permits over 2000 unlicensed operators to take shellfish the emergency byelaw has ensured uniform application of MCRS across all fishing sectors operating within the North Eastern IFC district.

Why is government intervention necessary?

Management of fisheries by prohibiting the removal of undersize individuals is an important tool in ensuring long-term, sustainable fisheries. North Eastern IFCA's ability to enforce such across both the commercial and recreational sectors is crucial to meeting duties under MaCAA and the Marine Strategy framework directive. The emergency byelaw regulation is limited to a maximum period of 18 months and following expiry, NEIFCA will be unable to apply MCRS provisions on recreational operators, placing the potential sustainability of associated stocks at significant risk.

What are the policy objectives and the intended effects?

It is proposed that the NEIFCA 'Fish, Mollusc and Crustacea Minimum Siz' Emergency Byelaw 2019' is replaced with a new byelaw regulation containing identical MCRS provisions. These provisions are long established mirroring those contained within both EC No. 850/98 and EC No.1241/2019, covering species of fish and shellfish which are known to have been caught from within the North Eastern IFCA district since 2012. They include some species which are not likely to be of particular importance to recreational fishing but reflect the paucity of information on a species by species basis for recreational fishing (i.e. an unknown level of risk to each fishery) and the purpose of the byelaw, to replicate the protective effect (whether limited or not) of the original regulations which would otherwise be lost. The wording of the byelaw also takes into account the landing obligation in relation to certain commercial catches so as to ensure no conflict between the byelaw and current EU regulations.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- 0. Do nothing/rely on MMO cross warranting
- 1. New byelaw regulation
- 2. Voluntary measures

'Do nothing' is not considered an option because of the perceived level of risk to the exploited fisheries outlined within this assessment and any agreed voluntary measures would not be respected or enforceable. Option 1 therefore, is considered the most effective option to ensure long-term, sustainable fisheries and effective enforcement of MCRS.

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

If confirmed the proposed new byelaw regulation will be monitored continuously by officers and formally reviewed before end 2025.

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: 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 Officer:



Date: 18/11/2019

Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV) (£m ¹))		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition² (Constant Price) Years		Average Annual³ (excluding transition) (Constant Price)		Total Cost⁴ (Present Value)
Low	NA		Optional		Optional
High	NA		Optional		Optional
Best Estimate	NA		Optional		
Description and scale of key monetised costs by 'main affected groups'					
The new byelaw regulation will merely replicate the current provisions contained within the NEIFCA 'Fish, Mollusc and Crustacea Minimum Siz' Emergency Byelaw 2019', ensuring continuity of protective measures. Therefore, no financial implications are anticipated.					
Other key non-monetised costs by 'main affected groups'					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
Other key non-monetised benefits by 'main affected groups'					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5%

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A⁵	No	N/A

¹ Net Benefit - value of the total monetised benefits minus the total monetised costs. All monetised costs and benefits should be expressed in £m. In order to compare options you need to adjust the estimates by discounting the impacts to the same point in time, to estimate the Present Value (PV) of the impacts (see main evidence section for explanation).

² Transient, or one-off costs or benefits that occur, which normally relate to the implementation of the measure. Non-quantified transient or one-off costs should be documented in the non-monetised section

³ Average Annual, These are the costs and benefits that will reoccur in every year while the policy measure remains in force (although the scale of the impact may change over time) and so should not include transition costs. These are expressed as an annual average (over the life of the policy). i.e. undiscounted.

⁴ i.e. discounted as with NPV

Evidence base

1. Introduction

IFCA's were previously empowered to enforce minimum sizes in relation to commercial and recreational fisheries imposed by Council Regulation (EC) No 850/98 which was replaced on 14 August 2019 by (EC) No 1241/019. This new legislation, however, represented deregulation and diminished the effectiveness of minimum sizes as a measure, particularly in relation to recreational fishing. In order to address this issue North Eastern IFCA, Northumberland IFCA, Eastern IFCA and Kent and Essex IFCA made emergency byelaw regulations to re-establish the MCRS contained within Council Regulation (EC) No 850/98, across their individual districts to ensure continuity of application across the commercial and recreational sectors. These byelaw regulations, however, are time limited to a maximum period of 18 months and must be replaced with permanent regulations to ensure the long term continuation of MCRS provision.

2. Rationale for intervention

Management of fisheries by prohibiting the removal of undersize individuals is an important tool in ensuring long-term, sustainable fisheries. North Eastern IFCA's ability to enforce such is crucial to meeting duties under MaCAA and the Marine Strategy framework directive. The potential loss of the emergency byelaw regulation through expiry would represent a risk to such.

Therefore, it is proposed that a replacement byelaw is implemented which has the effect of replicating the provisions of the emergency regulation.

3. Policy objectives and intended effects

The new byelaw will replicate the minimum conservation reference sizes contained with the emergency byelaw covering species which are known to have been caught from within the North Eastern IFCA district since 2012. This includes some species which are not likely to be of particular importance to recreational fishing but reflects the paucity of information on a species by species basis for recreational fishing (i.e. an unknown level of risk to each fishery) and that the purpose of the byelaw is to replicate the protective effect (whether limited or not) of the original regulation which would otherwise be lost. The wording of the byelaw also takes into account the landing obligation in relation to certain commercial catches so as to ensure no conflict between the byelaw and current EU regulations.

4. Background

As part of the IFCA's remit to manage fisheries within the IFC District, IFCA's can enforce some European and National fisheries legislation in addition to their own byelaws. This included measures implemented through Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms⁶ (850/98 hereafter). IFCA's were empowered to enforce measures from 850/98 under the Sea Fishing (Enforcement) Regulations 2018⁷. 850/98 also included the establishment of Minimum Conservation Reference Sizes (MCRS) - minimum sizes that fish and shellfish can be removed from the fishery - in addition to requirements relating to gear construction such as mesh sizes etc.

Matter under consideration

Regulation (EU) 2019/1241⁸ was published by the European Union on 25 July 2019 and came into force on 14 August 2019. It deals 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 came from a reformed Common Fisheries Policy. Importantly it revoked and replaced the measures implemented through 850/98. The following key differences in this new legislation have been identified:

- 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;
- Removes the requirement that crab species are to be landed whole with the exception of edible crab claws of no more than 5% by weight of total catch of crab or parts thereof;
- Allows any undersize marine organism not subject to landing obligations to be used as live bait (whereas previously it was limited to sardines, anchovy, horse mackerel and mackerel).

As a result of these legislative changes it was identified that there would be no effective IFCA enforcement regime in respect of undersized fish for recreational anglers and no enforcement in respect of transshipment, landing, transporting, storing, displaying and offering for sale. It was anticipated that this would cause enforcement issues in circumstances where there was 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 were outside the landing obligation below the MCRS.

In response, on 14 August 2019, North Eastern IFCA, alongside Northumberland, Eastern and Kent and Essex IFCA's introduced an emergency byelaw regulation to replicate the MCRS provisions contained within (EC) No. 850/98. This regulation, however, is limited to a maximum period of 18 months and once it expires the associated provisions will be lost.

Proposed solution

To implement a new byelaw regulation replacing NEIFCA Emergency Byelaw 'Fish, Mollusc and Crustacea Minimum Size Emergency Byelaw 2019' to maintain the protective effect and enforceability of minimum sizes as a fisheries management tool within the NEIFC district.

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^{9,10}. As a management measure it is relatively cheap, simple, effective to apply and easy for fishers to understand why this is used as a management measure.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998R0850>

⁷ <http://www.legislation.gov.uk/ukSI/2018/849/made>

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1241>

⁹ 1New South Wales Recreational Saltwater Fishing Guide. (2018) NSW Department of Primary Industries. ISBN web 978-1-76058-242-5

¹⁰ 2FLORIDA SALTWATER RECREATIONAL 2019. FISHING REGULATIONS. Florida Fish and Wildlife Conservation Commission. Issued: Jan. 1, 2019

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 North Eastern IFCA's compliance regime and in particular in relation to the crab and lobster 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 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.

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

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 2012¹¹ 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

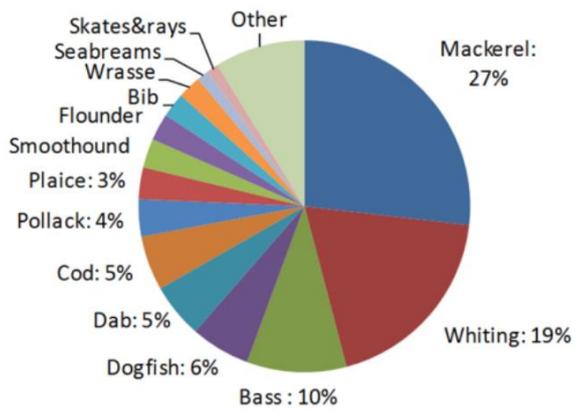
Almost 4 million days of sea angling were recorded over the year.

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.

The most common species caught, by number, were mackerel and whiting, (below).

¹¹ 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.



Shore anglers released around 75% of the fish caught, many of which were undersized, and boat anglers released around 50% of their fish.

The recreational shellfish fishery within the NEIFCA district is one of the largest in the UK and is managed through a dedicated permit scheme with 2,496 permits issued in 2019. Permit holders can set a maximum of 10 pots, with further restrictions placed on catch limits and the capture of shellfish using nets. Minimum size regulations help manage this activity.

The importance of minimum sizes is also recognised by the recreational angling community.

*Angling Trust website*¹² (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 a number of clam species.

Effective enforcement of MCRS

The new EC 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*¹³. 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 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. The protective effect and effectiveness of enforcement of minimum sizes are therefore greatly diminished by the new regulations and urgent action would be required to remedy this to avoid impacts on the sustainability of stocks.

Application to all species for which MCRS applies and which are landed within the North Eastern IFC District

The proposed byelaw seeks to replicate the protective effect in place under the emergency regulation. To this end, the byelaw applies to species which have an MCRS and are evidenced to have been landed within the North Eastern IFC District. This was determined using the Marine Management Organisation landing dataset 2012 to 2017 (inclusive).

¹² <https://www.anglingtrust.net/page.asp?section=163>

¹³ Article 15(12) 1380/2013 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1380>

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 in particular 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.

Impacts on stakeholders

The proposed byelaw is considered to have no impacts on stakeholders. This reflects that the effects of the byelaw reflect those presently in place and are no stricter than had been the case.

The options

Option 0: Do nothing

If new legislation was not in place and supported by education and enforcement there would be a significant likelihood of increased landings of fish and shellfish that are immature and have not bred yet. This could reduce the spawning stock biomass of a range of stocks and could affect the long-term health of a number of important stocks. Without a new byelaw replacing the current emergency regulation there would be no legal way of continuing to enforce these minimum sizes.

In officers' experience, the taking of small and undersized fish is an action that we get a significant number of phone calls and emails about. To the general public minimum sizes are an important and easy to understand management measure. The loss of such a measure would likely be seen as perverse for regulators charged with protecting fish stocks.

Minimum size legislation also helps create a greater consistency between the commercial and non-commercial sectors targeting the same species, and it helps avoid any tension between commercial fisher's landing to a MCRS and recreational fishers landing exactly the same fish but at a much smaller size.

Option 1: New bylaw replacing the existing emergency bylaw regulation

Ensure long-term, sustainable fisheries and effective enforcement of MCRS throughout the NEIFC district.

Option 2: Voluntary measures

A number of national and local angling associations, clubs and charter boats have their own set of minimum sizes which they fish to. These voluntary measures are useful and within clubs can be strictly adhered to. However, the number of people in fishing clubs continues to drop and enforcement has shown that there is a minority of people that will fish to their legal limit. Without specific legislation it is officers' opinion that there would be significant amounts of immature fish being caught and landed.

Conclusion

Recommended option:

That a new byelaw regulation be introduced to replace the provisions contained within the Authority's emergency byelaw, 'Fish, Mollusc and Crustacea Minimum Size Emergency Byelaw 2019' to maintain the protective effect and enforceability of minimum sizes as a fisheries management tool within the NEIFC district. In addition to all the considerations detailed within this IA, Annex A summarises further considerations made in relation to policy and national marine planning.

Annex A: Policy and Planning One in Three Out (OI3O)

OI3O is not applicable for IFCA byelaws implemented for marine protected area (MPA) management.

Small firms impact test and competition assessment

No firms are exempt from this byelaw. It applies to all firms who use the area. This measure does not have a disproportionate impact on small firms. It also has no impact on competition as it applies equally to all businesses that utilise the area.

Which marine plan area is the MPA and management measure in?

The proposed byelaw will include management areas in the East inshore plan area and the North East inshore plan area.

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

- Yes

If so, please give details of the assessments completed:

- In the East inshore plan area the byelaw is in accordance with the following objectives and policies from the East Marine Plans:
 - Objective 6: To have a healthy, resilient and adaptable marine ecosystem in the East marine plan areas.
 - Objective 7: To protect, conserve and, where appropriate, recover biodiversity that is in or dependent upon the East marine plan areas.
 - Objective 8: To support the objectives of marine protected areas (and other designated sites around the coast that overlap, or are adjacent to the East marine plan areas), individually and as part of an ecologically coherent network.
 - Policy BIO1: Appropriate weight should be attached to biodiversity, reflecting the need to protect biodiversity as a whole, taking account of the best available evidence including on habitats and species that are protected or of conservation concern in the East marine plans and adjacent areas (marine, terrestrial).
 - Policy MPA1: Any impacts on the overall marine protected area network must be taken account of in strategic level measures and assessments, with due regard given to any current agreed advice on an ecologically coherent network.
- In the North East inshore area no marine plan is currently in place. Therefore for management areas in this plan area consideration has been given to the Marine Policy Statement. The decision on this MPA management measure is in accordance with the Marine Policy Statement, in particular:
 - 3.1.8 Marine plan authorities and decision-makers should take account of the regime for MPAs and comply with obligations imposed in respect of them. This includes the obligation to ensure that the exercise of certain functions contribute to, or at least do not hinder, the achievement of the objectives of a Marine Conservation Zone (MCZ) or MPA (in Scotland). This would also

include the obligations in relevant legislation relating to SSSIs and sites designated under the Wild Birds and Habitats Directives.

- 3.8.3 Decision makers must therefore have regard to the provisions of the Common Fisheries Policy (CFP) in developing any plans or proposals affecting fisheries. The CFP is currently being reviewed. The view of the UK Administrations is that the overall aim of the reformed CFP should be to attain ecological sustainability whilst optimising the wealth generation of marine fish resources and their long term prospects.