



The Development of the Netting Permit Byelaw

A compilation of relevant reports and information used during the creation of the Netting Permit Byelaw

Final Report - 26th September 2018

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Version control

Author	Version	Comments
Neil Townsend	Final Report – 26 th September 2018	A compilation of previously published documents into a single document to aid stakeholders examine the process that was followed creating the Netting Permit Byelaw

Executive Summary

The Netting Permit Byelaw was introduced by the Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) in 2018 with the provisions coming into effect on 1st March 2018. The Netting Permit Byelaw provides the mechanism for D&S IFCA to manage netting activity within the District. Netting Permit Conditions are issued to both commercial and recreational fishers that conduct this fishing activity.

D&S IFCA adhered to the advice published by Defra during the making of the Netting Permit Byelaw. The creation of the Netting Permit Byelaw was a long process that lasted over two years. During this period multiple documents were created to accompany the creation of this new legislation. Authority members raised concern that the final impact assessment submitted to Defra was edited to such an extent that it failed to fully reflect the volume of information and evidence that had been documented and considered during the creation process. This report is an attempt to address those concerns. This report combines many of the relevant documents that were used throughout the creation of the Netting Permit Byelaw and is intended to aid all stakeholders understand the significance of each and why and when they were created.

Key information for readers:

- This is a very large document and it is recommended that readers utilise the contents page;
- Each chapter aims to briefly explain what the document or documents are and what significance they had during the process;
- Each chapter contains a transcript of the relevant document or report that is also available to read as a stand-alone item by visiting the resource library on the D&S IFCA website;
- This report contains hyperlinks (embedded information) to other information that were used in the separate documents before they were combined in this publication.
- Due to its size and the embedded information (hyperlinks), this publication is more suitable to be read in its electronic form.

The key documents transcribed or embedded in this report are as follows:

1. The Netting Impact Assessment (31st May 2016) created for consultation (includes Annexes)
2. Response and Recommendation Report for Stakeholders (22nd November 2016)
3. Access for Netting within Estuaries & the Decision-Making Process Report (February 2017)
4. The Final Netting Impact Assessment (September 2017) created for submission to Defra
5. Other supporting documents not required by Defra

Other sources of information - www.devonandsevernifca.gov.uk

Annexes (hyperlinks) were used during the creation of several documents. This information has been preserved by its placement into the resource library of the D&S IFCA website. [File F of the resource library](#) contains the Impact Assessments for Netting and the Annexes used.

Minutes are taken of all D&S IFCA Byelaw & Permitting Sub-Committee meetings.

[File B of the resource library](#) contains the minutes from these meetings dating back to 2015.

1. The Consultation Impact Assessment (31st May 2016)

The creation of an Impact Assessment is a mandatory requirement when a new byelaw is made. The [Impact Assessment \(31st May 2016\)](#) was formulated to document the rationale and objectives for the making of the Netting Permit Byelaw and, also provided stakeholders with the evidence base that had been collated at that time.

The Impact Assessment document was used during the formal period of consultation (extended 56-day period) that was conducted in 2016. The formal consultation period effectively allowed the Impact Assessment (and the evidence base it contained) to be “tested”. Stakeholders were given the opportunity to provide new evidence that was not already documented and the opportunity to submit letters of objection (or support) for the introduction of the Netting Permit Byelaw.

The Netting Permit Byelaw Impact Assessment (consultation version) has been transcribed below, however the format has been adjusted and is not the exact template that was used in the original. Several of the links used in the footnotes to other websites may no longer function as the source information will now have been archived by the host sites. No attempts have been made to change the content in any way, including any spelling or punctuation errors that may have been present in the original document.

The Transcript

Title: Devon and Severn IFCA Netting Permit Byelaw

IA No: D&SIFCA 004

Lead department or agency: Devon and Severn Inshore Fisheries and Conservation Authority

Date: 31st May 2016 Stage: Consultation Source of intervention: Domestic

Type of measure: Secondary Legislation

What is the problem under consideration?

Netting is a key fishing activity undertaken by the commercial sector and to a lesser degree by the recreational sector in the district. The activity takes many forms and is conducted both legitimately and illegally in both the estuaries and coastal areas of the Devon and Severn Inshore Fisheries and Conservation Authority’s (D&SIFCA) district.

Estuarine and coastal netting is currently controlled by a range of legislation including legacy byelaws, national and EU conservation measures, some of which are currently under review.¹ The current byelaws do not allow D&SIFCA to fully recognise and manage the interests and expectations of a wide range of stakeholders. Under section 153(2)(d) of MaCCA, D&SIFCA has a duty to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Consequently, D&SIFCA believes that the local, regulatory approach to managing netting in the district needs to be more flexible and adaptive to allow better harmonisation and integration with other conservation initiatives for sea fisheries resources whilst also helping to strengthen conservation for fish species set out in section 153(11) of the Marine and Coastal Access Act. 2009 (MaCCA)

¹ Defra review of The Bass (Specified Areas) (Prohibition of Fishing) Order 1990 as amended

Why is government intervention necessary?

ICES have reported significant reductions in the stock of bass (*Dicentrarchus labrax*) in the northwest Atlantic including the waters within the D&SIFCA district². European regulation has been introduced in an attempt to arrest this decline. However D&SIFCA believe further locally focussed management is required to support the intended recovery.

The Environment Agency (EA) in their submission to the pre-consultation highlighted their concerns relating to the bycatch of salmon and sea trout from netting activities targeting sea fish³

Given these pressures on stock, the need to achieve a balance between competing socio-economic demands and conservation of sea fishery resources and the inability to fully recognise the different interests of a wide range of stakeholders, management intervention is required to redress market failure in the marine environment by implementing appropriate management measures (this Byelaw) to conserve stock, features and to ensure negative externalities are reduced or suitably mitigated. Implementing this Byelaw will support continued provision of public goods⁴ in the marine environment. D&SIFCA has a duty under section 153(1) of the Marine and Coastal Access Act 2009 (MaCAA) to manage the exploitation of sea fisheries resources in the district. Section 153(2) of MaCAA, sets out what steps it must take when carrying out its management duty.

What are the policy objectives and the intended effects?

- To introduce a flexible management approach that includes the ability to reflect future changes in national and European fish stock and habitat conservation initiatives.
- To introduce two types of permits for netting activity to differentiate between the needs of the commercial and recreational netting interests.
- To provide a mechanism by which stakeholders can actively influence the management of fisheries within the district.
- To produce legislation that is easily accessible and comprehensible and helps make all fishers more aware of their responsibilities by byelaws that are activity focussed.
- To achieve and support the sustainable exploitation of important fish stocks in the district.
- To introduce a byelaw that meets potential future needs with particular reference to required management for Marine Protected Areas (MPA) within the district.
- To limit the need to use emergency byelaws and emergency amending byelaws.
- To provide D&SIFCA with local netting effort data to both inform and improve future management decisions.
- To meet requirements regarding sustainable management of local bass stocks as specified in the D&SIFCA Annual Plan 2016-17.⁵
- To aid public awareness about the activity of netting and help to identify illegal netting activity in estuaries.

² <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2015/2015/Bss-47.pdf>

³ Sumner K. (2015) Review of protection measures for Atlantic salmon and sea trout in inshore waters,

⁴ As defined on page 11 of the Impact Assessment

⁵ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCA-Annual-Plan16-17.pdf>

- To build on one of the 2011-2015 D&SIFCA's stated high level priorities to develop Recreational Sea Angling opportunities in the district⁶.
- To harmonise control measures (eg MCRS and bag limits) with other D&SIFCA permit byelaws.

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

0. Do nothing: this option was considered inappropriate. D&SIFCA is required to review the byelaws that it inherited. Byelaws apply to all persons and as such represent the best legislative tool to manage estuary and coastal waters that are accessible to all fishers.
1. Create a netting permit byelaw introducing a flexible, adaptive approach to management.
2. Review and remake byelaws using traditional byelaw model leading to the creation of a rigid byelaws which are unsuited to dealing with future management needs.
3. To rely solely on management of the activity through Statutory Instruments or Defra fishing licence, similar to traditional byelaws. This approach to management is too rigid. It would also mean that D&SIFCA is not meeting its vision and Annual Plan commitments or its duties under s153 MaCAA.
4. Voluntary measures: due to the number of fishers affected by the management proposals it is unlikely that there will be sufficient voluntary compliance with the restrictive measures necessary to achieve the outcomes required by D&SIFCA.

All options are compared to Option 0, the preferred option is Option 1.

Will the policy be reviewed? Yes. If applicable, set review date: Permit conditions are to be reviewed no later than three years after the Byelaw comes into force and the Byelaw no later than five years after the Byelaw comes into force.					
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 No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

⁶ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCAAnnualPlan15-16.pdf>

Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years 10 ⁷	Net Benefit (Present Value (PV) (£m ⁸))		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition ⁹ (Constant Price) Years		Average Annual ¹⁰ (excluding transition) (Constant Price)	Total Cost ¹¹ (Present Value)
Low	0.115		0.046	
High	0.166		0.076	
Best Estimate	0.130		0.064	

Description and scale of key monetised costs by 'main affected groups'

The restrictions associated with the proposed management approach to estuary netting will have a financial impact on a relatively small but not insignificant number of commercial operators. Pre-consultation conducted in both 2015 and 2016 has been summarised (Annex 2) and landing data from the Marine Management Organisation (MMO) analysed in an attempt to assess negative financial impacts associated with a complete estuary closure to fixed and drift nets and lost fishing opportunities for bass and mullet (Annex 3). A number of estuaries are already closed under current byelaws and the opportunity to net has already been removed.

For the purposes of assessing the financial impact from the closure of estuaries it has been assumed that all mullet catches are taken from these areas. Mullet netting is known to occur outside of estuaries but the level of activity is not quantifiable. The average value of mullet landings from nets in the district for the period 2011-2015 were £63,942, with a total of £46,078 of mullet landed in 2015.

⁷ The standard timeframe for analysis is 10 years unless the situation requires a different amount of time for example the benefits will occur over a much longer period. If there is deviation from the standard 10 years this must be clearly explained in the main evidence section.

⁸ 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).

⁹ 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

¹⁰ 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.

¹¹ i.e. discounted as with NPV

The closure of all estuaries to netting would remove current limited netting for bass. The opportunity to net for bass is already restricted by national and European legislation. The vast majority of estuaries are designated under The Bass (Specified Areas) (Prohibition of Fishing) Order 1990 (as amended)¹² prohibiting netting for bass for all or part of the year. In 2015 the increase in the Minimum Conservation Reference Size for bass to 42cms¹³ also reduced significantly the proportion of the bass available in estuaries that could be legally landed therefore already reducing the income that could be derived from fishing for this species in estuaries. Officers recorded complaints from Plymouth based estuary netters that the increase in MCRS would reduce their legal catch of bass by around 80%.

The analysis of the pre-consultation responses and the individual boat landings would indicate that the level of income generated from fishing in estuaries accounts for a relatively small portion of the total income for most of the commercial fishermen within the District. It is unlikely that where income from netting is a higher proportion of total fishing income that this represents all of the individual's income. Available data would indicate that average income from netting in estuaries was between £1,000 and £5,000. One Salcombe based fishermen reported in some years having an income of between £5,000 and £10,000 from netting the estuary however his main fishing income is derived from potting.

It is proposed to maintain the current byelaws' spatial and headline restrictions on coastal netting in the first instance. It is likely that the proposed removal of the limited permitted use of fixed surface nets, (in the size range 91-93mm mesh, where the current coastal netting restrictions apply) should be minimal. In 2015 only seven permits were issued to allow this netting activity under the current byelaw. In addition it is recognised that utilisation of this mesh range is likely to result in the capture and mortality of a significant number of bass below the MCRS.

The proposed permitting Byelaw would require all persons that use nets to operate under a permit issued by D&SIFCA. The biennial cost of a permit is set at £20. The cost of the permit is to cover estimated administration costs incurred by D&SIFCA. This does not cover the cost to D&SIFCA from resourcing the continual review of permit conditions. The proposed introduction of online payments and issuing of permits will reduce the administrative burden for the fisher and the administrator; however the cost of this development is £2,200.

D&SIFCA operates a risk based approach to enforcement. Illegal netting in estuaries is always identified as a high risk activity by D&SIFCA and as such a significant part of the enforcement budget is used to counter this risk. The introduction of restrictions on the recreational netting sector will require additional enforcement effort. However, no additional resource is available to meet this requirement. Operating on a fixed budget D&SIFCA will continue its risk based approach to enforcement and consequently focus on other fishing activities may be reduced to meet the required enforcement of the Byelaw.

D&SIFCA has commissioned a PhD student to assess the movement/migration of bass in local estuaries and coastal waters using a range of methods including tagging/isotopes analysis with the project also aiming to provide additional evidence on the levels of salmon and sea trout bycatch from coastal fixed nets set at both 3 metres and 5 metres below the surface. It is envisaged that the PhD will help inform D&SIFCA's future management approach to netting. The three year PhD will cost approximately £40,000 and will be completed in 2018.

¹² <http://www.legislation.gov.uk/ukxi/1990/1156/made/data.pdf>

¹³ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_203_R_0006

There are potentially a small number of commercial netters operating vessels with no engine power. These operations will need to be permitted. In order to continue to fish commercially (under a D&SIFCA permit) they would need to operate from a registered vessel and have a valid fishing licence issued under the Sea Fish (Conservation) Act 1967. To be registered on Part II of The Registry of Shipping and Seaman a vessel needs to be power driven. The application fee for registering a vessel is £124. There is an additional cost of less than £500 to carry out a MCA registration inspection. A fishing licence will cost between £1,000 - £1,500¹⁴ (licence for 0.3 tonne and 1.1Kw engine power advertised for £1,200 on 17/05/16). An additional cost of approximately £1,000 may be required to purchase mandatory safety equipment.

D&SIFCA are looking to introduce better ways of monitoring and control and believe that remotely accessed monitoring devices will play a key part in the future. Although not required initially, the Byelaw has the ability to require netting vessels to fit a remotely accessed monitoring device.

Purchasing of units and installation of units is likely to be approximately £1,000 with additional average airtime cost of between £150 and £200 per annum. Funding for the installation and purchase of the required units should be secured leaving the permit holder to finance the ongoing maintenance and annual airtime costs.

Estimating the cost of communicating this change in management is difficult but will involve developing and siting signage at strategic locations throughout the district, formally advertising the Byelaw, placing of a press release with local media, information flyers and further development of D&SIFCA's website. Formally advertising the Byelaw will cost approximately £7000 (1% of the overall D&SIFCA annual budget). The Authority has invested considerable resource to undertake a comprehensive pre-consultation process. Estimated cost of this work (including sub-committee meetings) and officer time is estimated to have been £20,000.

Other key non-monetised costs by 'main affected groups'

Closure of estuaries (and potential changes to estuary boundary definitions) to all forms of fixed and drift gill netting would (for some stakeholders) represent a negative impact in terms of historical, traditional and social cost. This has been highlighted in the pre-consultation phase, in particular for the Taw Torridge and Salcombe estuaries (Annex 2) and areas of the Severn estuary (Annex 6).

Deeming clauses have not been used in the creation of the netting permit byelaw; however the permit conditions (Catch Restrictions) have been drafted to produce a similar effect to deeming clauses used previously in D&SIFCA permit byelaws. These catch restrictions relating to the retention of species on board vessels actively fishing within the district will potentially lead to a small number of commercial vessels having to change their fishing pattern to remain compliant with local management measures. This change in the way fishermen

¹⁴ (licence for 0.3 tonne and 1.1Kw engine power advertised for £1,200 on 17/05/16)

conduct their operation has already been implemented in both the potting permit, and diving permit byelaws and have not resulted in any reports of negative impact.

Persons fishing recreationally will need to adjust to having effort restrictions placed on their netting activities and will need to adjust to the catch and gear limitations.

With the D&SIFCA following an activity-based permit byelaw strategy, there will be some stakeholders operating with more than one permit. This has potential non-monetised cost implications to some leisure fishers. The conditions of use restrict the catch for these category two permit holders. In addition, if these fishers are operating under the authorisation of more than one permit issued by D&SIFCA then the total number of crab and lobster that can be removed in any calendar day cannot exceed the permissible level offered by a single permit.

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’

No monetised figures are available for the benefits of the recommended management approach. However significant potential benefits are described below.

The introduction of the byelaw is a mechanism to balance the needs of persons engaged in exploitation of sea fisheries resources in the district. Although the netting permit byelaw is for the management and control of netting, there is an in-direct relationship with other activities. Fishing activities such as rod and line fishing on both a commercial and recreational level have significant economic importance.

Angling 2012 built on findings from other reports that RSA was a key economic sector involved in the exploitation of sea fisheries resources. D&SIFCA’s district is a key location for both local and visiting anglers. The development of RSA opportunities created by the removal of netting in estuaries may lead to an increase in the RSA economic value of each estuary.

The EA’s submission highlighted the estimated value of the rod and line salmonid fisheries in key estuaries within the district. The proposed restriction of netting in estuaries and the maintenance of the existing restrictions along the coast should support the continuation and possible growth of this sector.

Other key non-monetised benefits by 'main affected groups'

The needs of other sectors have been recognised by D&SIFCA and it has implemented change. This byelaw builds on voluntary initiatives (Angling Zones) helping to reduce previous conflict between netting and angling interests. Pre-consultation has indicated that netting (coastal and within estuaries) is cited as a negative factor on the catching expectations of many leisure anglers. In addition stakeholders and members of the general public have indicated that estuaries and in particular 'bass nursery areas', should be afforded additional protection from netting activity.

The Byelaw is designed to meet D&SIFCA's conservation responsibilities but at the same time minimising the socio-economic impact from these restrictions. By the end of 2016, D&SIFCA is required to have in place the management framework to control the impact of all fishing activities undertaken within European Marine Sites (EMS). The same Byelaw mechanism can be used to ensure that necessary management interventions can be taken for the protection of Marine Conservation Zones (MCZ) in the district. The Byelaw also provides the flexibility to manage fishing activities in a timely, effective way and provides the framework to consider developing new fisheries. The approach removes the need for further byelaws to deal with netting management and as such delivers significant saving to the public purse.

The use of the data available from vessel monitoring systems in the towed gear fleet has resulted in more effective and efficient use of enforcement resources. The potential use of similar technology to manage the netting fleet should result in similar benefits.

The new Byelaw better reflects the needs of the different sectors taking sea fish resources by limiting the level of effort and the amount of fish and shellfish that can be taken from the non-commercial sector. The Byelaw also allows for commercial effort to be restricted in a similar way. Reducing the competition from other sources will help to support the local fisheries retail economy in the district. This Byelaw would provide similar benefits to the existing permit byelaws in supporting one of D&SIFCA's guiding principles to develop byelaws that tackle the problems of Illegal, Unreported and Unregulated, fishing. This issue is also a national priority for the Marine Management Organisation.

At the same time the D&SIFCA believes that the gear and catch limits on the non-commercial sector are entirely reasonable and proportional to personal consumption and that both sectors will benefit from the improved sustainability of fish and shellfish stock brought about by this Byelaw.

Different groups of stakeholders raise different management challenges. The introduction of this byelaw offers flexibility in managing netting activity whilst clearly separating different user groups. Treating these groups differently is not adverse discrimination; rather it reflects the different management challenges presented by the different sectors. This byelaw therefore provides appropriate fishing opportunities rather than adopting an overly precautionary approach and excluding one specific sector.

Operating the permit scheme will give D&SIFCA far greater knowledge of the level of netting occurring and the amount of fish and shellfish being taken in the district to inform future management. The permit schemes will also allow D&SIFCA to communicate directly with users to increase understanding and awareness of the management and allow permit holders to actively participate in shaping future management. This reflects strongly the Government's Big Society and Localism agendas by encouraging local people to participate in the decision making process and helping to empower local communities.

Marking of gear (for all users) will be greatly improved, allowing better monitoring of netting effort. It helps to ensure that commercial and recreational netting effort is effectively managed. It can help prevent the tampering with or unauthorised use of other persons' gear and assist D&SIFCA and its stakeholders to identify legitimate activities. It can be part of the communication strategy to improve the understanding of the seasonality and scale of netting reducing the negativity surrounding netting that is derived from the public's preconceptions about the activity.

The tighter control on netting in estuaries will make illegal netting more readily identifiable to the general public, leading to better intelligence about the activity and reassurance that the observed netting is more likely to be legitimate and effectively managed.

Key assumptions/sensitivities/risks rate (%)

Discount 3.5%

MMO landing figures represent the only accessible district wide data set. There is a high probability that they do not reflect fully the landings for the commercial sector. Many of the vessels engaged in netting are from the under 10m sector where mandatory catch reporting is not required.

It is assumed that all mullet taken from nets have been caught within estuaries. Mullet are taken from areas outside of estuaries but this cannot be quantified.

It is assumed that the stocks of mullet are not at the same critical level as bass. However being a slow growing species they are vulnerable to increased fishing effort that may arise from short to medium term restrictions on the bass fishery.

Initially there is a strong likelihood that there will be significant non-compliance with the new management measures. This will be through a combination of resistance to change, lack of awareness and a continuing will to profit from illegal fishing (in particular within estuaries) and in regards to the non-commercial sector, the continued illegal selling of fish and shellfish.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: -0.064	Benefits: not quantifiable	Net: -0.064 ¹⁵	N/A	N/A

¹⁵-Linked to ENCB

Evidence Base (and annexes) for the Consultation Impact Assessment

The evidence base that was used within the original document is transcribed below. At the time of writing (this document), the Annexes listed in the evidence base below are all available to read via the inserted hyperlinks. These Annexes can also be found in section F of the Resource Library which can be accessed by visiting the D&S IFCA website.

www.devonandsevernifca.gov.uk

Contents of Evidence Base:

- Introduction
- Rationale for intervention
- Policy objectives and intended effect
- Background
- Environmental Impact
- Affected sectors
- The options
- Analysis of costs and benefits
- Summary
- Permits
- Estuary netting
- Boundary change
- Stock management
- Changing fishing patterns
- Coastal netting
- Recreational netting
- Bycatch of crab
- Catch restrictions
- Gear restrictions

Annex 1	Actions and communication plan for the netting pre-consultation....
Annex 2	The pre-consultation -Observations, future discussion points and a summary of responses.
Annex 3	Analysis of MMO Landings Data 2011-2015
Annex 4	European sea bass (<i>Dicentrarchus labrax</i>) Ecology, stock status and management update.
Annex 5	Coastal netting impacts on salmon and sea trout: a review of available evidence
Annex 6	North Coast netting (Minehead to Weston super Mare)
Annex 7	Netting Survey 2014
Annex 8	Ecology and distribution of European Sea Bass in inshore and coastal waters in South West England
Annex 9	Review process flow chart
Annex 10	Minutes of the Byelaw and Permitting Sub-committee meetings, Nov 2015 , Dec 2015 and March 2016 .
Annex 11	Estuary Netting – Options for management discussion paper
Annex 12	Phase two estuary and coastal netting questionnaires

1. Introduction

Inshore Fisheries and Conservation Authorities (IFCAs) have been established as the lead regulator for the sustainable management of inshore fisheries. As such, D&SIFCA is the most appropriate authority to implement and enforce fisheries management measures within six nautical miles.

Following the required review of legacy byelaws by 2015, D&SIFCA began to introduce a new approach to inshore fisheries and conservation management that would ultimately lead to all fishing activities being managed through permits. Through these permitting byelaws D&SIFCA will introduce greater flexibility in the way it manages the coastal and estuarine waters in the district. The marine environment is a dynamic system, there is high natural variation in some fish and shellfish stocks and fishing gear technology and practices continue to evolve. Inherited byelaws have been identified as being too rigid to fit this ever changing situation. Those affected by the new legislation will be safeguarded by the creation of an open and inclusive management review system. In each case the permitting byelaw describes the process by which changes to permit conditions will be made.

One of the outcomes delivered by the new Byelaw will be the ability of D&SIFCA to collect detailed fishing data enabling it to understand more about netting in the district. Where good data is unavailable, the new Byelaw mitigates the risk of creating unintended consequences by having a flexible approach to management.

EMS are designated to protect habitats and species in line with the EU Habitats Directive and Birds Directive. To bring fisheries into line with other activities, the Department for Environment, Food and Rural Affairs (Defra) announced on the 14th August 2012 a new approach to manage fishing activities within EMS. This change in approach will promote sustainable fisheries while conserving the marine environment and resources, securing a sustainable future for both.

Defra produced a risk activity matrix and as a result D&SIFCA, as the competent authority, must assess identified fishing activities within EMS by the end of 2016. The use of nets has been designated as a medium risk and assessment of the activity is already underway to meet the deadline. The design of the new Byelaw allows for new management measures to be introduced in an appropriate timeframe if the need for these is identified through this assessment process.

The first tranche of MCZ were designated on 21st November 2013. Impacts from netting on the designated habitats are unlikely to be assessed immediately. However it is proposed in the new Byelaw to prohibit the removal of Spiny Lobster, a Feature of Conservation Importance, in two of the MCZs and to maintain other restrictions on netting currently in place within Lundy MCZ.

The second tranche of MCZs were designated on 12th January 2016. Similar to the approach to the first tranche of MCZs, the Byelaw will enable D&SIFCA to introduce any necessary management following assessment of netting activity on the designated features.

2. Rationale for intervention

IFCAs have duties to ensure that fish stocks are exploited in a sustainable manner, and that any impacts from that exploitation in the marine environment, particular where protected by designation, are reduced or suitably mitigated, by implementing appropriate management measures (e.g. this Byelaw). Implementing this Byelaw will help ensure that fishing activities are conducted in a sustainable manner and that the marine environment is suitably protected.

The Authority has identified the need to replace five of the existing byelaws with an overarching Netting Permit Byelaw. D&SIFCA inherited an EA Byelaw¹⁶ that cannot be revoked by the Authority. The current byelaws do not allow D&SIFCA to fully recognise and manage the interests and expectations of the wide range of stakeholders. Existing byelaws have resulted from an identified need to apply management measures to conserve stocks or habitat. Any benefit that these measures may have had to any of the different sectors was as an indirect consequence of the intervention rather than being a planned outcome.

Under section 153(2)(d) of MaCCA, D&SIFCA has a duty to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Estuarine and coastal netting is currently controlled by a range of legislation including legacy byelaws, national and EU conservation measures, some of which are currently under review. D&SIFCA believes that the local, regulatory approach to managing netting in the district needs to be more flexible and adaptive to allow better harmonisation and integration with other conservation initiatives for sea fisheries resources whilst also helping to strengthen conservation initiatives for freshwater species.

ICES have reported significant reductions in the stock of bass (*Dicentrarchus labrax*) in the northwest Atlantic including the waters within the D&SIFCA district. European regulation has been introduced in an attempt to arrest this decline however D&SIFCA believe further locally focussed management is required to support the intended recovery.

The EA in their submission to the pre-consultation highlighted their concerns relating to the bycatch of salmon and sea trout from netting activities targeting sea fish. D&SIFCA recognise that it has a duty under section 153(2)(b) to seek to balance the socio-economic benefits from exploiting sea fisheries resources with the need to protect salmon and sea trout.

Given these pressures on stock and the inability to fully recognise the different interests of a wide range of stakeholders management intervention is required to redress market failure in the marine environment by implementing appropriate management measures (this Byelaw) to conserve stocks, features and to ensure negative externalities are reduced or suitably mitigated. Implementing this byelaw will support continued provision of public goods¹⁷ in the marine environment.

This Byelaw would provide similar benefits to the existing permit byelaws in supporting one of the Authority's guiding principles to develop byelaws that tackle the problems of Illegal, Unreported and Unregulated fishing. This issue is also a national priority for the Marine Management Organisation. National regulation requires significant investigation work to tackle the issue.

¹⁶ https://secure.toolkitfiles.co.uk/clients/17099/sitedata/Misc/EA_fixed_engine_byelaws.pdf

There is considered to be insufficient engagement with many of the fishers affected by the management measures, although extensive pre-consultation work has been carried out to address this issue. Unless stakeholders have already been integrated within the other D&SIFCA fishing permit mechanisms, the only opportunity for all those directly affected by the management measures is to engage in the consultation phase of byelaw making process.

Lack of robust, reliable, relevant fisheries effort data, highlighted in this document, needs to be addressed

Fishing activities can potentially cause negative outcomes as a result of 'market failures'. These failures can be described as:

- Public goods and services – A number of goods and services provided by the marine environment such as biological diversity are 'public goods' (no-one can be excluded from benefiting from them, but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.

D&SIFCA must seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.

- Negative externalities – Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

D&SIFCA must seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote the recovery from, the effect of such exploitation.

- Common goods - A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

D&SIFCA must seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district

In summary, the Byelaw aims to redress these sources of market failure in the marine environment through the following:

- Management measures designed to conserve designated features of EMS and MCZs will ensure negative externalities are reduced or suitably mitigated.

- Management measures will support continued existence of public goods in the marine environment, by controlling the catch taken.
- Management measures will also support continued existence of common goods in the marine environment by reflecting the needs of the commercial and recreational sectors.

3. Policy objectives and intended effect

IFCAs were established under the MaCAA 2009 to lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry. It is intended that the Byelaw will support D&SIFCA by delivering the following objectives.

The Byelaw continues the process by which the Authority intends to replace all its inherited byelaws with activity based permit byelaws where possible.

The introduction of the Byelaw's permit conditions will enable D&SIFCA to flexibly manage fishing activity using a number of the measures summarised below;

- catch restrictions;
- gear restrictions and design;
- spatial restrictions;
- time restrictions.

The Byelaw creates two categories of permits with differing management conditions designed to balance the needs of all users and to maintain a viable local commercial industry. D&SIFCA's guiding principles of the byelaw review include the aim to create a culture where the selling of fish or shellfish other than from commercial fishing activities is not acceptable to the general public.

The Byelaw creates a localised system of management by which those affected (permit holders) have a real opportunity to participate in the continuing management decision making process. Permit holders will be contacted directly and provided with the information that underpins the proposed changes to permit conditions. Permit holders will be invited to comment on and suggest alternatives to the management proposals. This helps the permit holders to understand the reasons for the proposed changes and allows the permit holders to express their opinions more freely than is sometimes possible in public meetings. D&SIFCA in turn is better informed and improves its decision making. Continued engagement with stakeholders reduces the likelihood that emergency measures (byelaw/ Statutory Instrument) need to be used to deal with unforeseen issues.

All the local restrictions applicable to netting activity can be found in one document (the permit). Permit conditions can be more readily translated into plain English helping the fisher to understand more easily fisheries legislation that is inherently complicated.

The Byelaw is designed to accommodate future management needs therefore reducing the cost associated with developing new legislation to deal with emerging issues.

In future D&SIFCA will be able to effectively collect relevant data to better inform its decision making through permit conditions.

4. Background

Since 2011, D&SIFCA has been reviewing inherited byelaws. From 2013 to the present day, the Authority has developed a series of activity based permit based byelaws. The basic structure of each permit byelaw is similar with the main byelaw setting out the mechanics for management and the associated permits focussed on the specific management detail.

The permit conditions are targeted towards the specific user group and all management is now contained in the permit conditions making all the management measures easier to review and amend. Any changes in permit conditions would have to follow the procedure outlined in the body of the byelaw. (Review of Flexible Permit Requirements). The review process is summarised in the flow chart (Annex 9). Following the concerns of some commercial fishermen raised by the introduction of an increased MCRS for female edible crab, a review of flexible conditions process was successfully conducted in 2015.

In addition to the requirement to review inherited byelaws, in August 2012 Defra undertook a review into the management of fisheries within EMS. This review looked to identify future management measures required to ensure site features are maintained in a favourable condition. This resulted in a revised approach¹⁸ to management of fishing in EMS.

This revised approach is being implemented using an evidence based, risk-prioritised, and phased basis. Risk prioritisation is informed by a matrix¹⁹ which categorises the risks from interactions between fishing activity and ecological features. Activity/feature interactions have been categorised as red, amber, green, or blue. Those classified as red have been prioritised for the implementation of management measures by the end of 2013 (regardless of the actual level of activity) to avoid the deterioration of 'Annex I' features, in line with obligations under Article 6(2) of the Habitats Directive.

Interactions which are categorised as amber require a site-level assessment to determine whether management of an activity is required to protect features. Where there is doubt as to whether conservation objectives for a feature (or sub-feature) will be achieved because of its vulnerability to a type of fishing, in all EMS where that feature occurs, the effect of that activity or activities on such features will need to be assessed in detail at a site specific level. Appropriate management action should then be taken based on that assessment.

Interactions which are categorised as green also require site-level assessment if there are "in-combination" effects. A categorisation of blue indicates that there is no feasible interaction, and as such no further assessment is required²⁰.

Paragraphs 6(1) and 6(2) of the Habitats Directive require that, within Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), member states:

- establish the necessary conservation measures which correspond to the ecological requirements of the 'Annex I' natural habitat types and the 'Annex II' species present on the sites;
- take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated.

¹⁸ Fisheries in EMS policy document:

www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/policy_and_delivery.pdf

¹⁹ See Matrix: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/populated_matrix3.xls

²⁰ Centre for Environment, Fisheries and Aquaculture Science (CEFAS) review of matrix and supporting evidence: http://www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/cefass_matrix_review.pdf

Regulation 8(1) of the Conservation of Habitats and Species Regulations 2010 defines an EMS as any (among others) SAC, SPA and SCI. Part 6 of these regulations lay out the management requirements for EMS, in line with articles 6(2), 6(3) and 6(4) of the Habitats Directive.

Netting activity on designated features within the EMS in D&SIFCA's district has been categorised as amber.

The byelaw will apply to the whole of the D&SIFCA district although commercial netting activity is a more commonly conducted on the north and south coasts of Devon. In regards to recreational netting, this is known to occur in all areas of the district with an intertidal stake net fishery between Minehead and Weston –super – Mare (Annex 6)

5. Environmental Impact

Impacts of nets on reef features designated under MPA

The impact of nets on features of the MPA in the district is currently being assessed. The Netting Permit Byelaw provides the mechanism to introduce the necessary management measures if required following these assessments. Similarly to the existing permit byelaws, it is the intention of the netting permit byelaw to prohibit the removal of spiny lobsters where it is a designated feature of two MCZs.

Impact of nets on bass, salmon and sea trout

European sea bass (*Dicentrarchus labrax*) is an important fish species in Northwest Europe to both commercial fishermen and recreational anglers. Its biology, in particular its slow growth rate, temperature dependent recruitment and schooling behaviour at inshore and offshore sites, makes it a particularly vulnerable species to overfishing. Coupled with greatly increased market demand, the natural and anthropogenic pressures on European sea bass have led to a major decline in abundance, leaving stocks at a potentially critical level.

Sea bass is an extremely important target species in the Devon and Severn IFCA district. The species is taken by both fixed and drift net, by longline and rod and line fishing. Netting for sea bass takes place in all Devon estuaries outside the BNA closure dates. Whilst the majority of netting outside of estuaries occurs in the summer, local observations suggest that adult bass don't seem to be moving offshore so much and the period has extended from late spring through to Christmas time. The boats involved operate from all ports within South Devon. Rod and line boats target the inshore wrecks in the summer and the East banks south of the Mew Stone. Additional hotspots for commercial rod and line targeting of sea bass occurs off the Eddystone and Start Point. Rod and line fishing for sea bass from kayaks seems to have increased significantly and not being a powered vessel means fish can be sold without a fishing vessel licence.

Bass is also of great importance to recreational anglers throughout the south and south west of England. It is targeted from both the shore and private boats and is also an important species for the charter boats operating on the south and north coasts of the district. In 2012 D&S IFCA identified 73 angling charter boats operating out of ports on the south coast of Devon and 38 boats operating out of North Devon and the Severn Estuary. It is extremely difficult to quantify the importance of one species to recreational angling as a whole, but the existence of the extremely active and engaged organisation dedicated to the conservation of

the species; Bass Anglers Sportfishing Society (B.A.S.S) goes some way to determining the importance of the fish to the recreational sector.²¹

D&SIFCA has commissioned a PhD student to assess the movement/migration of bass in local estuaries and coastal waters using a range of methods including tagging/isotopes analysis with the project also aiming to provide additional evidence on the levels of salmon and sea trout by-catch from coastal fixed nets set at both three metres and five metres below the surface (Annex 8). It is envisaged that the PhD will help inform D&SIFCA's future management approach to netting.

The EA submitted their evidence highlighting the current state and importance of local salmon and sea trout stocks. The EA in their submission highlighted their concerns relating to the incidental bycatch of salmon and sea trout from nets set to catch sea fish.²²

6. Affected sectors

Netting Sector:

From MMO and D&SIFCA records it is believed that over 70 commercial fishing vessels may be netting in the district (Annex 3 and 7). The level of recreational netting is far more difficult to quantify as similar records are not available and is presently unquantified. To demonstrate the difficulty in estimating the number of vessels fishing in the district, D&SIFCA estimated, from similar records, that 65 towed gear vessel operated in the district. There are currently 144 mobile gear permits issued.

Any person using nets²³ within the D&SIFCA district will be affected as they would need to operate under a permit issued by this Byelaw. The requirement to have a permit will start to remove the uncertainties in quantifying the levels of netting activity, thus better informing the decision making process.

Local economies and society including Recreational Sea Angling:

Public awareness of the importance of the netting sector and how it operates will improve through the introduction of the Byelaw. The permit byelaw mechanism promotes engagement with stakeholders who apply for and subsequently are issued with permits to operate nets. Improving engagement is a key part of the D&SIFCA's communication strategy.

One of D&SIFCA's guiding principles of the byelaw review includes the aim to create a culture where the selling of fish or shellfish other than from commercial fishing activities is not acceptable to the general public. D&SIFCA tries to promote behavioural change through the introduction of the permitting byelaws. To sustain behaviour change and maintain levels of compliance the conditions such as three metre headline restriction as an initial stance is accepted by commercial users as sensible, but their own experience of salmon by-catch does not indicate that a five metre headline necessary. However it is D&SIFCA's position that post introduction of the netting permit byelaw the Authority will review the evidence supporting the EA's proposed increase in headline depth.

At the same time D&SIFCA will collect evidence to demonstrate the socio-economic impact from this proposed change. The likely impact from this proposal is thought to be significant

²¹ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCA-Annual-Plan16-17.pdf>

²² Sumner K. (2015) Review of protection measures for Atlantic salmon and sea trout in inshore waters,

²³ Nets as defined in the Netting Permit Byelaw

and D&SIFCA believes that it warrants additional, focussed consultation and evidence gathering to ensure that the duty set out in section 153(2)(b) is met.

The reasons for the management measures should be better understood and accepted through the direct two way communication with permit holders leading to greater levels of compliance.

Mobile gear permit holders have already used the available flexible permit review process to raise issues relating to their towed gear sector. The review process has invited all permit holders to consider the views of some of their fellow commercial fishermen. Although on this occasion the process may not necessarily lead to change, it demonstrates that the permit holders are able to be involved in the management process post introduction of the Byelaw.

It has been reported that the introduction of the potting permit Byelaw has led to some 'recreational' potters getting their vessels licensed by the MMO. Longstanding commercial operators have welcomed the transition from a supposed 'recreational' activity to a legitimate commercial operation. It is important for fair competition that each commercial fisherman has similar responsibilities and overheads relative to their scale of operation.

Both fishing and tourism are key sectors to the economy within the D&SIFCA district. Better management of local commercial and recreational netting can help to support local tourism.

In this area there is an attraction and potential benefit for tourism associated with its connection to legitimate commercial fishing (including netting) conducted over generations. However the activity of legitimate netting activities are often poorly understood by a wider audience and consequently netting activity is sometimes reported by the media in unnecessarily negative way.

There is often conflict between those netting and those pursuing other activities such as recreational angling, many of which are visitors to the D&SIFCA district. The introduction of a flexible management system (this Byelaw) coupled with continuation of voluntary measures (angling zones) will potentially reduce this conflict and possibly increase expectations and improve the experience for recreational anglers, therefore encouraging this element of tourism and associated spending. D&SIFCA believes that through the various initiatives, including this Byelaw, it is demonstrating good practice in line with its duty to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district (section 153(2)(d) of MaCCA). Although D&SIFCA is seeking to develop the RSA sector it is aware that this may lead to lobbying where pressure is put on the Authority to make changes that affect other users that are not necessary.

Enforcement bodies:

The lead responsibility for enforcing any permit conditions would fall to D&SIFCA and therefore the additional enforcement cost would impact on D&SIFCA.

The Authority recognises that it has a duty to ensure that the legislation it introduces is enforceable and administration of the permits resourced. The Authority operates a risk based approach to enforcement. The byelaw and permit conditions are designed (including the introduction of catch restrictions when fishing in the district), in part, to make enforcement of the management measures more effective.

7. The Options

In determining the most appropriate form of management following the better Regulation Principles²⁴, D&SIFCA must consider voluntary measures before proceeding with a statutory measure such as a byelaw²⁵.

Option 0: ‘Do Nothing’

The fishing pressure from netting effort in the district is believed to be such that not regulating the activity would lead to unacceptable risk of the important shellfish and finfish fisheries being over exploited and collapsing.

Recommended option

Option 1 A D&SIFCA ‘netting permit byelaw’.

The recommended option reflects D&SIFCA’s aim to introduce a new approach to inshore fisheries and conservation management. The permitting byelaw will encourage active participation in management decisions.

This option is recommended because D&SIFCA is viewed as the appropriate statutory organisation to lead on the sustainable management of inshore fisheries and protection of the marine environment. A permitting byelaw is the preferred approach due to the flexibility associated with permit conditions.

There is also the potential for further measures to be introduced, or existing management to be amended or removed.

This option mitigates the risk of imposing inappropriate permanent restrictions based on the limitations of available evidence. Management is required for the reasons set out in the Impact Assessment but care should be taken to ensure decisions are amendable in light of better evidence or changing circumstances in an appropriate timeframe.

The ability to change management requirements though varying permit conditions is likely to be less expensive than creating separate voluntary agreements. Where voluntary agreements are created by other initiatives D&SIFCA has the ability to support the management approach by introducing permit conditions if required.

Option 2 D&SIFCA to revoke byelaws and create individual byelaws

This option would involve remaking byelaws using the traditional, inherited model, leading to the continuation of a management approach that is less able to adapt to change.

Under this option should further measures be required in the future for netting management then a new byelaw would be required or the existing byelaws would have to be amended. The byelaw making process is expensive and time consuming. More importantly the need to formally consult on any new byelaw will lead to extended periods of time where the management approach is not fit for purpose.

Option 3 MMO management measure – permanent MCZ byelaw or fishing licence condition

²⁴ Link to BRPs <https://www.gov.uk/government/publications/better-regulation-framework-manual>

²⁵ This is only the case if voluntary measures are cheaper than other options. A full description of the voluntary measures envisaged and how effective these will be in terms of risk mitigation.

IFCAs have been established as the responsible lead statutory organisation for the sustainable management of inshore fisheries and conservation. D&SIFCA's structure is in recognition of the role it has in dealing with both fisheries and conservation management at a local level.

Option 4 Voluntary agreement

D&SIFCA has considered this option in light of Better Regulation Principles. However, due to the recorded non-compliance with existing legislation, the incentive to catch and sell high value shellfish and finfish, the number of fishers, the area of sea, the length of coastline and the number of estuaries within D&SIFCA district, it is believed that a voluntary agreement would be poorly adhered to and poses an unacceptable risk to the fisheries and possibly the wider environment.

If a voluntary approach was adopted for the recreational sector some of the issues set out above would equally apply. A code of conduct approach would not dissuade some recreational netters to refrain from their current catching practices which are in conflict with the Authority's opinion of what a recreational activity should be.

In addition the Authority would be unlikely to obtain the same level of data from this sector than can be achieved by the permitting approach. The immediately available data on the number of commercial and recreational netters will be highly useful to D&SIFCA. A reliable assumption on the effort that is being directed towards the netting fisheries in the district can be made from the number of permits issued.

The permitting approach also creates direct communication links with fishers actively undertaking the activity. Through better communication the Authority and the permit holder will improve their understanding of the netting sector and provides an opportunity for both sectors to be properly represented in the Authority's management decisions.

8. Analysis of costs and benefits

Summary

The analysis of costs and benefits is based on comparing Option 1 to Option 0.

The key management measures that would be introduced through permit conditions are;

- All netting activity²⁶ to be authorised under permit;
- No netting in estuaries (other than seine nets targeting sand eels);
- Maintain current estuaries boundaries except for the Taw Torridge, Parrett and Axe (Somerset);
- Extend seawards boundaries for Taw Torridge, Parrett and Axe (Somerset);
- Maintain current fixed net coastal spatial restrictions;
- Maintain three metre headline clearance of coastal fixed nets;
- Remove derogation to use a surface fixed net between 91 and 93mm mesh size.

²⁶ Nets defined under Netting Permit Byelaw.

- Extend Lundy MCZ netting restrictions to include all nets;
- Restrict individual recreational netters to a maximum of 25 metres of net in coastal areas;
- Requirement to tag all recreational nets;
- Restrict recreational catches of crab, lobster, crawfish, and bass;
- Introduce a bycatch of crab claws for the commercial netting sector;
- Requirement for all permit holders to submit catch data;
- Potential to introduce vessel monitoring systems on board netting vessels.

The Authority accepts that precise data is not available for all aspects of the proposed management covered by the Byelaw (Permit conditions) and in such circumstances the Authority has proceeded on the best available evidence and, as required to do so, has applied the precautionary principle where data is unavailable. The Authority is entitled to proceed upon this evidentiary and precautionary basis. The Byelaw provides the opportunity to introduce a mechanism to gather more precise evidence to inform future management decisions by requiring all permit holders to provide records of their fishing activity. This requirement is set out in the Byelaw in, paragraph 15 '*The permit holder shall provide any relevant fisheries information required by the Authority for the discharge of its functions*'. The Authority is mindful of the fact that, where possible, as increased survey data and user evidence becomes available the permitting system will provide a flexible and responsive mechanism for timely adjustments to be made in the light of this increased evidence base. This process will be used to assess the impacts from the EA's proposals to increase the headline depth of coastal fixed nets to five metres.

The D&SIFCA has undertaken a significant amount of pre-consultation with sectors that are likely to be affected by the proposals. During the pre-consultation for this Byelaw the D&SIFCA formulated a communications plan (Annex 1) to maximise the awareness of the netting review using the available budget. The responses from the 2nd phase of pre-consultation are summarised in Annex 2. The 2nd phase consultation reflected the need to fill the identified gaps in knowledge resulting from the initial pre-consultation undertaken in 2015. Responses to both phases of pre-consultation were considered at the Byelaw and Permitting Sub-Committee meetings. The minutes from these meetings are set out in Annex 10.

Permits

Although D&SIFCA has the ability to restrict the number of permits issued this is not the way that it believes effort should be restricted and the number of permits issued will be unlimited.

Fishing effort management by way of licences is already undertaken at a national level. Local restricted licencing permit schemes can bring additional benefits to those fishers within the scheme, such as greater access to stock, limited competition from other fishers, an increased sense of ownership and reward for adopting good fishing practices. Many contributors²⁷ to the fisheries management debate support the use of such an approach. However among the many risks it is highly likely that a restrictive permit scheme becomes a valuable, tradeable document (even when every action is taken to prevent this from happening), it limits opportunity for new entrants to the fishery and may lead to increased effort as fishers believe

²⁷ Including Stage Two Report of Project Inshore,
http://www.seafish.org/media/921067/2013.07.23_project_inshore_s2_v5.pdf

that a track record of fishing may qualify them for a permit in the first instance. A restrictive scheme would also significantly increase the administrative burden on D&SIFCA. The current budget and staff resource would not be able to deliver this approach within existing or foreseeable resources.

The cost of the permit will be £20 and will be valid for a maximum of 24 months. The cost of the permit is set out in the Byelaw and can only change when the Byelaw is reviewed. The charge is based solely upon the estimated administrative cost in terms of staff hours. Inevitably this means that the same hours are incurred irrespective of whether the applicant is a commercial or recreational user. However to reflect the requirement for recreational fishers to attach tags to their nets and some commercial fixed nets, the initial charge for tags will be met by D&SIFCA.

D&SIFCA believes that a charge of £20 for permit that may last for up to two years, where the conditions of use may be varied without cost to the permit holders during that period, does not impose an excessive financial or regulatory burden upon any of its stakeholders. In addition, even for recreational netters, the value of the fish and shellfish (maximum amount) that can be removed in one day would easily exceed the cost of the permit.

Estuary netting

The information from the pre-consultation and the analysis of the MMO landing data does identify a number of small vessels that would be affected financially by the proposal to remove all netting from the estuaries except for seine netting for sandeels.

It is not thought that the effect of the closure will result in any full-time fishers leaving the sector. Some netters that work on a part-time basis, that have a smaller income from fishing may leave the sector. Full-time fishers have to compete with part-time fishers that only operate during the peak times and see fishing as a supplement to their income.

The greater significance is likely to be a social impact resulting from the loss of a netting fishery that has been undertaken for many generations on both the north and south coasts of the district. Fishermen have suggested ways to limit the amount of netting in estuaries similar to those set out in the Officers' report to the Sub-committee in November 2015 Annex 11. Fishermen from estuaries where all fixed and drift nets have already been excluded have previously asked the Authority to review the imposed closures. Minutes of the November 2015 sub-committee meeting record that members rejected the proposals to have limited access to netting in estuaries.

D&SIFCA acknowledges that the lower part of the Taw Torridge estuary is an important aggregation area for bass and should be considered in the same way as other estuaries in the district. The Plymouth Sound is more extensive and is already subject to netting restrictions under Byelaw and Queens Harbour Master's control. The closure of the Sound would impact on fisheries such as rays that are unlikely to impact on either bass or salmon and sea trout.

Responses from the recreational sea anglers would indicate that this sector would recognise the closure of estuaries to netting for sea fish as a significant step towards recognising and balancing their needs and interests with other sectors.

The responses to the questionnaires (Annex 2) followed very similar themes to the initial phase of pre-consultation in 2015. Initially the recreational sector featured strongly with a sense that some lobbying to support the proposals to further restrict netting was occurring. This in its own way reflected a strong feeling from the recreational sector that the review of the netting

management offered the best opportunity to introduce measures that would be recognised as meaningful change and reflecting the sector's expectations and socio-economic importance.

Commercial responses were not generally detailed enough to identify how important estuaries were in terms of the income that resulted from the netting activities. Analysis of MMO landing data, (Annex 3) as far as could be determined, suggested that netting in estuaries did not represent a significant proportion of fishermen's income for most but importantly did provide some income at times when access to the main grounds outside of estuaries were denied due to adverse weather. Commercial fishers believed that their impact on the stocks and environment were minimal and did not justify the complete closure of estuaries to netting.

Boundary Change

Plymouth Sound

Plymouth Sound lies between two separate IFC Authorities and in the context of netting has always been managed as a coastal area rather than an estuary. The initial proposal from D&SIFCA to create a new boundary line for Plymouth Sound was, to some degree, an attempt to achieve increased harmonisation with Cornwall IFCA for the management of netting in this area.

It is understood that Cornwall IFCA may not now be moving forward with the proposed closure. Failure to achieve a harmonised spatially controlled approach with Cornwall IFCA would create a complicated and potentially undesirable scenario in this area of the district.

Based on the pre-consultation, the extension of Plymouth Sound would have an impact on netters in the D&S IFCA portion of this area. A shift in this boundary in conjunction with the proposed new estuary permit conditions would prohibit some commercial netters operating bottom ray nets and also pursuing herring via drift nets (mainly autumn). An accurate economic impact of lost fishing opportunities in Plymouth Sound is hard to quantify from the responses. It is known that at least two of the respondents (indicating substantial losses from lost netting opportunities) are diverse in their static gear fishing with over 2000 pots used between them and the capture of shellfish accounting for the bulk of their earnings from fishing.

Defra are reviewing the bass nursery areas and it is possible they may choose to harmonise the Plymouth Bass Nursery Area boundaries with any boundary line implemented by the IFCA and therefore effectively create a much larger area for bass protection. If so, and unless the content of the bass nursery area legislation is modified, there will be an increased impact on rod and line fishing for bass by boat for all stakeholders within this relatively sheltered area.

On balance, the management proposal, in the first instance, is to maintain the existing estuary closing lines in Plymouth Sound.

Taw Torridge

The extension of the Taw/Torridge boundary will also impact upon several commercial netters, however only four commercial fishermen responded to the pre-consultation. The level of income reported by the four commercial fishers in the Taw/Torridge ranged between £1000 and £5000. D&SIFCA are aware that up to twelve commercial fishermen occasionally operate drift nets within the sheltered confines of this estuary, but the manner in which they are currently worked is of particular concern. The nets are fished in such a way that they could easily fish as fixed nets with only small changes to the operation. Observations of the nets by officers recorded a number of salmon being captured and returned to the water.

Netting for sea fish in the estuary is not a long established activity. The focus on sea fish netting has increased significantly following the buying out of many of the previously licensed salmon netsmen.

The available landing data indicates that the bass fishery is far more important, in relative terms, than the mullet fishery. It is likely that the MCRS increase in bass will reduce significantly the amount of bass that is available to all fishers including netsmen.

The current bass nursery area boundary lines are situated well within the estuary line as proposed in the permit conditions. Defra are reviewing the bass nursery areas and it is possible they may choose to harmonise the Taw and Torridge Bass Nursery Area boundaries with any boundary line implemented by the IFCA and therefore effectively create a much larger area for bass protection. If so, and unless the content of the bass nursery area legislation is modified, there will be an increased impact on rod and line fishing for bass by boat for all stakeholders within this relatively sheltered area.

On balance, the management proposal is to extend the estuary closing line as set out in the pre-consultation document. (Annex 12)

Other estuaries

The river Axe (Somerset) and River Parrett were referred to during the pre-consultation (Annex 6). Although the principle of adding further restrictions within these estuaries received positive feedback from recreational anglers, the proposed boundary lines were viewed by netsmen as being excessive. They considered that the new boundary line would encompass too much of the surrounding area and therefore potentially restrict activity 'at sea' too much.

On balance, the management proposal is to extend the estuary closing line as set out in the pre-consultation document (Annex 12).

Stock management

Bass

Recreational sea angling representatives have aired their frustration at the latest European bass management measures. They believe that the sector had been disproportionately affected by the new catch restrictions. The six month ban on recreational landing of bass and thereafter reducing the number of bass retained by a recreational fisher from three to one is likely to affect many more anglers and will reduce the legal catch taken by this sector.

MMO landing figures (Annex 3) for bass would indicate that, with only a few possible exceptions²⁸, commercial fishing vessels landing to designated ports within the Authority's district would not have got close to, let alone exceeded the 2016 monthly catch restrictions during the previous year, suggesting that this Northwest Atlantic wide measure will not have much effect locally.

MMO landing figures also indicate that most of the bass landed in the district is taken as a bycatch in a mixed fishery and not a directed fishery. This would indicate that it is more difficult to restrict commercial catches of bass taken in the district. This difficulty is reflected in the fact that the European measures when applying a commercial moratorium on the landing of bass

²⁸ Analysis of MMO data identified one vessel in Plymouth exceeded the proposed 1.3 tonnes limit in one month during 2015. Not all ports as yet analysed but Plymouth represented the largest landings of bass in the District.

during February and March allowed demersal towed gears and seine net fisheries to land bass up to 1% of the overall catch taken.

It is believed that estuaries (Annex 4) do have larger aggregations of bass and in these areas the stock does become a targeted fishery. The proposal to remove all netting activities in the estuaries would reduce the amount of bass that can be taken by the commercial sector, supporting the recovery of this species from over fishing and balancing the local restrictions placed on the commercial and recreational sectors.

Grey Mullet

The Bass Nursery Area designations remove the opportunity to fish for bass from boats in all of the main estuaries for most of the year if not all of it. From 1st April to at least the end of October, depending on the location, the only targeted commercial fishery is for grey mullet and possibly gilthead bream. The value of the commercial catch of mullet for the whole district in 2015 amounted to £46,078. The MMO landing data shows the value of this catch from ports in the district. It has been assumed that catches have been derived from fishing within estuaries.

Responses to the questionnaire highlight that the level of netting in Salcombe and the Rivers Dart and Avon have been less in the past two years as a result of the Duchy of Cornwall reviewing the management in netting in these areas where the Duchy's private rights to fishery exist.

Local Salcombe netsmen have also reduced netting activity following a netting investigation that questioned the local drift net methodology with the Authority believing the method to be a form of fixed netting. Local netsmen also refrained from netting so that they were not associated with the well-publicised illegal fraternity.

Mullet is similar to bass in that it is a slow growing species and this characteristic coupled with its overall reproductive strategy makes the species vulnerable to overfishing. Stock data is not so readily available for this species but there is strong anecdotal evidence to suggest that mullet stocks have declined and continue to decline. Grey mullet is increasingly being promoted as an alternative to bass and with the reduced access to bass stocks it may be targeted more in the future. Overall the Authority's precautionary approach to closure of estuaries to netting is presently prudent in relation to this species.

Mullet is a prized species among a specialist group of the recreational sector and the relative difficulty in catching the species on rod and line makes it less attractive than bass to the general angler. Nevertheless mullet is recognised as an important species among anglers and is one of the key fin fish species that characterise the estuaries in the district.

Salmon and Sea Trout

These species are recognised for their conservation status and socio-economic importance particularly to the recreational sector. As set out in the review of the EA's data (Annex 5) whilst acknowledging the importance of the recreational value of the species the Authority's focus lies in assessing how its management of finfish may support the protection afforded to the species.

The data suggests that with the exception of Salcombe Harbour all the bodies of water referred to in this and previous documents as estuaries are identified as important salmon and sea trout rivers. The capture of salmon and sea trout is as an accidental bycatch as it is illegal for most vessels to sell wild caught fish. Only a limited number of licensed salmon and sea trout

fishermen are authorised to land fish and gill tags, issued by the EA, must be attached to each individual fish offered for sale.

The numbers of salmon and sea trout caught in nets within estuaries is not known but monitoring of the netting activity in the Taw/Torridge estuary did reveal that a number of salmon and sea trout were caught and returned to the water. The relative confines of estuaries would suggest that similar methods of netting in other rivers may also pose a similar risk to that observed on the Taw Torridge

Changing fishing patterns

Analysis of MMO landing data highlights a potential shift in bass catching techniques with the rod and line bass fishery becoming the dominant method during 2015 in the district. The benefits of the rod and line fishery for bass are set out in the New Economic Forum Report²⁹. This alternative method of capture, rod and line or trolling, is inexpensive to adopt and more suitable to the smaller vessels that currently net in the estuaries. However the rod and line fishery is seasonal and peaks in the summer months when vessels cannot target bass in many estuaries due to the current bass nursery area legislation. Targeting of bass outside of estuaries then has to compete with other fisheries that also peak at this time.

Coastal netting

Similar to the process for estuarine netting D&SIFCA has reviewed the available evidence relating to coastal fixed net fisheries. D&SIFCA believes that it would be taking a precautionary approach to management by retaining the current levels of restrictions whilst allowing for appropriate future additional restrictions via the use of a flexible byelaw mechanism. In addition on the North coast D&SIFCA propose to reintroduce the fixed net restrictions that were previously in place for the Somerset coastline. The Wessex region netting byelaws were not automatically transferred to D&SIFCA. The EA's expectation was that these restrictions would be reintroduced when D&SIFCA reviewed its approach to netting in the district.

By maintaining the current coastal restrictions no financial loss will result. Annex 7 displays the known netting activities on the south coast resulting from the netting and potting questionnaire undertaken in 2014.

Increasing the headline clearance to 5 metres

Responses to the questionnaire from both coasts would indicate that the increase in the headline clearance to five metres at any state of the tide would adversely impact upon a number of important fisheries. The concerns ranged from fishermen that have already adapted to the three metre headline by modifying their nets that would no longer be able to fish with these nets to fishermen that operate ground nets targeting sole, cuttlefish, ray and spider crab that would all be affected for the first time.

The current restrictions on surface (0-3m depth) fixed nets, are likely to continue to benefit sea fish including both bass and mullet in the Devon part of the district. The commissioned bass PhD (Annex 8) will seek to provide better data to inform this discussion. D&SIFCA believes that the proposed tightening of the drift net and fixed net definitions³⁰ will support the current netting restrictions. The current restrictions are located in the close proximity of most

²⁹

NEF working paper

European Seabass in the UK: A test case for implementing Article 17 of the reformed CFP

³⁰ As defined in the permit condition interpretations

of the larger estuaries with the exception of the area around Salcombe and are likely therefore to afford protection to bass and mullet during their passage to and from most estuaries.

D&SIFCA believes that the available evidence relating to the proposed increase in headline restrictions and protection of salmon and sea trout is inconclusive. The current fixed engines Byelaw was revoked and remade in 2010. The new fixed engine Byelaw maintained the previous netting restrictions and met the EA's principle to allow the use of fixed engines where they were currently authorised and continue with the same restrictions for the protection of salmon and sea trout as currently existed³¹.

D&SIFCA is reviewing the latest data submitted by the EA to determine whether the potential restrictions that would be placed on the finfish and shellfish fisheries were proportionate to the potential, limited additional support this would provide to salmon and sea trout.

Large areas of ground would be lost, and it is significant that the provision would apply at any state of the tide. Given the tidal range in the district it is likely that as a minimum, fixed netting would be removed from within the 10 metre contour line. If displaced this far, fixed netting would have to compete with other fishing methods including trawl fisheries and it may not be possible for it to continue.

Extending the headline clearance of 3 metres to the whole of the district.

The most striking consequence of this proposal would be to remove the entire intertidal stake net fishery in Somerset (Annex 6). Responses to the questionnaires and officers' knowledge suggests that only a few commercial fishing operations take place but a number of recreational fishers continue to fish on a small scale along a large part of the coast.

It is not thought that the intertidal stake net activity has a negative impact on fish stocks but a Habitat Regulations Assessment is currently underway which will consider this in more depth, both for marine fish and migratory fish designated as part of the Severn Estuary European Marine Site. The fishery is largely recreational so that proposals to restrict the recreational net fishery will also manage the impact.

More evidence will become available over the next 18 months through the Burnham, Berrow and Brean Angling Zone monitoring programme. This monitoring programme will look to identify the outcome of removing nets from an area used by recreational sea anglers. The proposed introduction of the netting permit byelaw will also assist in the determination of the participation level in the recreational netting fishery on both coasts.

Currently the coastal netting restrictions do allow, under derogation, the use of a small amount of surface net during the year in the three metre headline requirement areas. In 2015, five individuals working a total of six boats were derogated to use fixed surface nets for bass (91-93mm mesh). The increase in the MCRS of bass to 42cm and the effectiveness of the current mesh (91mm to 93mm) in the surface net derogation at catching bass below this new minimum size is an important point to consider. Although there are very few issued derogations to allow the setting of these fixed surface nets, this current mesh size is no longer seen as appropriate in that it potentially creates an unnecessary bycatch of undersize bass.

An increase in this allowable mesh size will potentially reduce the capture of juvenile bass, but a larger mesh may then interfere with the migration of salmon and sea trout within the coastal belt. The D&S IFCA netting byelaws should not be viewed as the primary management mechanism to protect salmon and sea trout. The number of permits issued has diminished

³¹ Environment Agency Review of Byelaws Regulating Use of Fixed Engines in Estuaries and Coastal Waters.doc; Annex 1_Devon SFC.doc; ANNEX K; Severn and Bristol ChannelSFC.doc; ATT25050.txt

over the years. The reported low catches taken from these nets and the feedback from some of the active fishermen that used the derogation indicates that it is no longer necessary. The proposal is to discontinue with this derogation.

If the agreed and implemented control measures for the protection of sea fish resources are not seen as adequate by the EA to protect salmon and sea trout the Agency has both the opportunity and the authority to enact and implement additional restrictions specific for the protection of these species transiting through coastal waters.

Netting around Lundy

The proposal is to extend the existing restrictions on tangle nets and fixed gill nets to all nets in the area set out in the existing Byelaw 14 – Trawling and Netting Prohibition – Lundy Island Marine Conservation Zone (MCZ). D&SIFCA are not aware that any nets are currently lawfully set in this area.

Recreational netting

The Authority believes that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to secure the correct balance for different fishery users. D&SIFCA has taken the view that a recreational catch restriction to mirror the Potting Permit Byelaw and the Diving Permit Byelaws with the addition of one bass (to reflect 2016 EU bass regulations) will be appropriate and proportionate measures to apply through permit conditions.

A number of the responses questioned whether any recreational netting should be allowed.

D&SIFCA has concerns that some recreational netsmen, particularly on the south coast, are using significant amounts of nets and catching far more fish than can be reasonably be utilised for personal consumption. As previously mentioned, the review of netting has identified an intertidal stake net fishery that is predominantly undertaken by recreational fishers. Recreational fishers from Uphill reported that they use small boats to set up to normally 200m of net each in areas to the north of Brean Down, Somerset. This area overlaps the Burnham, Berrow and Brean Angling Zone.

D&SIFCA believes that netting as a recreational activity should continue but on a proportionately restricted basis. This would allow recreational users to catch sandeels for bait in estuaries and set up to 25 metres of net to catch fish and shellfish for their own consumption. In line with the Potting Permit Byelaw and Diving Permit Byelaw restrictions, recreational netters are not permitted to use store pots and must land the catch on the day of capture. This measure helps significantly with the Authority's ability to enforce the daily catch restrictions.

Additional control afforded by EU catch composition regulations in relation to mesh size will be incorporated within the permit conditions.

Bycatch of crab

The pre-consultation did not deliver a great deal of detail on this issue. There was not overwhelming support for the introduction of a bycatch of crab claws from the commercial sector with a total of 22 responses in favour of a bycatch of crab claws, 13 against and 5 unsure. Those supporting the bycatch proposals highlighted that by having no allowance is seen as a potential waste of a resource. A weight limit is seen as preferable to a number. Suggested levels ranged from a level between 30kg and 60kg per trip to an un-limited weight.

Cornwall IFCA have a 30kg allowance whilst European measures apply either a maximum 1% bycatch by weight of the total weight landed from pots and 75kgs from other fishing methods.

D&SIFCA and some fishermen have identified the risk that by relaxing D&SIFCA's current byelaw restriction, where no crab claws can be landed, may lead to some fishermen retaining as much crab claw as permitted or removing claws from undersize crab rather than trying to remove entire crab that can be legally landed above the minimum conservation reference size.

The proposal is to introduce a bycatch of a maximum of 30kg per commercial permit holder per calendar day. D&SIFCA believes that it is necessary to introduce the measure at a level to reflect in part the concerns raised by some commercial fishermen. The fishery will be monitored for any unintended consequences and to only allow the retention on board of crab claws where netting has been the only activity whilst fishing in the district. It may also be necessary to consider placing a minimum number of claws per kilo to counter the risk that smaller claws from undersize crab are retained.

Catch restrictions

The use of catch restrictions within the permits will potentially affect persons that fish both inside and outside the district. Similar measures have been used in both the Potting Permit Byelaw and the Diving Permit Byelaw. It is assumed that the extent of netting activity inside and outside of the district will be similar to that of potting as it is likely to be carried out, in the most part, by the same vessels. Previous discussions with representatives of the commercial potting fleet in north and south Devon would indicate that the number of vessels affected by these conditions of use is likely to be low. Recognising that some vessels do fish inside and outside of the district on the same fishing trip, the catch restriction does not prevent the carriage of the catch caught offshore through the district. The permit condition, (paragraph 1.1) sets out *that when fishing in the district a permit holder or named representative is not authorised to retain on board or have in their possession any catch that does not comply with any of the catch restrictions.*

For example this still allows fishermen to net inside the district and then outside the district and retain on board berried lobster if they then transit through the district to land. However if a vessel nets outside of the district and catches berried lobsters and then engages in netting inside the district the retention of those berried lobsters will contravene the permit conditions if inspected at sea.

Byelaws only apply within the district, normally six nautical miles from the coast or in places on the north coast of the D&SIFCA district to the median line with Wales. Proving where vessels have been fishing is an inherent and significant impediment to effective enforcement of byelaws. It reduces the ability to enforce the legislation and consequently the effectiveness of the management measures. The permit condition goes a significant way to addressing this weakness. It is incumbent on D&SIFCA to support the majority of law abiding fishers (example supporting the measure to return berried lobsters) by introducing effective and enforceable legislation.

The commercial (with no shellfish entitlement) and recreational catch limits proposed harmonise with the restrictions already in place through the Diving Permit Byelaw, Potting Permit Byelaw and EU bass regulations.

Nationally, commercial vessels, using pots or nets, that do not have shellfish entitlements are restricted to a maximum of five lobsters and 25 crabs per calendar day. The same restrictions, five lobsters and 25 crabs per calendar day will apply through the permit conditions to this sector of the commercial potting and netting fleet. The additional benefit of this approach is

that this catch limit for these commercial vessels is directly enforceable by the Authority's enforcement officers.

The Byelaw restricts the daily catch of recreational netters to two lobsters and three crabs and one bass (from 1st July to reflect EU regulations) per calendar day per person.

Spiny lobsters are a Feature of Conservation Importance in two designated MCZs within the D&SIFCA district. The number of spiny lobsters reported caught in the Lundy MCZ and the Skerries and Surrounds MCZ by commercial potters is very low. The total number of commercial boats working in the two MCZs is believed to be 15. Although the commercial value of spiny lobsters is high, ranging between £40 and £60 per fish, the numbers caught would suggest that by prohibiting the removal of spiny lobsters from these two areas it is likely to cost the whole fleet around £1,500. The low capture rates are likely to be indicative of very low populations in the two MCZs so the removal of only a few individuals may have a significant impact on the stock. D&SIFCA believes that this warrants a precautionary approach.

The same Minimum Conservation Reference Sizes set out in the Diving Permit Byelaw and Potting Permit Byelaw and EU bass regulations will apply to all permit holders.

Gear restrictions

Surface markers, buoys or dhans, attached to netting gear, need to be marked with either the commercial vessel's Port Letters and Numbers or the permit number. This will assist greatly in monitoring of fishing activity and help identify persons responsible for the gear. Determining ownership of gear is difficult at present and has resulted in seized gear relating to minor offences being auctioned rather than being returned where the owner has not come forward. Better marking of gear will also help when members of the public report suspicious activity in relation to static gear. Commonly potting gear is mistaken for nets.

In the case of recreational gear and some commercial fixed, surface nets, in addition to the requirement to mark gear, each net needs to be tagged with tags issued by D&SIFCA. The use of tags will enable the restriction on nets to be enforced more easily. In the first instance tags will be issued at no cost to the permit holder. Lost or stolen tags can be replaced at a cost of £2 per tag but this cost would be borne by the permit holder.

9. One In Two Out (OITO)

OITO is not applicable for byelaws as they are local government byelaws introducing local regulation and therefore not subject to central government processes.

However the new Byelaw will replace five inherited byelaws that relate to netting. The Byelaw will also introduce new restrictions on unlicensed, non-commercial fishing activities. These additional restrictions are important for D&SIFCA to meet its duties under section 153 (2) of the Marine and Coastal Access Act 2009.

10. Small firms impact test and competition assessment

The proposals will positively impact on competition for the commercial fishing sector by reducing the amount of shellfish and fish finding its way into the market from unlicensed vessel activities. Although it is impossible to determine the scale of the issue, commercial fishermen operating small boats believe it poses a significant threat to their small businesses.

Small businesses' ability to innovate may no longer be restricted due to rigid fisheries legislation. No fishers are exempt from this Byelaw as it applies to all persons operating nets.

11. Conclusion

Recommended Option: D&SIFCA Netting Permit Byelaw

This option is recommended because it is the most cost effective option. The D&SIFCA has statutory responsibilities that it believes it meets by introducing the Netting Permit Byelaw.

The Byelaw is designed to meet the Authority's conservation responsibilities but at the same time minimising the socio-economic impact from these restrictions. By the end of 2016, D&SIFCA is required to have in place the management framework to control the impact of all fishing activities undertaken within EMS. The same Byelaw mechanism can be used to ensure that necessary management interventions can be taken for the MCZ in the district. The Byelaw also provides the flexibility to manage fishing activities in a timely, effective way and provides the framework to consider developing new fisheries. This approach removes the need for further byelaws to deal with netting management and as such delivers significant cost saving to the public purse.

The purpose of this Byelaw is to provide the Authority with the ability to balance the differing needs of persons using nets and taking fish and shellfish. The Byelaw will provide the ability to manage effort directed towards the fisheries and support the development of sustainable fisheries.

A post implementation review will be undertaken no later than five years after the Byelaw is confirmed. It is the Authority's intention to review the management measures contained in the flexible permit conditions annually. It is possible that flexible permit conditions can be reviewed more frequently if needed and sufficient data is available. Social and economic data will be considered along with other evidence when considering if changes should be made. An impact assessment will be undertaken if management changes are proposed.

The permit scheme allows D&SIFCA to communicate directly with users to increase understanding and awareness of the management but also allows permit holders to actively participate in shaping future management. This reflects strongly Government's Big Society and Localism agendas to encourage local people to actively participate in the decision making process and help to empower local communities.

2. Objections to the Byelaw and Managing the Response

The formal consultation phase ended on 22nd September 2016. All responses were received by both the Marine Management Organisation (MMO) and D&S IFCA. All responses were summarised into a theme-based report which was circulated and made available to all stakeholders that had submitted a response:

Response and Recommendation Report for Stakeholders – 22nd November 2016.

This report documents the recommendations made by the D&S IFCA Byelaw and Permitting Sub-Committee in preparation for consideration by the D&S IFCA Full Authority on 9th December 2016.

At time of writing the report is posted in File F (Byelaw Development Reports) of the Resource Library of the D&S IFCA website. The complete report is transcribed below. No attempts have been made to change the content in any way, including any spelling or punctuation errors that may have been present in the original document.

The Transcript

PART ONE

Introduction

Dear Stakeholder,

Thank you for your response to the proposed introduction of the Devon and Severn Inshore Fisheries and Conservation Authority (D&SIFCA) Netting Permit Byelaw and the management measures contained within the permit conditions.

Due to the volume of responses within the consultation period this report has been prepared to inform all stakeholders of the recommendations that have been made in readiness for consideration by the Members of the Devon and Severn Inshore Fisheries and Conservation Authority on 9th December 2016.

Key recommendations:

- **No fixed or drift netting will be permitted in any estuary within the D&SIFCA District**
- **There will be a three metre headline restriction for coastal fixed nets (in existing areas)**
- **No derogations will be issued for the use of fixed surface nets (in areas where the three metre headline applies)**
- **Un-powered vessels can qualify for a Category One permit**
- **Recreational nets (fished at sea) will be limited to 25 metres**
- **Commercial seine nets (within estuaries) will be limited to a 20 metres in length**
- **Proposed Management measures which received no objections are to remain as set out in the consultation**

329 responses were received during the formal consultation period, ending on 22nd September 2016. The Authority has recognised that the majority, 263 responses, were generally supportive of the proposed byelaw and the management measures.

Whilst it is not possible to prepare individual responses, the D&SIFCA Byelaw and Permitting Sub-Committee is confident that this report addresses the issues you may have raised in your response. The objection or supportive comments will have been addressed within the key themes and subsequent discussions that were held during the meeting of the D&SIFCA Byelaw and Permitting Sub-Committee on the 3rd of November 2016. The purpose of the Byelaw and permitting Sub-Committee is to consider the issues in detail and make recommendations to the full Authority.

The discussion points and a full list of the recommendations made at this meeting are set out later in this response report and it is recommended that you study the contents list to help identify how your response has been recognised.

The Byelaw, review procedure and the introduction of different categories of permits

The construction of the overarching netting byelaw has received some criticism within some of the responses to the consultation. This included concerns over the scope of the D&SIFCA's powers to introduce the Byelaw, the associated permits and also how D&SIFCA can change permit conditions. The rationale for the creation of this Netting Permit Byelaw has received both support and criticism. Some comments can be summarised as follows:

- What is wrong with the old byelaws?
- Why is a new byelaw needed?
- Why are permits needed?
- Can permit conditions be changed whenever the D&SIFCA wants to?

The creation of a netting permit byelaw provides the Authority with a flexible, adaptive approach to management and is part of a series of activity based byelaws being implemented by the Authority as it proceeds with its mandatory requirement to review legacy byelaws.

The rationale for the creation of this Netting Permit Byelaw is explained within the Impact Assessment that accompanies this Byelaw. A section of this response and recommendation report focusses on the Impact Assessment to help stakeholders better understand its content and importance in this process. Wherever possible the D&SIFCA has used the best available evidence to take decisions and form recommendations and thereby reducing an overly pre-cautionary approach.

Permits and review of conditions

The Netting Permit Byelaw provides scope for both fixed and flexible management measures via the conditions of use within the permits issued to fishers. The scope of the flexible conditions is limited to catch, gear, spatial and time restrictions. The review procedure of flexible conditions is detailed within the main Byelaw (Section 24 & 25). D&SIFCA has a duty to review all of the flexible conditions at least every three years but can review conditions within a shorter time period as considered necessary and this is indicated by the flow diagram (Annex 9) of the Impact Assessment. The netting permit Byelaw needs to be reviewed within five years.

Responses were received from the commercial sector supporting the separation of different fishers using nets. This is to be achieved by the issue of two separate categories of permit.

- Category one (commercial fishers using nets)
- Category two (recreational fishers using nets)

The Authority believes that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to secure the correct balance for different fishery users who have different needs. The Authority has taken the view that a recreational catch restriction to mirror the Potting Permit Byelaw and the Diving Permit Byelaws with the addition of one bass (to reflect 2016 EU bass regulations) will be appropriate and proportionate measures to apply through permit conditions.

The Authority believes that netting as a recreational activity should continue but on a proportionately restricted basis which reflects its non-commercial nature. The proposal would allow recreational users to catch sand eels for bait in estuaries and use up to 25 metres of net to catch fish and shellfish for their own consumption. In line with the Potting Permit Byelaw and Diving Permit Byelaw restrictions, recreational netters are not permitted to use store pots and must land the catch on the day of capture. This measure helps significantly with the Authority's ability to enforce the daily catch restrictions.

The Byelaw making process

Some of the responses received within the consultation criticised the process that has been followed by the Authority. Work on the D&SIFCA proposed Netting Permit Byelaw began in 2015 with the Authority following exactly the guidance procedures published by the Department for Environment, Food and Rural Affairs (Defra). The key stages of the guidance procedures in the development of this Netting Permit Byelaw are summarised as follows:

Gather Information

- The D&SIFCA seeks views of stakeholders.
- The D&SIFCA conducts research and makes use of previous research
- The D&SIFCA begins work on the Impact Assessment
- Options are considered (via meetings of the Byelaw and Permitting Sub Committee)

In meeting these requirements the D&SIFCA conducted extensive pre-consultation ("call for evidence") with separate focus on coastal and estuary netting. Following a review of the information received from the initial responses, gap analysis, a further period of pre-consultation was undertaken. Previous D&SIFCA survey work was utilised and direct contact was made with stakeholders wherever possible. The pre-consultation communication initiatives are documented within the Impact Assessment along with the minutes of meetings used to assess management options.

Make a Byelaw

- Obtain legal advice
- Issue notice
- Present information
- Make a Byelaw

On 16th June 2016, members of the Authority considered the Byelaw and Permitting Sub-Committee's recommendations, following consideration of the information and evidence gained through the pre-consultation phase, and agreed to make the Netting Permit Byelaw (i.e. adopt the draft for consultation) and the agreed the permit conditions (management measures) Consultation

- Advertise the Byelaw for Consultation
- Consider responses
- Respond to the responses

The guidance states that the Authority should give notice of its intention to apply for confirmation of the byelaw by advertising it for two consecutive weeks in publications which target the stakeholders affected by the byelaws measures. The D&SIFCA made a conscious effort to exceed the minimum requirements by a considerable margin and extended the consultation phase to 56 days which ended on 22nd September 2016. In addition to advertising in various publications, a series of mobile presentation events were conducted across the District. A communication report has been created to detail this phase of the consultation.

How the responses received from stakeholders were processed, summarised and considered is explained in the "summary work and conclusions to aid the recommendation" portion of this report.

In responding to stakeholders the D&SIFCA must provide a sufficiently clear explanation as to why they have disregarded the objections.

Confirmation

- Byelaw to be sent to the Marine Management Organisation (MMO).
- The MMO quality assure the byelaw and the ensure process has been followed.
- Application for confirmation of the Byelaw will be made to the Secretary of State

Prior to this confirmation phase, the Authority will meet on the 9th of December 2016 to discuss the recommendations made by the Byelaw and Permitting Sub-Committee before making decisions regarding the proposed Byelaw. The agenda and venue will be available on the D&SIFCA website not less than 10 working days before the meeting. The general public will be able to attend this meeting and any requests to address the Authority should be made in writing to the Chair of the Authority by no later than 5th December 2016.

The D&SIFCA Byelaw and Permitting Sub-Committee met at Exeter Racecourse on 3rd November 2016. The purpose of this meeting was for members to formulate recommendations for the full Authority to consider on 9th December 2016. In making recommendations, members had the opportunity to examine all the objection responses and consider amendments where possible or establish the rationale why objections should be disregarded. Evidence submitted during this official consultation was compared to the existing evidence base. Recommendations made at this meeting have been recorded in the minutes and will be available to view on the D&SIFCA website.

Following consideration of the recommendations by the full Authority (and as per Defra Byelaw Guidance listed above) the Authority is likely to submit the Byelaw (with or without changes) to the Marine Management Organisation for quality assurance prior to submission of the Byelaw for confirmation by the Secretary of State.

Impact Assessment

The rationale for the creation of this Netting Permit Byelaw has received both support and criticism. The validity of data and other evidence used to assist with decision making has been challenged. D&SIFCA has created an Impact Assessment to accompany the introduction of this proposed Byelaw. The pre-consultation and formal consultation phases are used to develop this document. The Impact Assessment is divided into separate sections. Part 1 provides summary information, with greater detail explored within Part 2 (evidence base) of the document which should be read in conjunction with the separate annexes. The Impact Assessment and annexes (via links) can be viewed on the Devon and Severn IFCA website. The Impact Assessment currently contains the following:

- Introduction
- Rationale for intervention
- Policy objectives and intended effect
- Background
- Environmental Impact
- Affected sectors
- The options
- Analysis of costs and benefits
- Summary
- Permits
- Estuary netting
- Boundary change
- Stock management
- Changing fishing patterns
- Coastal netting
- Recreational netting
- Bycatch of crab
- Catch restrictions
- Gear restrictions

Annex 1	<u>Actions and communication plan for the netting pre-consultation....</u>
Annex 2	<u>The pre-consultation -Observations, future discussion points and a summary of responses.</u>
Annex 3	<u>Analysis of MMO Landings Data 2011-2015</u>
Annex 4	<u>European sea bass (<i>Dicentrarchus labrax</i>) Ecology, stock status and management update.</u>
Annex 5	<u>Coastal netting impacts on salmon and sea trout: a review of available evidence</u>
Annex 6	<u>North Coast netting (Minehead to Weston super Mare)</u>
Annex 7	<u>Netting Survey 2014</u>
Annex 8	<u>Ecology and distribution of European Sea Bass in inshore and coastal waters in South West England</u>
Annex 9	<u>Review process flow chart</u>
Annex 10	Minutes of the Byelaw and Permitting Sub-committee meetings, <u>Nov 2015</u> , <u>Dec 2015</u> and <u>March 2016</u> .
Annex 11	<u>Estuary Netting – Options for management discussion paper</u>
Annex 12	Phase two <u>estuary</u> and <u>coastal</u> netting questionnaires

Communication - How D&SIFCA engaged with stakeholders

Responses were received that criticised the communication efforts of the Authority in regards to this proposed netting permit byelaw. Throughout this process D&SIFCA has utilised various communication initiatives with the Authority's website the primary platform to display information. In recognising that not all stakeholders have access to on-line information, the D&SIFCA has produced hard copies of key information, posted information to stakeholders and officers have also conducted verbal presentations at various events and meetings. Communication planning and action reports have been made available for stakeholders to read and the Impact Assessment has been developed to explain communication measures taken. During the pre-consultation phase, questionnaires in both electronic and hard copy form were used to gather information from stakeholders with separate consultations completed on both estuary and coastal netting. From assessing the initial response a second phase of pre-consultation was actioned by members of the Byelaw and Permitting Sub-Committee and subsequently completed. The second phase of pre-consultation included gap analysis questionnaires to better identify the levels of netting activity within the district and the financial impact that new management measures including estuary closure may present to stakeholders. Quality of evidence submission rather than quantity has been sought by the D&SIFCA throughout the process. The communication efforts far exceeded the minimum requirements set for the Authority.

Summary work and conclusions to aid the recommendation making process

An extended 56 day period of formal consultation ended on Thursday 22nd September 2016. Some stakeholders have expressed concern that their views have not been taken into account throughout the process. Both written and electronic responses were received with your response being one of a total of 329 responses received before the deadline and subsequently

analysed by officers. Officers studied each and every one of the responses in an attempt to identify key themes from both the objection and supportive responses. Officers summarised the responses in a written report and spreadsheets which were then submitted to members of the D&SIFCA Byelaw and Permitting Sub-Committee prior to the meeting on 3rd November 2016. In summarising the responses officers formed the following conclusions:

- A significant number, 263 responses were in favour of the proposed Netting Permit Byelaw
- A large number of the supportive responses from individuals contained very basic information
- The remaining 66 responses were recorded as having at least some form of objection to the proposed Byelaw or elements of it
- Objections on socio- economic impacts were not well supported by the provision of financial information.
- Little additional data was provided in terms of the value (in addition to the MMO landing data) of the amount of bass and mullet taken from estuaries
- No detailed information was provided to challenge the Authority's assumption that the financial importance (proportion of fisherman's household income from estuary netting) was low

Members of the D&SIFCA Byelaw and Permitting Sub-Committee were tasked with reviewing the officers' conclusions and themes and also identifying additional themes and discussion points from within the responses that represented significant change from the existing evidence base as set out in the Impact Assessment. To this end the members of the D&SIFCA Byelaw and Permitting Sub-Committee were supplied with a copy of each and every response.

Although all responses were evaluated, members' primary focus was on the 66 objection based responses rather than responses that were generally in favour of the Byelaw but with criticism that the proposed measures did not go far enough. 48 responses were highlighted as offering the clearest objections to some elements of the proposed byelaw and management measures.

PART TWO

Your objection

Whilst it is not possible to respond to each stakeholder with a tailored response, the members of the D&SIFCA Byelaw and Permitting Sub Committee are confident that your objection points or supportive comments will have been have been addressed in either Part One or Part Two of this report.

To consider changes to the Netting Permit Byelaw

The D&SIFCA Netting Permit Byelaw provides the platform for the issue of permits containing conditions of use. The Byelaw includes interpretations, prohibitions, fixed provisions (such as fees) and has a review procedure explaining when and how flexible permit conditions are subject to a review.

The Environment Agency requested that they be included as a listed statutory body within section 25 of the Byelaw to clarify its position in regard to the D&SIFCA's duty to consult with that organisation in any review of permit conditions.

It is expected that the D&SIFCA will endeavour to engage with a wide range of stakeholders and organisations, therefore an overly detailed list within Section 25 of the Byelaw was not considered to be required. As an alternative, members recommended that the Byelaw be amended so all relevant statutory consultees would be recognised for their importance but not individually named.

Recommendation: That section 25 of the byelaw is amended to include "Relevant Statutory Bodies".

Revocation of legacy Byelaw 17

The introduction of a Netting Permit Byelaw provides D&SIFCA with the opportunity to revoke legacy byelaws related to netting such as Byelaw 17- Fixed Engines. The Environment Agency have recommended to the D&SIFCA that care should be taken in the revocation process until a complete suite of activity based permitting byelaws have been introduced so the D&SIFCA is not exposed to a lack of management control (in particular long lines) in the absence of Byelaw number 17.

Recommendation: That D&SIFCA officers' undertake a risk assessment associated with revocation of existing Byelaws.

Permit fees, tags and quotas

Construction of the D&SIFCA Netting Permit Byelaw and the associated permit conditions were criticised within some responses with several objection points associated with additional burdens resulting from new control measures.

Objection themes in relation to fees, tags and conditions of use were identified as follows:

- Why have fees for permits?
- Why have separate fees for each permit? (different activities)
- Additional quotas (catch restriction) for commercial fishers
- Commercial fishermen having to be supplied with hundreds of tags

A £20 administration fee has been established in all D&SIFCA permitting byelaws to date.

The fixed £20 fee covers a two year period and was set to reflect a best estimate of anticipated administrative costs to the D&SIFCA in managing the permit based approach. The objective was to cover only the administrative costs to the Authority and not to generate additional revenue ('revenue neutral'). On line payment has now been developed and it is the view of the Authority that this initiative may reduce longer term costs to D&SIFCA. This may make it possible to reduce the Permit fee in future but as yet detailed cost analysis of processing existing and future permits has not been calculated.

Each new permit byelaw has a maximum life of five years before being formally reviewed and this will provide opportunity to review the £20 fee. The potential to introduce multiple-permit fee amalgamation can also be considered when better data is available to determine the true administration costs to the Authority. Burdens faced by fishers such as the cost of fishing licences, registration of fishing vessels and the purchase and inspection of safety equipment are not economic impacts associated with this Byelaw.

The permit mechanism incorporates a provision for the collection of any relevant fisheries information that is not available from other sources. Information provided by permit holders would be used in a review of permit conditions as set out in Section 24 & 25 of the Byelaw. The Authority has identified permit based byelaws as offering improved stakeholder engagement opportunities, which can be of benefit to stakeholders.

Some misunderstanding and confusion is apparent within some of the responses. A number of objections raised concerns about measures that were not relevant to the fisher's activities. Examples of this include objection to a second quota in addition to MMO quota. Catch restrictions for commercial vessels imposed by the netting permit reflect national restrictions already in place and are listed within the flexible permit conditions and would require a specific review process for change to be implemented. In relation to tags, commercial fishers will only require a single tag for seine nets that are to be used within an estuary.

Recommendation: That the £20 administration fee (for each permit) be reviewed when all permit byelaws are reviewed.

Accuracy of data used to assess impact

Economic data within the objection responses was limited to two separate individual responses and this sensitive material was studied in the absence of the general public. One response focussed on challenging the accuracy of data used by D&SIFCA to help estimate potential financial impact by removing netting access within the estuaries.

Information and assumptions have been used within the Impact assessment with the primary source of the economic data used supplied by the Marine Management Organisation (MMO). The MMO data captures landings data from the under-ten metre sector from the buyers and sellers databases³². The D&SIFCA acknowledge that private sales would not have been captured within these statistics.

Only two responses in the consultation provided data to indicate the level of catch and financial return that netting within estuaries provides them. One response included some landing/value data for the period 2000 to 2010 within the Salcombe estuary, although this submitted data can't be validated and therefore considered completely beyond dispute. One other response submitted data relating to catches taken from a fishermen working from the Taw Torridge area for a two month period. The information provided did not provide a breakdown of the different fishing types and areas fished that had been used during the reported period. The information included private sales that would not have been captured within MMO landing statistics used in the Impact Assessment. The D&SIFCA Byelaw and Permitting Sub-Committee has taken the view that neither data submission has added significantly to the quality of data already used within the Impact Assessment that has been used to better determine economic impact of the proposals. In addition, the D&SIFCA Byelaw and Permitting Sub-Committee has taken

³² The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006

the view that sufficient opportunities, during the pre-consultation and formal consultation phases of this Byelaw's development, have been provided to stakeholders to add more detailed information but regrettably these opportunities were not taken.

Headline Restrictions (Coastal nets)

The proposal was to retain a three metre headline restriction rather than introduce an extension to a five metre headline clearance as requested by some of the responders in the consultation. The existing evidence base indicated that an increase would potentially present a significant impact to fishermen through the loss of fishing grounds and displacement of netting effort which would create potential gear conflict with fishing vessels conducting mobile fishing operations. The Environment Agency (EA) has considered the evidence to date and has accepted, at this time, that there is not sufficient evidence to seek an immediate increase in the headline restriction. The EA will continue to proceed with a research program in relation to this flexible permit condition but at present the three metre restriction (in combination with all the proposed additional estuary protection measures) is deemed adequate for the immediate conservation objectives of salmon and sea trout.

In response to scientific advice (ICES report) the European Commission has set out its proposals for managing bass fishing (commercial and recreational) 2017. One of the proposed management measures is to remove netting opportunities targeting bass. Although this proposed Byelaw is activity based, not species focussed, D&SIFCA is supportive of other conservation initiatives for bass and has identified within the Impact Assessment how to assist with bass conservation on a local level. D&SIFCA is funding a PhD in an attempt to gain more specific information about the species and the Centre for Environment Fisheries and Aquaculture Science (Cefas) have indicated a desire to input into this project.

In creating the proposals for the use of coastal fixed nets, the D&SIFCA has removed the provision for fishermen to apply for permission and then operate limited fixed surface nets within defined coastal areas. The removal of this provision was in part to reflect the new European minimum conservation reference size of bass (42cm) and to reduce discards of juvenile bass. It is likely that juvenile bass would be caught in nets with a mesh size of between 90mm and 93mm, and the removal of this provision recognises the scientific evidence within the Impact Assessment regarding the current critical state of bass stocks. Any increase in mesh size would reduce potential bycatch of juvenile bass but the EA believe this would increase the chance that salmonids would be caught. D&SIFCA also recognised that this change would support its duties to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district. The areas to which the fixed net headline restriction applies also remained unchanged for the reasons set out above.

Recommendation: That the headline restriction be implemented as per the proposed permit conditions.

The removal of fixed and drift netting from all estuaries within the D&SIFCA District (except salmon nets licenced by the Environment Agency)

Members discussed the following estuaries that had been the subject of objection in the responses:

Taw Torridge

A large volume of responses were focussed on this specific area, with both objection and supportive themes identified.

It is suggested that 13 fishermen of a wide age range approached the Torridge District Council to provide their views in order to assist formulation of that response. Several of these fishermen also submitted an individual response expressing the view that access to drift netting within the estuary was essential for their financial viability.

The Authority have taken the view that data supplied within this consultation has not added significantly to the quality of data already detailed within the Impact Assessment that has been used to better determine the economic impact from the proposals on stakeholders. Only one objection response included data from a commercial fishermen fishing from the Taw Torridge area for a two month period. The information provided included some private sales that would not have been captured within the MMO landing statistics used in the Impact Assessment. The response from Torridge District Council states that the Appledore fish dock has an annual turnover of £1 million; however it is impossible to determine from the response what portion of this income stream is derived from fishing activity within the estuary, and additionally how much of this turnover would be directly impacted by the proposed introduction of the new Netting Permit Byelaw.

The introduction of the Netting Permit Byelaw does not remove all fishing opportunities from the estuary. Of most relevance is the rod and line bass fishery that is conducted in the lower reaches of the estuary.

The D&SIFCA Byelaw and Permitting Sub-Committee has taken the view that sufficient opportunities, during the pre-consultation and formal consultation phases of this Byelaw's development, have been provided to stakeholders to add more detailed information but regrettably these opportunities have not been taken.

Many of the responses received during the consultation raised concern over bass stocks and this was seen as a significant theme in their support of the proposed D&SIFCA Netting Byelaw. Scientific data within the Impact assessment was referred to by members formulating the recommendations. Bass stocks are reported to be below the minimum acceptable (safe) limit and therefore at significant risk of non-recovery. The European Commission's proposals for the management of bass during 2017 are that there should be no netting to target this species. The D&SIFCA Byelaw and Permitting Sub-Committee takes the view that the increase in the minimum conservation reference size of bass to 42cm has already reduced availability of legal size bass within the estuary and continued access to estuary netting for mullet will promote discarding of bass, as mullet and bass stocks are impossible to target separately within the confines of an estuary. In addition, the Authority takes the view that in the past some fishers have targeted mullet as a means to continue to illegally take bass from estuaries.

Additional evidence has been submitted by the Environment Agency (EA) relating to the Taw Torridge Estuary. This includes information relating to EA Officers' monitoring of salmonids being caught in nets and being returned to the water. The D&SIFCA Byelaw and Permitting Sub-Committee recognised that although salmonids were being returned to the water to achieve compliance with regulation there were potential negative impacts associated with the distress caused to the captured fish including, scale damage (abrasion from nets and handling) leading to the onset of fungal diseases and increasing the risk of mortality.

The Authority has identified key objectives that this proposed Byelaw is expected to deliver which includes seeking to balance the different needs of fishers and has to recognise the significant quantity of supportive responses received throughout the process. D&SIFCA has to meet its statutory duties³³ and has documented the rationale for this byelaw work within the Impact Assessment. The recognition and development of other sectors such as recreational sea angling is part of this process along with the conservation of sea fish and taking responsibility for the public resource by seeking to balance the needs of different sectors. The D&SIFCA Byelaw and Permitting Sub-Committee has taken the view that it would be impossible to allow estuary netting for mullet whilst achieving adequate protection for bass and migratory fish. There are currently three commercial salmon licences being used within the Taw/Torridge that would not be impacted by this Byelaw as these nets are managed by the Environment Agency

Salcombe/Kingsbridge Estuary

A total of four objections (including one from an organisation) were received in the formal consultation period that related to the Salcombe and Kingsbridge estuary. All four responses focussed on this estuary alone, rather than other estuaries within the district. One response objected to the proposed size of commercial seine nets rather than exclusions of drift and fixed nets from the estuary. The fact that Salcombe is a ria and therefore offered different considerations in relation to the conservation of migratory species was recognised by members.

The Authority have taken the view that data supplied within this consultation has not added significantly to the quality of data already detailed within the Impact Assessment that has been used to better determine economic impact the proposals would have on stakeholders. Only one objecting stakeholder submitted data relating to catches taken within the Salcombe and Kingsbridge estuary for the period 2000 to 2010, although the Authority can't validate this submitted data and therefore cannot consider it to be completely beyond dispute. Although catch data for a ten year period has been submitted, the increased minimum conservation reference size for bass of 42cm would potentially reduce earnings due to a more limited available stock of fish at or above this length. The Authority recognise that this stakeholder had not fished the area so frequently in recent times due to his concern that a traditional netting method has been determined by the Authority to be a fixed net and therefore illegal under current and proposed definitions. The objector also pointed out that there was less opportunity to fish due to the presence of illegal netters from Plymouth.

The Authority have evidence that this stakeholder is diverse in his fishing operations and the Authority do not consider this stakeholder to be financially dependent on estuary netting for the majority of his income. No other stakeholders based their objections on financial dependency of netting within the Salcombe/Kingsbridge estuary. The value of retaining the tradition of netting within this estuary was raised by this individual stakeholder and amongst the objection responses. Alternative suggestions were made that included limitation of permits and limited seasonal access.

As with the Taw Torridge discussions, scientific data within the Impact assessment was referred to by members formulating recommendations. Many of the responses received during the consultation raised concern over bass stocks and this was seen as a significant theme in their support of the proposed D&SIFCA Netting Permit Byelaw. Scientific data within the Impact assessment was referred to by members formulating recommendations. Bass stocks are reported to be below the minimum acceptable (safe) limits and therefore at significant risk

³³ Section 153 Marine and Coastal Access Act 2009

of non-recovery. The European Commission's proposals for the management of bass during 2017 are that there should be no netting to target this species. The D&SIFCA Byelaw and Permitting Sub-Committee take the view that the increase in the minimum conservation reference size of bass to 42cm has already reduced availability of legal size bass within the estuary and continued access to estuary netting for mullet will promote discarding of bass, as mullet and bass stocks are impossible to target separately within the confines of an estuary. In addition, the Authority takes the view that in the past some fishers have targeted mullet as a means to continue to illegally take bass from estuaries.

The Authority has identified key objectives that this proposed byelaw is expected to deliver which includes seeking to balance the different needs of fishers and has to recognise the significant quantity of supportive responses received throughout the process. D&SIFCA has to meet its statutory duties³⁴ and has documented the rationale for this byelaw work within the Impact Assessment. The recognition and development of other sectors such as recreational sea angling is part of this process along with the conservation of sea fish and taking responsibility for the public resource by seeking to balance the needs of different sectors.

In making its recommendations, the Authority accepts that Salcombe is a ria and therefore in comparison to other estuaries, netting within Salcombe estuary presents less risk to Salmon. In addition, sea trout (if present) would be found in significantly less quantities. In conclusion the considerations relevant for netting within the Salcombe/Kingsbridge estuary were not different enough for the Authority to recommend changes to the proposals.

The Teign and other Estuaries

Six commercial operators from Teignmouth were identified from the objection responses; however it is not clear from the submitted evidence how many of these actively net within the estuary. The content of responses indicates that there are one or possibly two commercial fishermen using nets within the estuary. The fact that the management of netting (within estuaries) is not area specific was one of several objection themes, along with a suggestion that salmon anglers and riparian owners have far more influence in this process to the detriment of fishermen less able to present well-articulated responses. Negative economic impact was an identified theme. Construction of the Byelaw and Permit conditions was criticised with several objection points associated with additional burdens resulting from new control measures.

Mullet netting is seen by several of these responders to be of economic value to the small vessels and provides opportunities to fish when weather conditions are un-favourable for fishing at sea. One objection stated that mullet netting is conducted all through the year and bass netting is also carried out from 31st October. Risks to migratory fish were dismissed due to them rarely being caught within nets. Supportive comments from stakeholders were identified in relation to imposing control measures on recreational fishers.

As with the other estuaries, the Authority have taken the view that data supplied within this consultation has not added significantly to the quality of data already detailed within the Impact Assessment that has been used to better determine economic impact of the proposals. Sufficient opportunities to add more detailed information within both the pre-consultation and formal consultation phases of this byelaw's development has been provided to stakeholders but regrettably the opportunity to do so was not taken by those responding.

³⁴ Section 153 Marine and Coastal Access Act 2009

Regarding the rationale for this Byelaw the Authority has prepared an Impact Assessment and as with all estuaries within the district has identified evidence to help inform its decision making. Scientific data within the Impact assessment was referred to by members formulating recommendations. Many of the responses received during the consultation raised concern over bass stocks and this was seen as a significant theme in their support of the proposed D&SIFCA Netting Permit Byelaw.

Scientific data within the Impact assessment was referred to by members formulating recommendations. Bass stocks are reported to be below the minimum acceptable (safe) limits and therefore at significant risk of non-recovery. The European commission's proposals for the management of bass during 2017 are that there should be no netting to target this species. The D&SIFCA Byelaw and Permitting Sub-Committee take the view that the increase in the minimum conservation reference size of bass to 42cm has already reduced availability of legal size bass within the estuary and continued access to estuary netting for mullet will promote discarding of bass, as mullet and bass stocks are impossible to target separately within the confines of an estuary. In addition, the Authority takes the view that in the past some fishers have targeted mullet as a means to continue to illegally take bass from estuaries.

The River Teign was not seen to be significantly different from other estuaries and did not require the Authority to introduce tailored management for this specific estuary.

The Authority has identified key objectives that this proposed Byelaw is expected to deliver which includes seeking to balance the different needs of fishers and has to recognise the significant quantity of supportive responses received throughout the process. D&SIFCA has to meet its statutory duties³⁵ and has documented the rationale for this byelaw work within the Impact Assessment. The recognition and development of other sectors such as recreational sea angling is part of this process along with the conservation of sea fish and taking responsibility for the public resource by seeking to balance the needs of different sectors.

The introduction of this netting byelaw does not remove all fishing opportunities from the River Teign or other estuaries. This Byelaw separates commercial and recreational fishers and the Authority will issue two separate categories of permits which will contain different conditions of use that are representative of the different needs that different sectors have.

No permit holders will be able to use fixed or drift nets within the estuaries as defined. There are currently three commercial salmon licences being used within the river Teign that would not be impacted by this byelaw but are instead managed by the Environment Agency.

Salmon and Sea Trout

These species are recognised for their conservation status and socio-economic importance particularly to the recreational sector. As set out in the review of the EA's data (Annex 5) whilst acknowledging the importance of the recreational value of the species the Authority's duty lies in seeking to balance access to sea fisheries resources with the need to protect salmonids (a collection term for salmon and sea trout). This approach is supported by Counsel's advice identified the Authority's duties were to consider the conservation of salmonids as part of the Authority's duty to conserve the wider marine environment but not to have direct regard for the economic benefits derived from these species.

The data suggests that with the exception of Salcombe and Kingsbridge all the bodies of water referred to in this and previous documents as estuaries are identified as important rivers for salmon and sea trout. The capture of salmon and sea trout would generally be viewed as an

³⁵ Section 153 Marine and Coastal Access Act 2009

accidental bycatch as it is illegal for most vessels to sell wild caught fish. Only a limited number of licensed salmon and sea trout fishermen are authorised to land fish and gill tags, issued by the EA, must be attached to each individual fish offered for sale.

The numbers of salmon and sea trout caught in nets within estuaries is not known but monitoring of the netting activity in the Taw/Torridge estuary did reveal that a number of salmon and sea trout were caught and returned to the water. The relative confines of estuaries would suggest that similar methods of netting in other rivers may also pose a similar risk to that observed on the Taw Torridge.

In conclusion, the D&SIFCA Byelaw and Permitting Sub-Committee believe, having considered the estuaries individually, that all estuaries should have the same management measures applied.

Recommendation: That the prohibition of netting within the estuaries (as set out in the proposals) stands.

Estuary Boundaries (safety issues and potential bass nursery area extension)

The main objection letters related to the Taw Torridge estuary and also the proposed boundary for Plymouth Sound. The safety of fishers was a concern to some stakeholders who highlighted the fact that the prohibition on netting would mean that commercial fishers could no longer fish with nets within the relative shelter of estuarine waters. Other objections focussed on the potential that the proposed boundaries would possibly be replicated in other legislation so that bass nursery areas would be expanded. Alternative suggestions were advanced by stakeholders in relation to the Taw Torridge with a suggested boundary line between Crow Point and Appledore Quay.

The D&SIFCA Byelaw and Permitting Sub-Committee have recognised the physical shape of the Taw Torridge estuary as being a key element in the proposed placement of the boundary line for the Netting Permit Byelaw. Due to the presence of sand banks, a bottle neck effect is apparent when the tide is beginning to flood and netting has taken place during the first hour of flood tide to take advantage of this occurrence. The proposed boundary was created to reduce the risk to fish stocks at key aggregation sites and in addition prominent headlands had been identified to clarify visually the boundary line for the benefit of fishers and other stakeholders.

The D&SIFCA Byelaw and Permitting Sub-Committee has taken the view that fixed visual points, rather than points on sand banks are required for fishers to identify more clearly the boundaries and those boundaries will therefore not be subject to natural movement.

Defra are in a separate process of reviewing bass nursery area legislation. The proposed boundary lines do not represent new bass nursery area boundaries and any amendment to bass nursery boundaries is a matter for Defra and not the Authority. Access to commercial and recreational rod and line fishing for bass would not be impacted by this Byelaw.

Recommendation: That the boundary for the Taw Torridge estuary remains the same as the proposals.

Objection responses were received in relation to the proposed and existing estuary boundaries within Plymouth Sound. Some stakeholders suggesting this boundary should be extended in line with the boundary set out in the pre-consultation proposals, from the breakwater to south of Bovisand Bay.

In relaxing the pre-consultation proposed boundary for Plymouth Sound the Authority recognised that a winter herring fishery is pursued within Plymouth Sound. A headline restriction of three metres would still exist for the area of Plymouth Sound (that is outside of the entrance to the Rivers Tamar and Plym).

As the Cornwall Inshore Fisheries and Conservation Authority (CIFCA) shares a boundary with D&SIFCA in the Plymouth area, differences in management approach can cause enforcement difficulties if harmonization is not achieved. CIFCA is also in the official consultation phase with their proposed Estuarine Netting Byelaw and it is impossible to predict the eventual outcome; however D&SIFCA did set out its pre-consultation proposal based on information and expectations that have now potentially changed. Members of the Byelaw and Permitting Sub-Committee stated that attempts should be made to resolve boundary and enforcement issues within the Plymouth area using the mechanism provided in the Marine and Coastal Access Act 2009..

Recommendation: That this Byelaw Sub Committee recommends to the full D&SIFCA Authority that a s. 167 (Marine and Coastal Access Act 2009) agreement be discussed with CIFCA.

Size of commercial seine nets for the capture of sand eel within estuaries

A single objection response, focussed on the Salcombe and Kingsbridge estuary, was received in regard to the proposed length of 20 metres for a commercial seine net that could be used within the confines of an estuary. One other response raised concern associated with sand eel seine nets and the potential negative impact on beds of eel grass resulting from this fishing method being conducted in the Salcombe and Kingsbridge estuary.

The proposed length of 20 metres had been derived from legacy Byelaw 29 (River Exe – prohibition of netting). The D&SIFCA Byelaw and Permitting Sub-Committee recognised that this stakeholder currently uses a 40 metre length sand eel seine, but also recognised that nets were available in different lengths.

The D&SIFCA Byelaw and Permitting Sub-Committee has taken the view that the small mesh associated with sand eel seine nets is less damaging to fish caught accidentally than it would be the case from other types of net. However risks associated with un-wanted catch will increase if longer nets are permitted. Salcombe is a designated Site of Special Scientific Interest (SSSI) and as such any necessary assessments in relation to beds of eel grass will be carried out in due course.

Recommendation: That the maximum length of a seine net used for sand eels in estuaries remains the same as in the proposals.

Recreational netting and a maximum length of 25 metres

Objections were received in relation to the proposal to limit recreational coastal nets to a 25 metre length. The following key points were identified:

- The ability to purchase nets of 25 metres from suppliers
- The practicality of fishing with a 25 metre net

- Alternative suggestions of 100 metres to 200 metres in length
- Different size nets for the capture of herring

In formulating recommendations, the D&SIFCA Byelaw and Permitting Sub-Committee recognised that some stakeholders have questioned whether any recreational netting should be allowed and through the consultation process have questioned whether recreational netting should be seen as a hobby at all. The Sub-Committee recognised there were differences between bottom gill nets and other forms of nets and there were differences in which species were targeted. The Authority had concerns that some recreational fishers, particularly on the south coast, were using significant amounts of nets and catching far more fish than can reasonably be utilised for personal consumption. The members of the D&SIFCA Byelaw and Permitting Sub-Committee had stated that care was needed in managing this activity due to the potential to aggregate nets and the fact that several permit holders may attempt to work fishing equipment together from one vessel.

The Authority believed that netting as a recreational activity should continue but on a proportionately restricted basis, that reflects its recreational, not commercial, nature. The proposal of 25 metres was set to reflect a key difference between commercial and recreational pursuit. Nets of 100 metres in length are considered more of a standard purchase length, but it was not the only length that can be acquired. Nets of 25 metres in length can be purchased, but it is accepted that they may be more expensive to be made up by manufacturers. In terms of gill nets, it is accepted that shorter length presents less catching potential but can still be used for the capture of sufficient fish to satisfy personal consumption.

Managing recreational netting offers different challenges for fishers targeting differing fisheries and seasonality was another factor identified in the responses. Some of the recreational netters' responses reflected the presence of a seasonal, November to December herring fishery on the North Coast and how 25 metres of net would, in their opinion, not be sufficient to pursue that fishery at all. Similar concerns were raised about the length of bottom set nets too.

The absence of a district wide three metre headline restriction allows some surface fixed netting to occur around the coast. A district wide headline restriction would remove all intertidal netting activities. Opportunities to use longer lengths of net exist if stakeholders decide to operate on a commercial basis.

The Authority believes that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to secure the correct balance for different fishery users. The D&SIFCA Byelaw and Permitting Sub-Committee has taken the view that a recreational catch restriction to mirror the Potting Permit Byelaw and the Diving Permit Byelaws with the addition of one bass (to reflect 2016 EU bass regulations) will be appropriate and proportionate measures to apply through permit conditions.

The Authority has identified key objectives that this proposed byelaw is expected to deliver which includes seeking to balance the different needs of fishers and has to recognise the significant quantity of supportive responses received throughout the process. D&SIFCA has to meet its statutory duties³⁶ and has documented the rationale for this byelaw work within the Impact Assessment. The recognition of other sectors including the commercial netting sector and the angling sectors is part of this process as the Authority aims to meet its duties by seeking to balance the needs of different sectors.

³⁶ Section 153 of the Marine and Coastal Access Act 2009

Recommendation: That the restrictions for recreational netting be implemented as per the proposals.

Un-powered vessels qualifying for a category 1 permit

The proposed Netting Permit Byelaw was created in such a way that un-powered vessels would not fulfil the criteria needed in the application process to qualify for a Category One Permit (commercial permit). This situation derived from the wording “relevant fishing vessel” that appears within the interpretations of the Netting Permit Byelaw and the meaning the phrase “*relevant fishing vessel*” has in relation to the application of permits. Objections concerning this issue were raised by stakeholders.

The Byelaw creates two categories of permits with differing management conditions designed to balance the needs of all users

Members of the Byelaw and Permitting Sub-Committee have recognised that there are a small number of commercial netters using vessels with no engine power. These fishing operations will need to be permitted. Under the proposals, in order to continue to fish commercially (under a D&SIFCA permit) these commercial fishers would need to operate from a registered vessel and have a valid fishing licence issued under the Sea Fish (Conservation) Act 1967. To be registered on Part II of The Registry of Shipping and Seaman a vessel needs to be power driven. The application fee for registering a vessel is £124. There is an additional cost of less than £500 to carry out a MCA registration inspection. A fishing licence will cost approximately £1,000 to £1,500³⁷ (licence for 0.3 tonne and 1.1Kw engine power advertised for £1,200 on 17/05/16). An additional cost of approximately £1,000 may be required to purchase mandatory safety equipment.

The Authority’s guiding principles of the byelaw review include the aim to create a culture where the selling of fish or shellfish other than from commercial fishing activities is not acceptable to the general public. This principal has not changed.

In the development of other permitting byelaws the Authority has taken the view that the requirement for fishers to potentially invest money to qualify for a Category One permit would demonstrate their intention to genuinely undertake a commercial operation and allow the Authority to clearly separate and identify recreational and commercial users. Continuation of this policy was recognised by members of the D&SIFCA Byelaw and Permitting Sub-Committee to have negative impacts on some traditional fishing practices, possibly including the stake nets used in the Severn and also the mud horse used at Stolford.

Current national legislation means that without a byelaw in place, un-powered vessels are not required to obtain (purchase) a fishing licence. Members of the Byelaw and Permitting Sub-Committee recognised that this situation needs to be rectified at a national level in the longer term; however members concluded that a byelaw was not the appropriate mechanism to resolve this weakness in the current system. As a result, the members of the D&SIFCA Byelaw and Permitting Sub Committee recommended to the full Authority a change in stance on this issue and the Authority has the expectation that the MMO will explore this issue in the future.

³⁷ (licence for 0.3 tonne and 1.1Kw engine power advertised for £1,200 on 17/05/16)

Recommendation: That an un-powered vessel should be able to qualify for a category one permit.

30kg crab claw provision

This provision has been included within the proposed Netting Permit Byelaw to reflect a potential waste of a fishery resource. Pre-consultation suggested mixed support for this provision by the commercial sector and one stakeholder objected to this provision during this consultation phase.

The Authority has identified the risk that by relaxing D&SIFCA's current byelaw restriction, where no crab claws can be landed, it may lead to some fishermen retaining as much crab claw as permitted or removing claws from undersize crab rather than trying to remove entire crab that can be legally landed above the minimum conservation reference size. The Authority also recognised that a 75kg provision is already in place under EU regulation outside of the D&SIFCA District and that CIFCA have a 30 kg provision in place via a byelaw within their District.

The proposal is to introduce a bycatch of a maximum of 30kg per commercial permit holder, per calendar day. Members of the D&SIFCA Byelaw and Permitting Sub-Committee believed that it was necessary to introduce the measure at a level to reflect in part the concerns raised by some commercial fishermen. A weight limit was deemed preferable to using a number of claws.

It is accepted that this provision does nothing to aid conservation but at the same time makes no difference to the damage caused to crabs caught in nets. It is accepted that the capture of crab in nets is unfortunately un-avoidable and to have no provision for claws that get detached when nets are cleared is a waste of a resource. The lack of a crab claw provision also removes potential earnings. In retaining this provision D&SIFCA would endeavour to monitor landings to identify any unintended consequences. It is important to note that under the proposed permit condition the retention on board of crab claws would only be permitted where netting had been the only activity conducted whilst fishing in the district prior to landing. It may also be necessary to consider placing a minimum number of claws per kilo to counter the risk that smaller claws from undersize crab are retained.

Recommendation: That the 30kg provision for crab claws is to remain as a permit condition.

Protection of spiny lobsters

Several shellfish species have been afforded protection within this and other D&SIFCA permitting byelaws via the flexible permit conditions. One stakeholder made an objection that protection measures for spiny lobster that has recently cast its shell (soft) are not included within the permit conditions.

Members of the Byelaw and Permitting Sub Committee felt it was appropriate to clarify and add consistency to what is meant by the words "spiny lobster" and that only one term be used for this species in relation to the byelaw work of D&SIFCA.

The Authority recognises that Spiny lobsters are a Feature of Conservation Importance in two designated MCZs within the D&SIFCA District and via permit conditions within other permitting byelaws their removal is prohibited from the Skerries Bank, the Surrounds Marine Conservation Zone and also the Lundy Marine Conservation Zone. This proposed Netting Permit Byelaw will include the same restriction.

A minimum conservation reference size (MCRS) has been introduced for spiny lobsters within other permitting byelaws and this represents an increase from 95mm to 110mm carapace length. This MCRS harmonizes with Cornwall IFCA's current restriction. Consistency of management is one of the Authority's guiding principles of its review of the inherited byelaws. This proposed Netting Permit Byelaw will include the same restriction.

In regards to additional protection, members were agreed that soft spiny lobster (*Palinurus elephas*) should be afforded the same protection as edible brown crab (*Cancer pagurus*) and lobster (*Homarus gammarus*) and the permits (catch restrictions) be amended to reflect what has now been considered to be an unfortunate oversight when the initial protection measures were formulated.

Recommendation: To add protection of spiny lobster (*Palinurus elephas*) to the permit conditions.

Part 3

Management measures receiving no objections

Marking of fishing gear

During the meeting of the Byelaw and Permitting Sub Committee on the 3rd of November, members discussed the marking of fishing gear (nets) with flags. The proposed permit conditions on the use of flags to mark fixed nets was in part to allow different gear types to be more readily identified and some members remain supportive of this provision in that there is value in being better able to identify different gear types.

Members were made aware that other sectors such as recreational sea anglers have in the past struggled to identify different gear types and illegal activity has sometimes been reported in error. Not all members were convinced of the merits of such a provision and it was stated that the commercial sector was likely to resist the introduction of this measure as the use of floating buoys had become much more widespread and many fishermen couldn't see a significant problem with the current situation. Members recognised that at least some of the commercial sector would be reluctant to change their approach and changing large amounts of gear marking equipment may represent a significant cost to fishers using nets.

It was acknowledged that although fishing gear must be marked correctly, the finer detail of how this is best achieved could be further explored with direct assistance from the industry itself. The commercial sector (or any other sector) would be able to request a review of this gear marking provision as per the review of permit conditions process if and when the Byelaw was in place. This ability to instigate a review of any flexible condition is shown in the flow diagram (Annex 9) of the Impact Assessment.

During discussions members highlighted that there was a lack of evidence within the formal responses to justify a change from the proposals and there had been no objection to this permit condition.

Recommendation: Management measures receiving no objections are to remain as per the consultation.

3. Access for Netting within Estuaries

The D&S IFCA Full Authority considered the recommendations from the Byelaw & Permitting Sub-Committee on 9th December 2016. Some stakeholders that had raised objections to the implementation of the Netting Permit Byelaw were invited to address members and present new evidence that had not already been documented and considered. The main objection points did centre around the removal of access to drift netting within some estuary areas, most notably the Taw Torridge, Teign and Salcombe estuaries.

Although the implementation of the Netting Permit Byelaw had the objective of managing all netting activity both at sea and within estuaries, many stakeholders mis-understood this and took the view that this Byelaw was purely to manage netting within estuaries.

Members of the Full Authority did not accept, nor reject the recommendations presented to them. The Full Authority took a decision to suspend the confirmation phase of the Netting Permit Byelaw until all members had more time to consider the content of the work undertaken to date, the recommendations made by the Byelaw Sub-Committee and the economic and social impact of implementing this byelaw.

To meet this requirement, officers, via approval of the Byelaw and Permitting Sub-Committee, prepared a report and, also made arrangements to conduct supplementary slide show presentations to Authority members (that requested presentations) that are not on the Byelaw and Permitting Sub-Committee.

The report that was prepared recognised requests from the Sub-Committee to add clarity concerning key objectives of the proposed Netting Permit Byelaw and to link these objectives to the IFCA's statutory duties, pre-established principles and simplified decision making (final recommendations) against alternative approaches to netting management suggested during the consultation process.

The report – [Access for Netting within Estuaries & the Decision-Making Process](#) was completed in February 2017 and circulated to all members before their meeting in March 2017. At time of writing this report is posted on the D&SIFCA website and has been transcribed below in full.

The Access for Netting within Estuaries & Decision Making Process report is a very large document in its own right. Key content includes:

- **Objectives, foundations and recommendations**

(Duties, principles, legacy measures, survey data, alternative suggestions and more)

- **Explanation of process**

(Pre-consultation, options for management, decisions taken at meetings and more)

- **Audit**

(costs and a time line of events and documents circulated)

- **Documents relevant to decision making**

(Officer papers, SWOT analysis, pre-consultation summary)

The Transcript

Part 1 Objectives, foundations and recommendations

1. Introduction and purpose

A meeting of the Full Authority was held on 9th December 2016. The recommendations in regards to the proposed Netting Permit Byelaw were partially discussed but this discussion was not completed. Members of the Full Authority did not accept nor reject the recommendations presented to them. The Full Authority took a decision to suspend the confirmation phase of the Netting Permit Byelaw until all members had more time to consider the content of the work undertaken to date, the recommendations made by the Byelaw Sub-Committee and the economic and social impact of implementing this byelaw.

To meet this requirement, officers, via approval of the Byelaw and Permitting Sub-Committee, have prepared this amended report and intend to conduct a supplementary slide show presentation to Authority members that are not on the Byelaw and Permitting Sub-Committee. This amended report has recognised requests from the Sub-Committee to add clarity concerning key objectives of the proposed Netting Permit Byelaw and linking these objectives to the IFCA's statutory duties, pre-established principles and simplified decision making (final recommendations) against alternative approaches to netting management suggested during the consultation process.

Key aspects of this report:

- a) Provide Members of the Full Authority with an overarching reference document to re-cap key information used within the process and an audit of when information was presented;
- b) To place particular focus on the proposal to prohibit fixed and drift netting within estuaries;
- c) To explain how and why a proposal was reached to prohibit netting within estuaries;
- d) To explain what alternative suggestions for netting within estuaries were suggested and why, on balance, these were discounted as a credible option;
- e) Provide all readers with relevant information in regard to the process and decision making to date that is simplified and therefore easier to understand

To simplify aspects of the process and the information that has been considered, part of this report has been devoted to stakeholders that may or may not have followed the process in detail. Simplified information (where required) is indicated and appears as **blue italic** paragraphs.

In forming recommendations, multiple factors have often been considered. This report highlights some key areas of rationale relative to several of the recommendations made, but readers should understand that it has often been the case that more than one aspect of background (foundation) information has influenced deliberations in forming the final recommendations.

The information contained within this report, and in particular the simplified sections are not intended as a substitute for more comprehensive information or evidence bases that have been compiled within other documents such as the Impact Assessment, the multiple annexes for the Impact Assessment or the final Response and Recommendations Report, which are all available on the D&SIFCA website. Throughout the process officers have prepared over 50 documents to aid deliberations by members.

It is also important to recognise that Officers collect and prepare material to aid Sub-Committee members' deliberation of different aspects of the byelaw review work. Officers offer advice on certain aspects of the work, often present work on behalf of the Sub-Committee, but do not make decisions at any stage. Decisions taken by the Sub-Committee are in fact only "recommendations" that are then presented to members of the Full Authority at key stages for them to make decisions.

2. Overview

In order to avoid challenges (via a judicial review) to the decision making process to date it is important to highlight the information that was referred to by the D&SIFCA Byelaw and Permitting Sub-Committee during their deliberations and forming recommendations to the Full Authority via a Response and Recommendations report, finalised on 22nd November 2016.

- All consultation phases ended on 22nd September 2016;
- Information received during the pre-consultation and formal consultation phases were explored, evaluated and considered;
- Key principles have been developed and referred to during decision making;
- Recommendations have been formulated based on information available to 22nd September 2016 and are detailed in the Response and Recommendations report (November 22nd 2016);
- To avoid an *ultra vires* situation, any external changes to the management of netting (Domestic and EU conservation measures) after 22nd September 2016 can influence the content of the final byelaw (and/or permits) submitted for confirmation*.

**D&SIFCA byelaws cannot be less restrictive than domestic and EU legislation. These forms of legislation take precedent over the Byelaws. New byelaws (Permit Conditions) can't be introduced if measures contained within them allow an activity to take place when in fact it is prohibited under national or EU legislation. Until a byelaw is confirmed, external measures will be recognised and the Byelaw (and/or Permit Conditions) may have to be amended if changes occur and they are relevant.*

3. Duties of the D&SIFCA

The Byelaw and Permitting Sub-Committee have had to recognise the IFCA's statutory duties as specified within the Marine and Coastal Access Act 2009 (MaCAA) whilst undertaking its remit to review all legacy byelaws on behalf of the full Authority.

Section 153 of MaCAA includes the following:

- (1) The authority for an IFC district must manage the exploitation of sea fisheries resources;
- (2) In performing its duty under subsection (1), the authority for an IFC district must-

- a) Seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way,
- b) Seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation,
- c) Take any other steps which in the authority's opinion are necessary or expedient for the purpose of making a contribution to the achievement of sustainable development, and
- d) Seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

The proposed netting byelaw is one of many byelaws that the IFCA is required to review as part of an activity based byelaw strategy. It is important that readers recognise that this proposed netting permit byelaw is intended to manage netting activity in the whole of the D&SIFCA District and is not limited to netting activity conducted within estuaries.

There are many methods of netting and equipment used is also varied. In regards to this Byelaw, netting does not include activities such as trawling. Trawling, including sand eel trawling does not form part of this byelaw. Towed gear fishing activities (trawling, scallop dredging and ring netting) has been addressed in the Authority's Mobile Fishing Permit Byelaw.

During this report, references will be made to the proposal to prohibit netting within estuaries, however this prohibition does allow seine nets (up to 20m in length) to be used for the capture of sand eel.

Although the proposed Netting Permit Byelaw is not species focussed, the exploitation of several species is significant when linking the objectives of the Byelaw with the duties listed within Section 153 of the Marine and Coastal Access Act (MaCAA).

Through this process the safety of fishers has been highlighted. Safety is of particular significance in relation to the Taw/Torridge Estuary and the proposal to extend the boundary. Concerns have been raised because if the Byelaw (as proposed) is confirmed there would be no fixed or drift netting opportunities within estuaries which are more sheltered than open sea areas. Evidence of landings by active netters within this area indicates that the peak catches are between June and November. Regardless of this evidence, it is important to recognise that the duties of the D&SIFCA do not extend to health and safety responsibilities. We are not able to consider health and safety when balancing the multiple factors involved in this process.

In developing the Byelaw, the members have linked the duties in MaCAA to key areas relevant to netting as follows:

- *Protection of bass;*
- *Balancing the needs of others catching sea fish species;*
- *Protection of salmon and sea trout;*
- *Achievement of sustainable development;*

Bass

Bass stocks are recognised to be at critical levels. There is clear scientific evidence of this. Annex 4 of the Impact Assessment provides detail³⁸. Whilst the D&SIFCA has been developing this Byelaw, other forms of legislation have been introduced or recommended for introduction in order to protect this species.

Zero or one bass per person restrictions have been introduced for the recreational sector, regardless of fishing method. Additional EU measures limiting catches for commercial fishermen using different fishing methods have been introduced. Netting is seen as an effective method to catch bass and as such the 2017 EU regulation is that there should be no netting targeting bass. In addition, the legal size of bass that can be taken (minimum conservation reference size) has increased from 36cm to 42cm. The Marine Management Organisation (MMO) has now published bass fishing guidance on their website³⁹.

Estuaries are known to contain concentrations of bass, in particular juvenile bass. The majority of the estuaries in the D&SIFCA district are designated as Bass Nursery Areas, which again limit opportunities to legally catch this species, especially by those using nets. Bass Nursery Areas have been introduced via national legislation and not via this or any other Byelaw. Bass Nursery Areas, including the restrictions in them (catches and methods) are currently being reviewed by Defra.

The D&SIFCA believe that further locally focussed management is needed to support the intended recovery of this species. The D&SIFCA is co-funding a PhD student to explore the movement of sub-adult bass movements within and in and out of the estuaries. An overview of this PhD study has been presented to members and a summary appears in the Impact Assessment (Annex 8).

Balance

Balance falls into two key areas. Balancing the needs of different groups of people catching fish and secondly, balancing social, economic and conservation factors. Social aspects such as traditional fishing are of importance; the ability for commercial fishermen to earn a living is important and obviously, so too is conservation. In developing the netting Byelaw, the D&SIFCA has aimed to achieve the correct balance whilst recognising that changes produce an impact that can be both positive and negative dependent on different people's perspective and circumstances.

Sea fish are a public resource. The D&SIFCA has a duty to try and find the correct balance between sectors. D&SIFCA has recognised that the needs of those targeting sea fish are different. The inshore commercial netting sector has social and economic importance but so do recreational sectors such as anglers. The recreational angling sector has been recognised as a large group in England with a survey estimating 884,000 people spending a total of over £1 Billion in 2012. The Fisheries Minister, at the time, stated that sea angling creates money and jobs as well as contributing to the national economy. Putting statistics aside, the information makes it clear that this sector is of significant importance and it is known that the D&SIFCA District is a key area for local and visiting anglers. The Netting Byelaw review has been identified by

³⁸ [European sea bass – Ecology, stock status and management update](#)

³⁹ <https://www.gov.uk/government/publications/bass-fishing-guidance/bass-fishing-guidance>

D&SIFCA as a development opportunity for this group. The importance of other sectors is why the consultation for the netting Byelaw was so wide ranging.

Salmon & Sea Trout

The D&SIFCA has a responsibility to consider the conservation of Salmon and Sea Trout when making this Netting Byelaw but does not have a duty to consider the economic importance of salmon and sea trout.

The D&SIFCA has taken legal advice from specialist Counsel to establish what responsibility the Authority has in regard to fresh water species. The D&SIFCA is not directly responsible for managing fresh water species and it is the Environment Agency (EA) that manages activity that directly targets Salmon and Sea Trout (such as licenced salmon nets and rod licences).

Fixed nets and drift nets that are intended to catch sea fish species, such as bass or grey mullet, can catch salmon and sea trout. This is true for both coastal areas and in particular many of the estuaries. Salmon need protection and therefore the intended restrictions for netting (targeting sea fish, but which may catch fresh water species) have been formulated taking this into account. Salcombe is one estuary where the issues relating to freshwater species are less of a concern and this has been taken into account during members' deliberations in forming recommendations.

During the process the EA have submitted its response, which included a report focussing on the monitoring of salmon and sea trout in the Taw Torridge. This report was presented to members and highlighted negative impacts on (non-targeted) salmon and sea trout caught within nets and subsequently released. Increased mortality, increased stress, damage to scales and disease were key elements noted by members.

The D&SIFCA has a statutory duty to consult with the Environment Agency. The Netting Permit Byelaw specifies specific organisations that must be consulted with as part of any review of the netting permit conditions. The Environment Agency raised concern over how this consultation duty is presented in section 25 of the Byelaw*.

**The EA have worked closely with D&SIFCA in developing this Netting Byelaw. To clarify the importance of the EA as an organisation to be consulted with, members have recommended that section 25 of the Netting Permit Byelaw be amended. Instead of naming some organisations individually, the recommendation is that wording is amended to include "Relevant Statutory Bodies".*

Achievement of sustainable development

Managing fishing activity provides opportunity to achieve greater sustainability. The introduction of a netting permit byelaw provides a flexible management approach to support the sustainable development of the netting fishery. To manage a limited resource D&SIFCA differentiates between commercial and recreational netters by applying tailored management measures.

Development opportunities for other fishing methods (other than netting) can be diminished by failure to appropriately manage netting. Different fishing methods present different levels of risk and provide different management challenges and some are therefore not suitable for management via voluntary measures rather than legislation. It is the view of the Sub-Committee that current netting activities in estuaries are considered to be a barrier to achieving sustainable development.

Due to the high effectiveness of netting (especially in confined areas such as estuaries) there is significant risk that large quantities of immature fish can be taken in a relatively short space of time. Mesh size can be used to make nets more selective; however unattended fixed nets can catch un-wanted fish that will die because they can't then be returned alive and undamaged. Netting is considered to be less selective than rod and line and this has been recognised via EU legislation regarding bass. 2017 EU regulations reflect how important the rod and line commercial fishery for bass is for smaller inshore/coastal vessels by allowing this fishery to continue with the least restrictions. Greater restrictions implemented for one activity can promote investment, diversity and development of other methods such as commercial rod and line fishing. 44% of bass are taken by rod and line and there is an opportunity to further commercially develop this fishery.

4. Review Principles

To recognise the duties of the D&SIFCA as specified in MaCAA and in order to develop a strategy to review the legacy byelaws (and in particular the proposed netting byelaw), Review Principles have been established. The principles underpin the development of the byelaws and the management measures contained within the associated permits. In formulating these principles, the measures contained in legacy measures have been considered along with other factors such as the Hampton Review.

Key principles of the most relevance include the following:

- Remove laws which have become irrelevant from the statute book (Hampton Review);
- Consider alternative management approaches (gentlemen's agreements and codes of conduct);
- Use the wider byelaw making powers provided by MaCAA;
- To make use of permits to manage the activity of netting in a more flexible way;
- Not to limit permit numbers;
- To use emergency Byelaws as a last resort;
- Where possible make the legislation easier to understand;
- Differentiate between commercial and recreational netting sector by applying management measures;
- Encourage legitimate activity removing illegal, un-licenced and un-regulated fishing activity;
- Current netting activities in estuaries are a barrier to achieving sustainable development;
- Recognising that sustainable development is where the management of the fishing activities seeks to maximise the social, economic and environmental benefits in the medium and long term;
- Review existing netting management (as a blank canvass) but to introduce no lesser restriction than is currently in place unless there is sufficient evidence to prove otherwise;
- New byelaws should ideally achieve behavioural change and high compliance;

- Draft legislation so that it assists with enforcement;
- A pre-cautionary stance must be taken where required to secure compliance with the UK's international Treaty obligations.

All of the principles are important, but it is important that several are further explained and better understood at this point by those Authority members or stakeholders that have not closely followed the development of this work.

- Not to limit permit numbers and to issue different types of permits

The D&SIFCA have taken the view that permits issued for fishing methods should not be limited, thereby creating a private fishery as fish is a public resource available to everyone. Control of the activity will be achieved via the conditions in the permits rather than limiting the overall number. Limiting permit numbers provides difficulties in deciding who initially has access to the fishery; it can create an economic advantage for those issued with the permits, it blocks the path for new entrants wanting to enter the fishery and provides complications in regards to managing waiting lists for permits.

Different types of permit with proportionate restrictions can be issued, dependent on which sector the applicant falls within. Permits will be issued to commercial fishermen but also to recreational fishers using nets.

- Review existing netting management (as a blank canvass) but to introduce no lesser restriction than is currently in place unless there is sufficient evidence to prove otherwise

In recognising the principle of starting from a blank canvass, alternative suggestions to manage netting activity were sought during the pre-consultation phase and discussed at different times during the process. Alternatives to a prohibition of drift and fixed netting with estuaries were presented to Members of the Byelaw and Permitting Sub-committee. To challenge traditional thinking in regard to controlling estuary netting, officers presented an "Options for Management" discussion report to Sub-Committee members. This report and accompanying SWOT analysis is presented in Part 4 of this report.

The D&SIFCA examined the content and structure of the legacy measures. The management resulting from a new Netting Byelaw has to provide sufficient control of the activity so that it is not weaker than the original measures.

- A pre-cautionary stance can be taken

The D&SIFCA collected the best available evidence during the process. Good evidence assists decision making. Where evidence is lacking, the D&SIFCA must take a pre-cautionary approach in regards to the content of a byelaw so it meets its statutory duties and the objectives of the Byelaw.

- Where possible make the legislation easier to understand

Netting is often perceived to be illegal, especially within estuaries, when sometimes it is not. A minority of the estuaries currently offer some opportunity for drift netting for catching fish such as grey mullet. The EA regulate the remaining limited number of licenced Salmon nets that are used in a small number of estuaries within the District. Although the Byelaw would never be considered if the only rationale was simplicity, it

has to be a consideration that it may be easier for the public to recognise and report illegal netting activity within estuaries if no netting is permitted.

- Draft legislation so that it assists with enforcement

In recognising the Hampton Review, alternatives to legislation have been considered. Voluntary measures are obviously a weaker form of management than legislation. The risk of non-compliance and the effects of non-compliance are key considerations. The introduction of voluntary measures as a substitute for the Byelaw was not the chosen option taken by the Sub-Committee. Legislation has to be able to be enforced and this has been recognised. The provisions within the permits are drafted so the D&SIFCA can realistically enforce the measures. Historically, “loop holes” have been created by accident and these are sometimes exploited. By using permits, catch restrictions can be implemented to achieve what in effect is a deeming clause. Fishers make a choice when considering applying for a permit and in doing so will be bound by the conditions within the permit. The fisher has a choice to either accept the conditions of the permit or can choose not to have a permit and not fish in the Authority’s district.

In regard to allowing access for netting within estuaries, multiple conditions of use would be required to allow this activity to be managed correctly. Increased monitoring of this activity would be crucial to reduce risks of non-compliance. Increased monitoring to achieve compliance with measures introduced to allow an activity, would place a burden on D&SIFCA resources. The permits that are currently issued in other D&SIFCA Permit Byelaws are £20 for a two year period. This fee is for administration only, and is not an attempt at full cost recovery which would potentially be more appropriate for a heavily monitored fishery.

- Encourage legitimate activity removing illegal, un-licenced and un-regulated fishing activity

One way (but not the only way) to achieve this principle is to clearly set out who is entitled to apply for a commercial netting permit. Within some other Permitting Byelaws the D&SIFCA have required all commercial permit applicants to have a registered fishing vessel and a fishing licence issued under the Sea Fish (Conservation) Act 1967. Un-powered vessels are not required to have the Fishing Licence and therefore cannot qualify for a commercial permit. The implication of this rationale and a later change to this aspect of this principle is significant. Social impact has been recognised by members. In regards to the application process for a commercial netting permit, historical fisheries (such as the traditional herring fishery at Clovelly) have been recognised and elements of this principle altered to allow this method to continue.

5. Legacy measures and other relevant netting legislation

Having established these review principles D&SIFCA were able to further examine legacy and other measures that applied to netting within the District.

Netting activity and the species that are exploited is currently controlled by a range of legislation expanding into many areas of restrictive management. Restrictions include but are not limited to quota, mesh sizes, net construction, minimum conservation reference sizes and spatial control. There are many legacy byelaws that relate to netting and the Authority, as part of the activity based byelaw review, is able to merge older measures into a single netting byelaw. When new permitting byelaws are introduced, it provides an opportunity for older measures to be revoked, although care is needed. It is important that appropriate management restrictions (sometimes not immediately obvious restrictions) are not lost.

D&SIFCA replaced Devon Sea Fisheries Committee. Legacy measures are the old inherited Sea Fisheries and EA byelaws. There are several that relate to netting or species that can be taken within nets. Legacy byelaw measures generally focus on restricting where nets can be placed and what types of nets can be used in different locations. Restrictions apply to nets at sea and also within estuaries.

The restrictions in the legacy measures act as part of an overall package to control the activity of netting and therefore fishers are already restricted in what they can and can't do with nets. These older byelaws, along with EU and Domestic legislation, provided the base to begin reviewing the control of netting activity.

Legacy access to estuaries within the District is show below:

River/Estuary	Netting Restriction	Bass Nursery Area?	Bass Closure Dates
<i>Axe</i>	<i>No fixed nets</i>	<i>No</i>	
<i>Otter</i>	<i>No fixed nets</i>	<i>No</i>	
<i>Exe</i>	<i>No fixed nets</i>	<i>Yes</i>	<i>30th April to 1st Nov</i>
	<i>No drift nets</i>		
<i>Teign</i>	<i>No fixed nets</i>	<i>Yes</i>	<i>30th April to 1st Nov</i>
<i>Dart</i>	<i>No fixed nets</i>	<i>Yes</i>	<i>30th April to 1st Jan</i>
<i>Salcombe</i>	<i>No fixed nets</i>	<i>Yes</i>	<i>30th April to 1st Jan</i>
<i>Avon</i>	<i>No fixed nets</i>	<i>Yes</i>	<i>30th April to 1st Jan</i>
<i>Erme</i>	<i>No fixed nets</i>	<i>No</i>	
<i>Yealm</i>	<i>No fixed nets</i>	<i>Yes</i>	<i>30th April to 1st Jan</i>
	<i>No drift nets</i>		
<i>Tavy</i>	<i>No fixed nets</i>	<i>Yes (all)</i>	<i>All year</i>
	<i>No drift nets</i>		
<i>Plym</i>	<i>No fixed nets</i> <i>No drift nets</i>	<i>Yes (all)</i>	<i>All year</i>
<i>Tamar</i>	<i>No fixed nets</i> <i>No drift nets</i>		
<i>Taw/Torridge</i>	<i>No fixed nets under EA Byelaw. 2010 no fixed nets in areas not in DSF District</i>	<i>Yes (both in upper reaches)</i>	<i>30th April to 1st Nov</i>

Yeo	No nets - Fishing prohibited (Taw confluence & Raleigh Weir	The River Yeo feeds into the River Taw	
Lyn	No fixed nets across Lynmouth harbour mouth	No	
Parrett	No fixed nets	No	
Axe (Somerset) (Burnham, Berrow and Brean)	No fixed nets (Voluntary code of conduct)	No	
Severn	No fixed nets	No	

The tables indicate that fixed netting within all of the estuaries within the D&SIFCA District is already prohibited. Drift netting does take place in some estuaries within the D&SIFCA District. Fixed nets have been recognised as a very effective method of catching fish and as such historical measures were introduced to restrict their use. Legacy Byelaw 17 (Fixed Engines) was introduced in 1988 (revoked and remade in 2010) and includes restrictions on the placement of fixed nets around the coast and within many of the estuaries. In 1990 Byelaw 19 was introduced, which prohibited the use of both fixed and drift nets in the Plymouth Rivers (Tamar, Tavy and Plym) and the River Yealm. In 2004 the River Exe was closed to both fixed and drift netting via Byelaw 29.

Byelaw 17 (fixed Engines) restricts the use of fixed surface nets in coastal areas. Coastal zones were established where all fixed nets must be set at least three metres below the surface at any state of tide. This legacy measure provides a safer passage for migrating fresh water species. As part of this legacy measure, derogations were issued for limited fixed surface nets with a mesh size of 90-93mm. Due to the definitions used within this legacy measure via the Salmon and Freshwater Species Act 1975, "Fixed Engines" includes long lines. This is important when considering revoking Byelaw 17 as to do so would remove the only existing management of longlines.

"Fixed Engines" is an older terminology for "Fixed fishing gear - mainly nets". It was recognised in the consultation that many people and organisations such as the EA had a preference to strengthen coastal restrictions for netting. The EA called for an increased headline restriction to 5 metres and wanted coastal zones extended to the whole district out to one mile from the shore. D&SIFCA had concerns over displacement of netting if the headline depth increased. Members also disputed the overall credibility of the initial evidence submitted by the EA. A precautionary stance was not deemed appropriate in this situation and the EA will conduct further research. Members have applied the principle of recognising legacy measures, but also recognising a duty to provide balance between commercial netters and conservation objectives. Members have recommended that the majority of the coastal restrictions from the legacy Byelaw 17 should initially remain un-changed and therefore the spatially controlled coastal zones will remain the same. However, derogations for fixed surface nets of 90-93mm have been removed as part of the proposal. This recognises

representations from stakeholders (including commercial fishermen) that this measure was no longer appropriate considering the increase in the minimum size of bass and potential discarding of bass.

6. 2014 survey data

D&SIFCA were able to add additional information in the early stages of the netting review. In 2014 a netting survey was conducted to gather the views of commercial netters (only) for both estuary and coastal netting. The information gathered during this survey appears in the Impact Assessment (Annex 7).

63 questionnaires from the 2014 survey were returned by the commercial fishermen, with some more complete than others. 16 of these felt that netting within estuaries should be prohibited. Over half of the respondents were in favour of controlled access to some or all of the estuaries within the district. At least 15 respondents were deduced to be active (drift netting) in estuaries at the time of the survey. It was considered that 17 of the respondents, may not have been actively fishing with nets within estuaries at the time, but could see potential for access, with the implementation of additional control measures. Some of the respondents wanted access to be limited to local boats.

The table below focuses on the data received in regard to specific estuaries.

2014 Netting Survey – (Commercial fishers only) - Extract of Data			
Estuary	Total response	Controlled Access	Prohibit Netting
Salcombe	13	8	2
Exe	5	4	1
Teign	8	4	1
North Devon ⁴⁰	7	2	Unknown

7. Consultation and alternative suggestions

Two phases of pre-consultation were conducted and also a 56 day period of formal consultation. Alternative suggestions were presented at different times, including alternative suggestions from commercial fishermen and also D&SIFCA Officers. All these alternatives were considered prior to production of final recommendations.

Salcombe specific

1. Introduce a limited permit scheme;
2. Maximum of 2 nets per fishermen, each of 200 metres in length;
3. Each net should have a tag on each end provided by the IFCA for identification;

⁴⁰ But not necessarily the Taw Torridge

4. The nets should be attended at all times;
5. The nets should only be set in the water for a maximum of 45 minutes;
6. The nets can be fixed or drift (reducing confusion associated with definitions).

The stakeholder providing alternative suggestions for Salcombe was clear in their view that each estuary should be managed independently from others.

Taw/Torridge specific

The Torridge District Council (representing 13 fishermen) suggested a compromise solution focussed on seasonal access as follows:

1. **1st January to 30th April No bass fishing under EU restrictions**
2. **1st May to 31st July Bass to be caught in the river through the use of “seine netting”, which involves fishing half the width of the river as opposed to netting across the complete width of the river.**
3. **31st July to 31st December Fishing for bass as current**

This proposal continues with the statement that “in return the fishermen would like a fundamental re-examination of the current practices on quota apportionment and redistribution”.

Alternative considerations provided by officers

- Provide access for sand eel and landing nets (Rod and Line);
- In the first instant only allow limited access to the Teign, Exe, Salcombe and the Taw/Torridge;
- Seasonal opening to reduce risk to Salmon;
- Mesh and length of net control;
- Estuary sub-division for additional protection (such as sea grass);
- In attendance only – for target species only removal;
- “Daylight fishing only”;
- “Designated authorised slipways” if trailer launched;
- “Designated landing points” for estuary fishing;
- Notification prior to fishing;
- Use of existing and future technology/tracking;
- Legitimate fishermen to wear high visibility clothing whilst netting in estuaries;
- High visibility numbers/symbols displayed on the fishing vessels;
- Deeming clauses.

Officers prepared an alternative suggestions document. This was completed in part to meet the principle “Review existing netting management (as a blank canvass) but to

introduce no lesser restriction than is currently in place unless there is sufficient evidence to prove otherwise”.

Along with alternative suggestions, the report focussed on setting out management options and expanded into exploring issues such as perception of netting as a legitimate activity. In addition the reputation and capability of the D&SIFCA as a competent Authority to manage the activity in a similar manner to the Environment Agency’s management of nets that target migratory species was documented as a discussion theme.

This paper was in part created in the event that responses from stakeholders would fail to highlight alternative suggestions which officers felt were suitable to be explored and discussed by members as offering a potentially credible alternative to closure. This report referred to several additional annexes.

Officers highlighted some suggestions in relation to definitions. Due to the different types of nets and how they can be used, defining them has always posed problems. If netting was to be permitted within the (chosen) estuaries, the officers’ view is that the D&SIFCA consider a different approach to the traditional approach of numerous detailed definitions.

Mesh and length of net would obviously form part of the requirements of use; however nets limited by other control measures could potentially be used in a manner chosen by the individual fishers. This could include the use of fixed nets. Attendance of the nets, as mentioned above, would most certainly be a condition of use.

In regard to access to netting within estuaries, fixed nets have been banned for many years because they are a highly effective method of catching fish in confined areas. Estuaries are places where fish such as Bass and mullet aggregate and populations of fish in these areas do not accurately reflect total stock levels. Estuaries and channel entrances are often “choke points”, like a doorway through which fish must pass.

Alternative suggestions for estuary netting included allowing fixed nets to be used within Salcombe estuary with a limited soak time. Fishermen in Salcombe have indicated that it is difficult to conduct traditional drift netting techniques without the practice becoming a fixed netting technique in the view of the D&SIFCA.

Officers advised members that in the past there have been occasions where the opportunities to use legitimate drift netting has been used as a disguise by some to deliberately use illegal fixed nets within estuaries. This observation was evidenced via previous investigations and successful prosecutions.

Rather than relaxing definitions in regards to fixed nets and drift nets, members recommended that definitions for the use of drift nets be clarified and strengthened.

Members were made aware that some stakeholders raised concern that a tightening of netting definition would negatively affect traditional herring netting techniques in coastal areas such as Clovelly. Further engagement with those that traditionally fish for herring from rowing boats indicates that they do not share this concern.

8. Impact Assessment

The D&SIFCA has to create an Impact Assessment to accompany this Byelaw. The Impact Assessment began its development in 2016, with a version suitable for “Formal Consultation” ready by 31st May 2016. This document includes multiple annexes and an evidence base. Best available evidence has been used to assess social and economic impact within this document. Key monetised and non-monetised costs are explored. The responses and data

collected indicated that income from netting in the estuaries is low. The Impact Assessment has been made publicly available throughout the process with an on-line version posted on the D&SIFCA website in readiness for a formal consultation phase.

In regards to estuary netting the annexes below are the most relevant.

Annex 2	Final pre-consultation report;
Annex 3	Analysis of MMO landings data for bass and mullet;
Annex 4	Bass report – ecology, stock status and management update;
Annex 7	Netting survey 2014;
Annex 10	Minutes of Sub-Committee meetings (November 2015, December 2015 and March 2016);
Annex 11	Options for Management Discussion Paper.

The Impact Assessment (IA) is a large document divided into different sections and includes many additional annexes. The document sets out reasons for introducing the Byelaw. This document groups together information that has been gathered throughout the process and will be amended to reflect the formal consultation phase prior to the Byelaw being submitted for confirmation. The IA examines financial, social and conservation impacts. Financial impact is described as monetised costs or monetised benefits. Social impact is described as a non-monetised cost or non-monetised benefits. The formal consultation provided an opportunity for affected stakeholders to provide evidence that was different to the information already set out in the IA. When making final recommendations members were able to refer back to this document.

Economic evidence provided to the D&SIFCA during the consultation phases by commercial fishermen was very poor in quantity and quality. In the formal response only 2 of the 21 commercial fishermen that objected to the byelaw provided any economic data. D&SIFCA has ensured that it has used the best available economic information to assess the monetary impact on the commercial catching sector. MMO landings data (which included the under -10 metre vessels) has been analysed over a 5 year period (2011-2015).

9. Additional foundation information/summary points

This Netting Byelaw making process has been a long process beginning in March 2015. During this period there have been multiple meetings of the Byelaw & Permitting Sub Committee. Members have referred to multiple documents and have held discussions to build their own knowledge of the subject matter. Key points that have been established include:

- ***The IFCA has statutory duties and objectives;***
- ***Principals have been developed;***
- ***Legacy measures and other legislation have been recognised;***
- ***There is strong support for the introduction of this Byelaw from many stakeholders;***
- ***Netting in estuaries can be a highly efficient form of exploiting fish stocks;***
- ***Bass stocks are below modelled safe biological limits;***

- *Estuaries are places of fish aggregation such as bass, bass less than 36cm in length spend their entire life inside estuaries;*
- *The D&SIFCA has funded a PhD study into bass. The overall aims of the research are strongly management-focused and resulted from questions surrounding the boundaries of bass nursery areas and the level of protection offered to different ages of bass;*
- *The minimum conservation size of bass has increased to 42cm significantly reducing the amount of bass available to the fishery;*
- *Advice has been offered to suggest that the minimum conservation reference size of grey mullet should be over 42cm; populations of mullet are also found in estuaries;*
- *The restrictions on bass fishing may increase effort on other species such as grey mullet that like bass are vulnerable to over exploitation due to their use of estuaries and slow growth;*
- *It is considered impossible to target mullet in estuaries without catching bass;*
- *Removing un-wanted catches of bass from nets may lead to significant stress and mortality;*
- *Handling of un wanted fish caught in nets can damage the fish (gills & scales);*
- *Handling of un-wanted catches of Salmon can damage the fish and lead to disease;*
- *Mesh size increase is required to reduce bycatch of undersize bass;*
- *Increases in mesh sizes (for estuary nets) conflict with EA advice for the protection of Salmon and Sea Trout;*
- *The best available economic information has been used to determine monetary effect on the commercial catching sector;*
- *The economic value of estuarine netting fisheries is very low, as indicated by MMO landing data analysed over a 5 year period;*
- *Only 2 of the 21 commercial nets men's responses received during consultation provided economic information;*
- *The financial impact in the Taw Torridge has been estimated at a total of £16,300 (landings from 15 boats in the 2015 MMO landing figures).*
- *Landings of bass and mullet in the Taw Torridge peak between May and December;*
- *The financial impact in Salcombe has been estimated at a total of £8,900 (landings from 8 boats in the 2015 MMO landing figures).*
- *The total mullet fishery in 2015 (whole district) was estimated to be worth approximately £46,000;*
- *Total landings of grey mullet in Taw Torridge valued at £3,800 ((landings from 8 boats in the 2015 MMO landing figures);*

- *Total landings of grey mullet in Salcombe valued at £1,900 (landings from 5 boats in the 2015 MMO landing figures);*
- *The permit mechanism can accommodate for a change in future circumstances via a review procedure;*
- *The Netting Permit Byelaw does not represent change to the Bass Nursery Areas;*
- *The Netting Permit Byelaw does not prevent fishers diversifying into different methods to use within the estuaries such as rod and line;*
- *44% of bass are now taken by rod and line. 2017 EU regulations reflect how important the rod and line commercial fishery for bass is for smaller inshore/coastal vessels by allowing this fishery to continue with the least restrictions and the largest catches;*
- *Traditional netting fisheries have been recognised and considered in the proposals;*

10. Byelaw & Permitting Sub Committee recommendations

Members of the Byelaw and Permitting Sub-Committee produced a set of recommendations in November 2016. This “Response and recommendations report for stakeholders” addressed objection responses and set out the rationale for the proposals as documented.

In developing the recommendations the information contained in the first part of this document was evaluated, considered and discussed against alternative suggestions raised throughout the process

It was the view of members that no significant new evidence was provided to alter the majority of the proposed measures within the Netting Permit Byelaw and in particular the prohibition of fixed and drift netting within all the estuaries in the D&SIFCA District.

On balance it was the view of the members that allowing limited netting within estuaries did not represent a proportionate balance between the socio-economic considerations of the commercial netting sector and the socio-economic importance of the recreational sea angling sector and the conservation considerations.

Part 2 Explanation of process

11. Introduction to Part 2

A meeting of the Full Authority was held on 9th December 2016. The recommendations in regards to the proposed Netting Permit Byelaw were partially discussed but this discussion was not completed. Members of the Full Authority did not accept or reject the recommendations presented to them. The Full Authority took a decision to suspend the confirmation phase of the Netting Permit Byelaw until all members have had more time to consider the content of work undertaken to date, the recommendations made by the Byelaw Sub-Committee and the economic and social impact of implementing this byelaw.

The D&SIFCA Byelaw and Permitting Sub-Committee are all members of the Full Authority. Sub-Committee members have been tasked with conducting a review of legacy measures (byelaws) inherited from Devon Sea Fisheries Committee and the EA on behalf of the Full Authority. Officers collect and prepare material to aid Sub-Committee member's deliberations of different aspects of the byelaw review work. Officers offer advice on certain aspects of the work, often present work on behalf of the Sub-Committee, but do not make decisions at any stage. Decisions taken by the Sub-Committee are in fact only "recommendations" that are then presented to the Full Authority at key stages for them to make decisions.

The first stage of this process involved closer examination of the D&SIFCA duties, the establishment of objectives and principles and reviewing available foundation material such as legacy and external legislation.

12. Guidance for the process

The Authority has followed the guidance procedures published by the Department for Environment, Food and Rural Affairs (Defra). The development of the Impact Assessment is one of the procedures. Key stages of the guidance procedures in the development of this Netting Permit Byelaw are summarised as follows:

Gather Information

- The D&SIFCA seeks views of stakeholders;
- The D&SIFCA conducts research and makes use of previous research;
- The D&SIFCA begins work on the Impact Assessment;
- Options are considered (via meetings of the Byelaw and Permitting Sub Committee).

As indicated in the bullet points above, evidence gathering is not limited to stakeholder feedback, and neither is stakeholder feedback limited to one sector of people. During the whole process to date, multiple sources of information have been acquired and considered.

13. Pre-consultation (phase 1)

Information was collected throughout a prolonged pre-consultation period beginning in late 2015 and extended into early 2016 for gap analysis. The first phase (2015) pre-consultation was separated into both estuary and coastal netting responses.

Responses from the first phase pre-consultation "call for evidence" was summarised by officers and this information was later incorporated into a final pre-consultation report used as an annex within the Impact Assessment.

The questionnaires used within the first phase pre-consultation provided stakeholders with the opportunity to select different options for the management of netting within estuaries via a potential permit mechanism.

The 1st phase pre-consultation (2015) was effectively a scoping exercise. Questionnaires focussed on the following:

- **How often do you go netting?**
- **Where, which estuaries?**

- What types of gear do you use? (Type, length, mesh)
- When do you go netting, seasonal variations?
- What is your target species?
- Potential management suggestions for estuary fishing?

Tick box selection boxes (for potential management) were set out on the questionnaires that included:

- Net length
- Mesh size
- Automated vessel monitoring
- Notification
- Gear marking
- Seasonal closures
- Spatial restrictions
- Other (please specify)

Although these selection fields were often populated (sometimes all selected), generally very little detail was provided on how the D&SIFCA could potentially apply these options in practice to allow access and manage the activity of netting within each estuary of the District. The application of specified mesh size and net length were popular selections along with seasonal access. Suggestions for seasonal openings included both winter opening periods and also requests for access in summer months. Other suggestions made included the limitation of permits and a maximum size of vessel that could be used. In addition, at least one commercial operator recommended that only un-powered vessels should be used for netting within estuaries. During summary work officers deduced that confusion existed in relation to licenced access to netting within estuaries for the targeting of salmon and the loss of traditional practices (including the licensed salmon netting) was a concern to many stakeholders who responded at this time.

Although responses were received from fishers active in many estuaries, the estuaries generating most response were Salcombe, the Taw Torridge, the Teign and to a lesser degree the River Exe. It is notable that the River Exe was already closed at this time to both fixed and drift netting via legacy measures.

- *177 responses from the first phase pre-consultation (estuary) response were analysed*
- *The majority were in favour of estuary closure for netting*
- *37 responses were highlighted as offering a different view*
- *8 responses favoured no change to existing legacy measures*
- *29 indicated a preference for alternative management measures by selecting one or more of the tick box selections that were provided*

Meetings of the D&SIFCA Byelaw & Permitting Sub-Committee in late 2015 were arranged to allow separate focus on each topic with the meeting on 24th November 2015 used to concentrate on netting within estuaries. In preparation for the meeting of 24th November 2015, and in order to assist members in their deliberations, officers prepared material and sent it to all Sub-Committee members prior to the meeting. The information included the following:

- Agenda
- Minutes of the previous meeting
- Estuary Netting – Options for management discussion paper
- Economic data - Bass and Mullet Landings for 2014 & 2015
- Estuary Maps (for boundary considerations)
- SWOT analysis spreadsheet - Access to estuaries
- Officers' summary of pre-consultation phase 1 (Estuary netting)

14. Estuary netting – Options for management discussion paper (officer paper)

Whilst phase one pre-consultation responses were being collected and summarised, officers had already begun creating an “options for management discussion paper”. The report focussed on setting out management options and expanded into exploring issues such as perception of netting as a legitimate activity. In addition the reputation and capability of the D&SIFCA as a competent Authority to manage the activity in a similar manner to the Environment Agency’s management of nets that target migratory species was documented as a discussion theme.

So estuary access for netting could be explored, and to see if what options were feasible, officers prepared papers that explored the topic. This was done, in anticipation that people; including commercial fishermen may not come forward with ideas to manage/control netting within the estuaries. SWOT is like a risk assessment where the strengths, weaknesses, opportunities and threats of allowing access can be identified.

This original “options for management” paper is reproduced in Part 4 of this report and also appears as an annex in the Impact Assessment (Annex 11). The SWOT analysis is also reproduced in Part 4 of this report.

15. Decision taken by the Sub-Committee (Nov 2015)

A meeting of the Byelaw and Permitting Sub-Committee was held on 24th November 2015 and minutes were taken. During the meeting members were able to refer to the papers prepared by officers but also factor in material considerations such as statutory duties, objectives and the guiding principles that had been developed for the byelaw review as a whole and specifically for the review of netting⁴¹. Members agreed to continue with the use of permits (on a non-restrictive basis) to manage the activity. External and other factors were also recognised such as the increase in the minimum conservation reference size (MCRS) of bass to 42cm and the development of a D&SIFCA co-funded PhD⁴² (bass) project designed to provide more information on this species. Traditional fishing and its value was debated when trying to

⁴¹ Communication strategy via a message house process

⁴² [Overview of PhD in Annex 8 of the Impact Assessment](#)

balance this social issue with known serious concerns relating to bass stock levels. Enforcement difficulties associated with managing limited access for netting within estuaries was another discussion topic. Having discussed multiple issues and explored the available evidence members were able to formulate a proposal for continuation of the netting review.

Proposal

That netting should be prohibited within estuaries, with the exception of sand eel seine nets, landing nets and a de minimis piece of netting of 4m²

Proposed: Mike Williams

Seconded: Simon Toms

6 members in favour, 2 against, 1 abstained.

Another meeting of the Byelaw and Permitting Sub-Committee was held on December 11th 2015 with coastal netting the main agenda item.

The minutes taken from the Byelaw and Permitting Sub-Committee meeting on November 24th 2015 appear as an annex in the Impact assessment (Annex 10).

16. Pre-consultation (phase 2)

Following a meeting of the Sub-Committee in December 2015, officers were actioned to conduct a second phase of pre-consultation on both estuary and coastal netting. This action was intended to provide gap analysis information, in particular social and economic impact responses. A key difference for this 2nd phase pre-consultation compared to 1st phase was that officers could now set out agreed management proposal options which included the closure of estuaries to netting and the suggested boundary changes.

The 2nd phase pre-consultation can be considered a testing phase for the initial proposal that estuary netting should be banned.

In order to get a better understanding of how people may be affected (positively and negatively) officers were asked to circulate questionnaires. Proposals were set out in the questionnaires which were then circulated via the post, e-mail, and also posted on the D&SIFCA website. Proposals for coastal areas included additional no fixed surface netting areas and stricter conditions for where a fixed net can be placed in the water column. The proposals for estuaries were clearly set out in detail but in summary it indicated that no netting would be permitted, other than small mesh nets for sand eels. Other restrictions were proposed for recreational nets and bag limits for recreational netters were also highlighted.

When the 2nd phase pre-consultation was completed the information was again summarised by officers and was used to formulate a final pre-consultation report. This report and the additional papers that were created by officers were discussed by members at a meeting of the Sub-Committee on March 7th 2016. The responses from the 2nd phase pre-consultation were used to help build the Impact Assessment.

17. Decision taken by the Sub-Committee (March 2016)

This meeting provided members with the opportunity to review the whole of the pre-consultation process. Discussions included re-visitation of the proposal to remove netting access from estuaries and in addition more focused discussions on potential boundary changes. It was recognised that significant and detailed social and economic data from those most affected by potential changes to legislation had generally not been submitted. The additional evidence collected in early 2016 did not represent significant differences from the first phase of pre-consultation conducted in late 2015. Discussions also now included the role and responsibility of the D&SIFCA in relation to the protection of salmon and sea trout with the possibility of seeking Counsel's Advice as an addition step in the process. Available economic data was presented to the members that indicated that commercial interests within estuaries were low.

Although members were aware that there would be a negative impact (for some) created by the introduction of new measures, members considered the proposals in light of key areas of the IFCA's main duties as specified in section 153 of the Marine and Coastal Access Act 2009; including sustainable exploitation of sea fisheries resources (especially in the light of the critical state of Bass stocks) and also seeking to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district. Guiding principles including the objective of reducing illegal netting activity was also discussed at this meeting.

- *The Sub-Committee viewed and discussed information collected during the pre-consultation*
- *The Sub-Committee recognised that significant and detailed social and economic data from those most affected by potential changes to legislation had generally not been submitted in the Consultation responses.*
- *The Sub-Committee reviewed all available economic data that was available to them at this time which indicated that commercial interests within estuaries were low.*
- *The Sub-Committee recognised that there would be some negative impact for some fishers, but on balance the other factors outweighed this possible impact.*
- *On balance, at this stage, members felt that the key drivers for the Byelaw and the principles already developed outweighed the impact for those wanting to use nets within the estuaries*

A proposal was put to the vote;

That the proposal to ban fixed and drift netting within estuaries be adopted for byelaw development

Proposed: Mike Williams

Seconded: Richard White

For (10 members)

Abstain (1 member)

18. Development of the Impact Assessment

Information gathered in the pre-consultation was used to develop the Impact Assessment. The Impact Assessment began its development in 2016, with a version suitable for “Formal Consultation” ready by 31st May 2016. This document includes multiple annexes and an evidence base. Best available evidence has been used to assess social and economic impact within this document. The Impact Assessment has been made publicly available throughout the process with an on-line version posted on the D&SIFCA website in readiness for a formal consultation phase.

In regards to estuary netting the annexes below are the most relevant.

Annex 2	Final pre-consultation report;
Annex 3	Analysis of MMO landings data for bass and mullet;
Annex 4	Bass report – ecology, stock status and management update;
Annex 7	Netting survey 2014;
Annex 10	Minutes of Sub-Committee meetings (November 2015, December 2015 and March 2016).

The D&SIFCA must create an Impact Assessment. The Impact Assessment (IA) is a large document divided into different sections and includes many additional annexes. The document sets out reasons for introducing the Byelaw. This document groups together information that has been gathered throughout the process and can be added to/amended over time prior to the Byelaw being introduced. The IA examines financial, social and conservation impacts. Financial impact is described as monetised costs or monetised benefits. Social impact is described as a non-monetised cost or non-monetised benefits. The formal consultation provided a platform for information already documented to be tested. New information provided can further shape the IA. The formal consultation provided an opportunity for affected stakeholders to provide evidence that was different to the information already set out in this document. When making final recommendations members were able to refer back to this document.

19. Formal consultation and responses

Decision of the Full Authority (June 2016)

There was a meeting of the D&SIFCA Full Authority on June 16th 2016. The proposed Netting Permit Byelaw at this stage had been drafted with a prohibition of drift and fixed netting in all estuaries within the District. The accompanying Impact Assessment had demonstrated that there would be a social and economic impact on some stakeholders (both positive and negative).

Members of the Full Authority were sent copies of the Netting Permit Byelaw and the Impact Assessment prior to the meeting in readiness for the agenda items.

Agenda item 11 was for the Full Authority members to take a decision in regards to making of the Netting Permit Byelaw.

- **The Full Authority agree to Make the Netting Permit Byelaw**
- **13 in favour, 4 against, 3 abstentions**

Officers were actioned to prepare material for a formal consultation phase using the draft Byelaw (and permit conditions) that had been developed at this stage.

The process and strategy for the formal consultation has been documented within the communication reports submitted to members of the Sub-Committee. The communication report for the formal consultation is on the D&SIFCA website.

The formal consultation period can again be considered as a testing phase for evidence already collected. The estimated impacts (economic and social) were already set out in the Impact Assessment at this time. It had already been established in the Impact Assessment that there would be some negative impact for some people if the Byelaw in its current form was eventually confirmed.

Stakeholders (including commercial fishermen) were made aware of the need to raise objection points if they didn't want the byelaw to be introduced in its current form. Stakeholders were also advised to provide detailed responses if they wanted to add value to their objection points. Detailed responses (with evidence) can be used to effectively challenge the evidence (as set out in the Impact Assessment).

Stakeholders 'responses

The responses from the extended 56 day consultation were summarised by officers in preparation for an additional meeting of the Sub-Committee that was scheduled for November 2016. 329 responses were received (including organisations/Councils), with the majority of these in favour of the proposals as set out. Objections were received with 21 commercial operators identified as raising the clearest objection themes. The Taw Torridge estuary and Salcombe estuary were highlighted as being areas of the district with more focussed objections. Although the analysis of the responses again produced a lack of detailed economic data, some financial data was submitted in relation to these two areas. This submitted economic data confirmed the previous economic data relied upon by the IFCA. Along with this, a group of fishermen in the Taw Torridge area had approached the Torridge District Council to submit an objection response on their behalf. A negative social impact along with safety concerns were two themes that were clearly identified and as such were documented in the summary of the response reports.

20. Recommendations made to the Full Authority

A meeting of the Byelaw and Permitting Sub-Committee was held on 3rd November 2016. Multiple documents were prepared by officers including:

- **A revision of the Netting Permit Byelaw;**
- **A communications report;**
- **A summary of all the responses.**

A scanned copy of every response was sent to all members of the Byelaw and Permitting Sub-Committee. The themes developed from all the objection responses were discussed. Minutes of the meeting were taken and are posted on the D&SIFCA website. Additional evidence was submitted from the Environment Agency (monitoring of salmon and sea trout in the Taw Torridge) and discussed but this report has not yet been attached to the Impact Assessment. Member's deliberated information obtained throughout the process in forming the recommendations.

- **Members concluded that there was insufficient new evidence collected to alter the majority of proposed measures that had been set out in the formal consultation period.**
- **The deliberations at the meeting produced a set of recommendations (including one change to the proposals used for public consultation⁴³) that would be presented to members of the Full Authority in December 2016.**

In addition and in order to comply with Defra's guidance, officers were tasked with responding to all stakeholders. A "response and recommendation report for stakeholders" was subsequently prepared and circulated. This report is designed to expand on the rationale behind the key recommendations and should be read in conjunction with the Impact Assessment.

21. Meetings and decisions – December 2016 & January 2017

December 2016

A meeting of the Full Authority was held on 9th December 2016. As part of their papers members were sent the following in advance of the meeting:

- ***Public bodies decision making information***
- ***The "Response and recommendations" report***

A verbal presentation was provided detailing the content of the public bodies' decision making process. The recommendations contained within the "Response and recommendations" report were presented one by one. Four of the recommendations were agreed. The presentation for the remaining recommendations was not completed.

Members of the Full Authority did not accept or reject the recommendations (5-12). The Full Authority took a decision to suspend the confirmation phase of the Netting Permit Byelaw until all members have had more time to consider the content of work undertaken to date, the recommendations made by the Byelaw Sub-Committee and the economic and social impact of implementing this byelaw.

January 2017

A meeting of the Byelaw and Permitting Sub-Committee was held on 25th January 2017.

Key agenda items were as follows:

- To review the decision making process and the audit trail for the Netting Permit Byelaw;
- To consider whether to deliver a presentation on the proposed Netting Permit Byelaw decision making process and findings to Local Authority members and make it available to the public;
- To review the proposals, received through public consultation process, for restricted netting access in estuaries.

An earlier (but similar) version of this document was presented to members. A draft slide show was also discussed.

⁴³ [Response & recommendations report page 23 & 24](#) - Vessels with no engine power can qualify for a category one permit.

- *Members of the Sub-Committee approved this report (subject to modification) to be used as a reference document by members of the Full Authority*
- *Members approved the use of a supplementary slide show to better inform Local Authority members.*
- *Members did not feel it was appropriate to review the proposals and concluded that the proposals had been formulated over a significant time period and accurately represented the views of the Sub-Committee, which were arrived at after lengthy consideration of all the material considerations.*
- *Members of the Sub-Committee have the expectation that the Full Authority will take a decision in regards to the recommendations in March 2016.*

Part 3 Audit and costs

22. Costs and a timeline (audit of events and documents circulated)

Over 2000 hours of officers' time (1.2 FTE (£38,400) has been spent on the development of the Netting Permit Byelaw. Initiatives for communication have been documented throughout the process and a communication report is contained within Part 5 of this document. Over £14000 was spent on advertising, publicity and legal advice. In total the cost of developing this Netting Permit Byelaw to date is approximately £52,400 (7.5% of the 2016/2017 budget).

The following pages provide a detailed audit trail of meetings, actions and documents circulated.

2016					
Month	Event & Actions	Agenda item	Detail and Documents	Date of meeting	Date papers sent out
Jan & Feb	Pre-consultation (phase 2)		New questionnaires used (estuary & coastal)- Gap analysis On-line & postal versions created and circulated		
March	Sub-Committee Mtg		Agenda and minutes from last meeting	07/03/2016	02/03/2016
		3	Verbal presentation - IFCA responsibilities (salmon & sea trout)		
		4	Final netting pre-consultation report		
		5	Review of the terms of reference for the Sub-Committee		04/03/2016
March	Officer Action		Drafting begins for Netting Permit Byelaw & Impact Assessment		
March	Full Authority Mtg		Agenda and minutes from last meeting	17/03/2016	01/03/2016
		8	Byelaw update (verbal)		
		9	Bass update (verbal)		
		10	Officers' quarterly report including a byelaw update		
May	Additional information		Wessex 1992 fixed engines byelaw sent to Sub-Committee		02/06/2016
June	Additional information		Pre meeting info and advice to visit members area of website		01/06/2016
June	Full Authority Mtg		Agenda and minutes from last meeting	16/06/2016	02/06/2016
		9	Appointment of the Byelaw Sub-Committee (3 papers)		
			(1) Function of Byelaw Sub-Committee		
			(2) Appointment of members of the Byelaw Sub-Committee		
			(3) Terms of Reference for the Byelaw Sub-Committee		
		11	Making the Netting Permit Byelaw (Main paper and 3 enclosures)		
		11-a	Netting Byelaw Impact Assessment		
		11-b	Netting Byelaw Permit Conditions		
		11-c	Netting Permit Byelaw		
	Byelaw making vote for the Full Authority - 13 in favour, 4 against, 3 abstentions				

2016 - continued					
Month	Event & Actions	Agenda item	Detail and Documents	Date of meeting	Date papers sent out
June	Officer work		Officers begin working towards 56 day formal consultation		
July	Byelaw construction Formal consultation		MMO & Defra quality assure proposed byelaw for consultation Officers begin preparation for consultation & website display		
August	Formal consultation and officer work		Byelaw notices placed in 6 publications as per Defra guidance		05/08/2016
			10 mobile presentation publicity events conducted		
			Multiple documents posted on website		
Sept			56 day formal consultation ends		
			Formal consultation responses summarised & papers created		
Sept	Full Authority Mtg		Agenda and minutes from last meeting	15/09/2016	01/09/2016
		6	Byelaw update (verbal)		
		7	Bass update (2 additional papers)		
		7-a	IFCA bass plan (update report) - Dr E Ross		
		7-b	Bass information report - J May		
Oct	Additional information		Public bodies decision making document		12/10/2016

2016 - continued					
Month	Event & Actions	Agenda item	Detail and Documents	Date of meeting	Date papers sent out
Nov	Sub-Committee Mtg		Agenda	03/11/2016	17/10/2016
			Public bodies decision making document		06/10/2016
			Netting Byelaw re-cap document		
			Chart of changes represented by the introduction of byelaw		
			Amended Agenda		19/10/2016
			Support & object spreadsheet (themes)		17/10/2016
			Communication report		
			Letter from East Devon Fishermen’s and Boatmen's Association		
			Summary of all the responses		
			Netting Impact Assessment		
			Summary of the main points raised by Bass Anglers Sportfish Soc.		
			ICES advice for 2017 bass management		28/10/2016
		3	To review each response received during formal consultation		
		4	To consider changes to the Netting Permit Byelaw		
		5	To consider changes to.... the Netting Permit and Byelaw		
		6	To receive a letter from East Devon Fishermen		
Nov	All responses received were copied on to USB data sticks and sent to Sub-Committee members (secure handling of data)				
Nov	Officer work		Draft Minutes from Nov Sub-Committee circulated		10/11/2016
			Draft response & recommendations report to Sub-Committee		18/11/2016
			Response & recommendations report circulated to stakeholders		24/11/2016

2016 - continued					
Month	Event & Actions	Agenda item	Detail and Documents	Date of meeting	Date papers sent out
Dec	Full Authority Mtg	7 7-a	Agenda and minutes	09/12/2016	24/11/2016
			Revised Agenda		05/11/2016
			Consideration of the Netting Permit Byelaw		24/11/2016
			Response and recommendations report		
			(Info B) Public bodies decision making document		12/10/2016
			Supplementary information/e-mails & scanned letters		07/12/2016
			Letter from Felicity Sylvester (Circulated at meeting)		
			Mike Williams conducted a verbal presentation on "Public Bodies decision Making" for members of the full Authority		
Verbal presentations were given by members of the public to the full Authority					
DCO Mander presented a slide show presentation on recommendations which was not completed					
The full Authority agreed to suspend a decision on the Netting Permit Byelaw until the next meeting in March 2017					
Recommendations 1- 4 agreed – defer decision on recommendations 5-12					

2017					
Month	Event & Actions	Agenda item	Detail and Documents	Date of meeting	Date papers sent out
Jan	Sub-Committee Mtg		Agenda and minutes	25/01/2017	24/11/2016
		3a	Review decision making and audit - Access for netting report		05/11/2016
		3b	Consideration of a slide show presentation - Draft slides		24/11/2016
		4	To review proposals - Access for netting report		
		Item 4 was removed from the agenda (at the meeting)			12/10/2016
		The Sub-Committee did not alter recommendations			07/12/2016
	The Sub-Committee approved circulation of an access for netting within estuaries & decision making report				

Part 4 Documents relevant to decision making in November 2015

23. Options for management – Officers' View

1. Do nothing: This option was considered inappropriate.
2. Create a netting permit byelaw introducing a flexible, adaptive approach to management.
3. Review and remake byelaws using current model leading to the creation of a rigid byelaws which are unsuited to dealing with future management needs.
4. Voluntary measures: due to the nature of this issue and the associated risks it is unlikely that there will be sufficient voluntary compliance with the restrictive measures necessary to achieve the outcomes required by D&SIFCA.

The preferred option is Option 2. - Creation of a new permitting byelaw for netting.

The most obvious conclusion would be to prohibit the majority of netting activity within estuaries as part of the new permitting byelaw; however key elements of the Authority's purpose, strategy and principals should form part of the decision making process.

Mission statement

The D&S IFCA will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry.

From the mission statement, the full Authority and this working group have been able to identify key themes for the overall work of the IFCA and have established guiding principles to be taken into account during the byelaw review process.

The officers' view is that allowing some form of access for netting within estuaries is a credible option to be explored. Quite clearly limited access would be subject to multiple conditions of use as set out in the associated permits that would accompany the new netting permitting byelaw. The specific detail of control measures would fall under the established sections with additional development of deeming clauses:

- Catch Restrictions
- Gear Restrictions
- Time Restrictions
- Spatial Restrictions

Each estuary would need to be examined on an individual basis to assess suitability. The view of the officers at this time is that only certain estuaries would be suited to this potential access in the first instant.

Development and advances in the D&SIFCA's ability to publicise and communicate the carefully regulated access could provide the platform to promote legitimate netting and change public perception related to the activity as a whole.

More detailed conditions appropriate to the above categories could potentially include:

- Provide access for sand eel and landing nets (Rod and Line)
- In the first instant only allow limited access to the Teign, Exe, Salcombe and the Taw/Torridge
- Seasonal opening to reduce risk to Salmon
- Mesh and length of net control
- Estuary sub-division for additional protection (such as sea grass)
- In attendance only – for target species only removal
- “Daylight fishing only”
- “Designated authorised slipways” if trailer launched
- “Designated landing points” for estuary fishing
- Notification prior to fishing
- Use of existing and future technology/tracking
- Legitimate fishermen to wear high visibility clothing whilst netting in estuaries
- High visibility numbers/symbols displayed on the fishing vessels
- Deeming clauses

Definition of nets to be used

Due to the different types of nets and how they can be used, defining them has always posed problems. If netting was to be permitted within the (chosen) estuaries, the officers’ view is that the IFCA consider a different approach to the traditional approach of numerous detailed definitions.

Mesh and length of net would obviously form part of the requirements of use; however nets limited by other control measures could potentially be used in a manner chosen by the individual fishers. This could include the use of fixed nets. Attendance of the nets, as mentioned above, would most certainly be a condition of use.

To aid discussion, a chart has been prepared to highlight potential strengths, weakness, opportunities and threats associated with allowing netting access to estuaries.

Illegal fishing

It should be understood that this will be a problem in reality, whatever the outcome of the decision making process. Whatever we do – access or closure- the IFCA will probably face criticism because of illegal fishing or people having the perception that it is happening, even if sometimes it isn’t. Illegal netting happens now in closed areas and will continue to happen to some degree. Complete closure will place pressure on resources. Limited access has similar complications but may promote some increased compliance/self-policing from the sector of responsible fishermen?

Total closure may produce criticism above current levels if it is felt or perceived we are not able to enforce it properly.

Intelligence

The recent National Enforcement Group meeting highlighted potential development and improvement in processing and using intelligence.

It is expected that greater effort will need to be placed on what constitutes good intelligence from the public/other sources. The IFCA may need to be more challenging/probing into received intelligence and may have to be more prepared to deflect poor intelligence, whilst encouraging continued engagement and information from stakeholders.

A vessel seen launching on an estuary slipway is not a guarantee of illegal netting within the estuary. This boat may be intending to fish outside?

A trailer carrying a boat with Plymouth PLN, parked at a burger cafe does not always mean illegal activity has happened or is going to happen?

Again, this leads back to perception and communication/publication. Promoting legitimate netting into a high visibility activity could be a concept worthy of development and implementation.

The addition of the new “communication” post sanctioned by the Authority has given this IFCA the opportunity to greatly improve this area of working.

Enforcement

- Continue with out of hours contact phone/answer phone line to inform IFCA of suspicious activity
- Develop much better intelligence sharing with EA/MMO/Police
- Improve reporting back to sources outcomes of their information
- Explore IFCA use/agreements/access of assets (boats) – Such as vessels that are already located on the estuaries but owned and operated by harbour authorities/estuary groups?
- The additional use of some private “security services” could be explored.

24. Strengths, weakness, opportunity and threats

To accompany the above report officers conducted some SWOT analysis for potential access for estuaries. This analysis was sent to members of the Byelaw and Permitting Sub-Committee in preparation for their meeting on November 24th 2015

Netting – Access within estuaries

<i>Strengths</i>	<i>Weakness</i>	<i>Opportunity</i>	<i>Threats</i>
Provides balance for the needs of all users	Likely criticism by the stakeholders opposed to access	Opportunity to suspend the permits at a later date and remove access if required	Insufficient communication to all stakeholders concerning the approach & possible damage to IFCA's reputation
Demonstrates that the IFCA is an individual organisation capable of its own decision making	Different initial management approach to CIFCA	Change the public perception of the netting activity and those who operate nets	The IFCA may be accused of bias towards the commercial sector
Follows the EA example - allowing carefully regulated netting	Access could add confusion to the public that think all estuary netting is already illegal	Assess new measures such as estuary sub-division/daylight fishing/designated slipways	The public may perceive the new legislation more complicated than a blanket closure
Demonstrates the effective use of the permitting mechanism and conditions of use for all activities	Raising expectations before external bass conservation measures have been finalised	Gain support from fishermen adopting strict measures as they are expecting closure	Risk of challenge to the byelaw by the EA/riparian owners/RSA sector
Allows continuation of some traditional fisheries (Mullet)	Missed opportunity to further develop the RSA sector in all of the estuaries	To demonstrate inclusive management via fishermen participation	Monitoring the strict conditions with limited resources
To gain a better understanding of netting within the district via data collection	A missed opportunity to develop the "Total area of sanctuary" concept for estuaries	To develop more interest in self-policing by legitimate fishermen	Stakeholders may perceive that the motive of providing access is just for the IFCA to collect permit fees
The reduction in detailed definition will aid enforcement	Potential that the fishermen will miss-use the permits, not strictly following all of the conditions	To introduce new technology as it develops	
Provides fishing opportunity for smaller vessels when poor weather restricts use elsewhere	Allowing access may be more difficult to Police than a blanket closure?	If used properly the conditions assist the protection of salmon	

<i>Strengths</i>	<i>Weakness</i>	<i>Opportunity</i>	<i>Threats</i>
Tagged nets will potentially reduce theft and their re-use	If new technology is introduced as part of management, it may fail for reasons beyond the control of the IFCA	To harmonize with CIFCA's proposals in the Plymouth area by continued closure of estuaries	
Tagged nets (via tags) more traceable		To reform behaviour of some fishermen	
Reduce small scale displacement		The payment of permit fees by fishermen can demonstrate the commitment of fishermen to be involved in the management process	
Permit measures will help to identify legitimate activity V illegal activity			

25. Pre-consultation (phase 1) summary (A Call for Evidence 2015)

Timeline for the “call for evidence” period

Phase 1 (Estuary netting) September 1st to October 15th

(Phase 1) Estuary netting Summary of response

- A total of 177 responses were received.
- 125 on-line responses
- 18 questionnaires in hard copy form
- 34 responses in letter form (non-questionnaire format)

Engagement in the process was wide ranging with feedback collected from both individuals and interested organisations. Interest was district wide and beyond. Examples include but are not limited to the following:

- Commercial fishermen (operating nets)
- Recreational fishermen (including anglers)
- Harbour Authorities
- South West Rivers Association
- Salmon and Trout Conservation UK
- Angling Trust (Wyvern Region)
- Tamar and tributaries Fisheries Association

- Estuary Conservation Association and Forums
- River Taw Fisheries Association.

The more detailed feedback has been split into categories shown below. Following this, a general summary from all the respondents in this pre-consultation and also feedback from an historic survey has been provided.

No netting within estuaries

67 responses favoured a total prohibition of netting within estuaries. The majority of these responses came from the recreational sectors, many of which were anglers. Other feedback came from organisations, some of which are mentioned above.

Not all of these 67 respondents provided evidence or reasons for their views, and very few provided any indication that they would support any other control initiatives such as those offered by a flexible permitting byelaw. The majority of estuaries in the district were mentioned, but by far the most interest and feedback was from stake holders in the Taw/Torridge areas; with the protection of salmon and sea trout the key theme, and also to a slightly lesser degree, the protection of bass stocks.

Taw/Torridge

The Taw/Torridge area was heavily represented, from both individual responses and from the Fisheries Associations. Evidence was provided concerning the historic efforts and commitments of the fishery associations in this area to re-build migratory fish stock levels. This included the initiative of raising capital from subscriptions and donations and purchasing 11 of the 14 salmon licenses. The responses indicate that voluntary codes are in place to promote catch and release and a high percentage (80% to 90%) of line caught Salmon are released, but overall catch rates have declined in recent years. Many people from the Taw/Torridge catchment have stated that the protection of salmon and increasing stock is very much inter-linked with the local economy, with major revenue streams generated through tourism, including game fishing tourism.

The questionnaires indicate that all 67 respondents from this group including those focussed more on the Taw/Torridge area support a prohibition of gill netting, including drift nets and offered little indication that they would support any other forms of control to allow access to estuaries. The general view is that netting for bass and mullet should not be sanctioned as netting indiscriminately targets all fish including migrating salmonids. In addition, many of the “No netting in estuaries” respondents expanded their view to include coastal areas as well as estuaries, with the protection of salmon, again being the key theme.

Environment Agency Response

The response from the Environment Agency, in many ways repeats the point of view of the Taw/Torridge stake holders, but is obviously focussed on all areas, not just the estuaries within the D&SIFCA district. A detailed and extensive report “*Review of protection measures for Atlantic salmon and sea trout in inshore waters*” by Dr Katie Summer has been provided.

In summary the report concludes that there is currently insufficient protection for salmon and sea trout within estuaries and coastal areas. Information was provided on migratory patterns with recommended restrictions as follows:

Atlantic Salmon (April/May through to October/November)

Time restrictions (combined with depth and/or geographical measures) during key migratory periods would be the most effective, recognising that fish will be present in inshore areas prior to river entry.

Sea Trout (All year Restriction)

An all year time restriction (combined with depth and/or geographical measures) would offer the greatest protection.

The report promotes the prohibition of fixed nets within all the estuaries.

In addition to this, the report also recommends that drift nets within estuaries also offer an un-acceptable risk to salmon and sea trout and should therefore be subjected to the same restrictions. It is recognised that the incidental capture of salmon and sea trout by fishermen (targeting other species) is not an offence if these fish are returned; however the risk of delayed mortality and breeding concerns help form the conclusion that the incidental capture of salmon and sea trout within estuaries is an un-acceptable risk.

The report also makes reference to coastal netting and the recommendation of a 5 metre depth for these nets; however this will be explored in more detail within the 2nd phase of the consultation summary.

A second submission from the EA builds on the clarification received from Defra regarding the role of the IFCA. It has been interpreted that the role of the IFCA includes protection of sea fish resources (which can include migratory salmonids in the marine phase of their lifecycle) and therefore have power and the duty to prohibit the netting of sea fish resources if this poses a risk to other marine fauna which includes salmon. In addition the status of Salmon (as interest features) in relation to Conservation sites (SAC's and SSSI's) provides the IFCA with more management responsibilities than would seem obvious in the first instant. The report indicates that all river estuaries within Devon are likely to support populations of salmon and evidence and data justify a need for improved protection measures. Evidence includes an estimation of the economic value for each estuary which is a combined amount of over £40 million. The report raises concern over the levels of illegal netting activity and recommends that (apart from small sand eel seines and landing nets for rod and line fishing) all estuaries should be closed to netting, which will also potentially reduce pressure on bass stocks.

South West Rivers Association

A response was received from the South West Rivers Association. This report also recommends increased protection for salmon, by prohibiting netting within estuaries. The report recognises that a precautionary approach is acceptable for regulating bodies and is in favour of the IFCA continuing with this policy in this instant. The report highlights the significant features of estuaries in regards to their relative size (narrow in some cases), their contents of mixed fish stocks and their importance as nursery areas. These characteristics in combination with each other provide a high risk environment for illegal fishing and by-catches of salmon are intensified in these areas. This report highlights the capital value of the fishing rights in some of the rivers in the South West which run into many millions of pounds. The angling opportunities for salmon and sea trout make a significant contribution to the local economies.

Angling Trust

A response was received by the Wyvern Region of the Angling Trust. The response highlights that the estuaries are in many cases nursery areas for bass, which have stock levels viewed

as critical, and by-catches from netting are potentially damaging. The recommendation is that all netting within estuaries should be prohibited. The only exception should be for sand eels seine nets and anglers landing nets. The reasons for these derogations are based around selectiveness: the sand eel nets do not impact on other species and landing nets are used for removal of single fish.

A second viewpoint from the Angling Trust relates to enforcement. The trust recognises that current byelaws restrict certain forms of netting within estuaries, but complicated definitions potentially reduce the effectiveness of the legislation. Changes to the legislation could be made to simplify the current situation, especially for the general public, where the different netting methods and illegal and legitimate fishing opportunities within the estuaries, are not always fully understood.

No netting within estuaries, but a more open point of view

34 responses felt that the prohibition of netting within estuaries was their preferred option. However they did provide some insight into alternative measures, if some form of access was to be permitted. This group were again dominated by people with a recreational interest, and many were anglers that fish from the shore or vessels. The majority of estuaries were represented by this group.

The main focus of concern for this group was the protection of juvenile fish, in particular bass. Concerns about movements of salmon, was mentioned far less in these 34 questionnaires.

Another key theme was the development of the recreational sector - many explaining how protection of estuaries or development as “safe havens” can boost interest in rod and line fishing, and in turn boost the local economies, benefiting many people, rather than a relatively small group of commercial netters.

Many showed knowledge that a lot of estuaries are classified as nursery areas for bass. The more detailed questionnaires did express concerns over stock of juvenile fish, and many felt that the bass nursery areas should include other species such as mullet. Some recognised the benefits that these closed areas can have for fish (such as mullet) that have similar shoaling patterns and occupy the same space.

With knowledge of bass nursery area legislation, a significant proportion of this group made suggestions that seasonal closures could be an option for management, but only if the estuaries couldn't be shut altogether. There was a common theme that netting prohibition for one species but allowing netting for other species in the same area and time period was confusing and does not make sense. The perceived view was that commercial fishermen have and will continue to target mullet, but only as an excuse to catch bass illegally.

Other management options selected on the forms were fairly mixed, with some favouring nearly all or a fairly high mix of all the suggested options presented in question 11 of the questionnaire. Many of these respondents ticked options for potential alternative management measures, but did not expand or explain why they had these views on the options.

Other points of view included:

- There needs to be a common approach between all IFCA's in the South West;
- Nets are dangerous to navigation and other water sports;

- Netting in estuaries is not commercial, fishermen have other jobs;
- All netting should be at sea only;
- Current legislation is too confusing;
- A complete ban on estuary netting is easier for the public to understand and therefore report illegal activity.

Allow netting within estuaries

29 stake holders had the view that netting (of some form) within estuaries should be made available with a new management approach. This group were represented by far more people with a commercial interest, although there was also some input from the recreational/other sectors. Many estuaries within the district were mentioned, but there was particular interest in the rivers Exe, Teign and the Salcombe estuary.

There is a general acceptance that fixed netting within estuaries should be prohibited, however drift netting, ring netting, seine netting for sand eel and also licenced salmon netting be permissible. Many people favoured a range of control measures with mesh size, net length, seasonal closure and notification prior to fishing being popular selections. There is also the acceptance that attendance with the net is vital, so by-catch mortality is minimised.

Currently (from an IFCA perspective) several of the estuaries are currently open to drift netting. Several of the commercial fishermen commented that the mullet fisheries in these estuaries do provide a boost to their overall income, and can still support exploitation of this species. Some of these estuaries have supported small scale legitimate historic fishing activity for generations, with mullet being the target species.

Respondents from the Exe area commented that a significant proportion of incomes have been lost since this river has been closed. Comments suggest that the fishermen feel that this estuary can also support netting for mullet.

The potential for the IFCA to issue permits has perhaps been slightly misunderstood by some. Comments suggested that a limited number of permits could be issued to local people to operate drift nets within certain estuaries, but not expand the issue to wider circulation.

Miss-use of fishing access/illegal netting was mentioned in the feedback, particularly in less visible areas of estuaries, or areas less illuminated. Solutions included estuary sub-division to allow access in areas that are easier to monitor by authorities and the general public, also only allow daylight fishing. Sub-division of estuaries was also suggested as a protection measure for areas of sea grass.

Other points of view included:

- Estuaries offer weather protection and provide fishing opportunities for small vessels in winter months;
- Some estuaries should be sub-divided to create smaller no take zones – For any activity including anglers;
- Access for estuaries should be related to close seasons for bass and salmon migration;
- Net length should be controlled, but each estuary has to be considered on an individual basis to determine the overall correct length to be used (lengths suggested ranged from 100 to 500 yards);

- Some estuaries (due to their size/shape) are not suitable for any netting;
- Use permits to allow registered fishermen to make a living and keep recreational fishermen at bay.

Allow netting- with minimal changes to existing measures

This group was relatively small with only 8 completed questionnaires. The group was made up from stakeholders with both a commercial and recreational interest. 2 respondents currently operate nets as a recreational activity. Several estuaries were mentioned in the feedback including the Taw/Torridge/Dart/Avon/Teign/Erme and Axe.

The general thoughts were that the existing measures (via legacy byelaws) were adequate, with almost no suggestions (other than closed seasons) of using other management options such as those offered by a permitting mechanism. Again comments expressed the opinion that seine netting for salmon should be allowed to continue as they are well regulated, and also fishermen should have continued access to sand-eel capture via small mesh nets. Commercial factors were raised by this group with one fisherman stating that up to 50% of his income is derived from fishing within estuaries.

The most common key target species were sand eel, mullet and bass (via drift netting). Several mentioned that fishing for mullet is a tradition in several of the estuaries and has to their mind not been damaging to other species as attendance reduces the by-catch issue.

Other comments:

- Stop illegal fishing, netting should only be allowed for licenced and registered fishing vessels;
- Estuaries provide an alternative to fishing at sea during poor weather;
- The new 42cm bass size and the expected increased bass conservation measures will limit fishing opportunities.

General summary/themes from all the feedback

- Over one third of the responses heavily promote the prohibition of netting within estuaries. There was evidence to suggest that netting within these areas offers a high risk to species (including salmon).
- Economic data was provided showing the value of estuaries to the local economy, and the value of the RSA sector. Less data was submitted in relation to the income streams generated for commercial fishermen operating within estuaries.
- A common theme was that salmon netting (licenced by the EA) should be permitted to continue as this is well regulated. Evidence for the fresh water species was slightly contradictory with the West country Rivers Trust indicating that sea trout is not classed as “probably at risk” across the D&SIFCA region.

- Many of the responses came from the recreational sector, in particular the angling community, who would potentially benefit from the removal of netting opportunities within the estuaries.
- It is impossible to know if all the respondents digested all of the background information presented on the web site and it is un-clear if the permit mechanism with flexible management options was fully understood by everyone.
- Those wishing to see total closure offered few alternative options for management.
- Some appeared to suggest that the fact that the D&SIFCA favours permits for management, indicated that access for netting in estuaries would be made available as the IFCA had already decided this, regardless of other opinion. Some felt that the questionnaire was biased and leaned towards this potential outcome.
- Many respondents appear to have formed the opinion that prohibition of all netting within estuaries provides a simple and cost effective option, with illegal netting likely to be reduced.
- Many comments expressed concern over bass. Some mentioned that all estuaries should be closed to strengthen conservation drives for this particular species. Commercial fishermen expressed concern that the inability to target bass would place more importance on potential access to stocks of mullet to supplement incomes.
- Management by other means other than total closure, such as the flexibility offered by a permitting byelaw was mentioned, but not by the majority.
- There appeared to be an acceptance that attendance with the net was important if netting access was to be provided by a new byelaw.
- Winter access to estuaries was deemed important for many commercial fishermen, who stated that poor winter weather limits their ability to work at sea.
- Some felt that the restrictions already in place via the legacy byelaws was sufficient and there should be no changes.

End of transcript.

4. The Final Impact Assessment (21st September 2017)

On 16th March 2017, the D&S IFCA Full Authority members re-considered the implementation of the Netting Permit Byelaw. Each recommendation was subjected to an individual vote. The final recommendation was as follows:

Final Recommendation - That the Authority submits the Netting Permit Byelaw (with permit conditions) to the MMO requesting confirmation by the Secretary of State.

Proposed: Mike Williams Seconded: Stephen Gledhill
All in favour, none against

Following this vote, officers began to prepare the Final Impact Assessment to submit to Defra.

The Netting Permit Byelaw [Impact Assessment \(Final Version\)](#) has been transcribed below, however the format has been adjusted slightly and is not the exact template that was used in the original. Several of the links used in the footnotes to other websites may no longer function as the source information will now have been archived by the host sites. No attempts have been made to change the content in any way, including any spelling or punctuation errors that may have been present in the original document.

The Transcript

Title: Devon and Severn IFCA Netting Permit Byelaw 2016 IA No: D&S IFCA 004a Lead department or agency: Devon and Severn Inshore Fisheries and Conservation Authority Other departments or agencies: MMO	Impact Assessment (IA)			
	Date: 21 st September 2017			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
	Contact for enquiries: M Mander Deputy Chief Officer, D&S IFCA m.mander@devonandsevernifca.gov.uk 01803 854648			
Summary: Intervention and Options			RPC Opinion: Opinion Status: N/A	
Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2016 prices)	In scope of One-In, Three-Out?	Business Impact Target Status
- £559,000.38	- £559,000.38	£58,219.1	No	n/a
What is the problem under consideration? Why is government intervention necessary?				

Section 153 of Marine and Coastal Access Act 2009 (MaCAA) has defined the duties of the Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA). Current legislation including legacy byelaws, national and EU conservation measures are not considered sufficient to manage the recreational and commercial netting activity in the District. D&S IFCA believes that the local, regulatory approach to managing netting needs to be more flexible and adaptive to allow better harmonisation and integration with other conservation initiatives for sea fisheries resources whilst also helping to strengthen conservation for fish species.

What are the policy objectives and the intended effects?

- To introduce a permit byelaw to manage all netting activity that is easy to understand, flexible in its approach, includes the ability to reflect future changes in national and European fish stock and habitat conservation initiatives and in doing so reduce future legislative burden to manage netting activity. This byelaw allows for the potential introduction of inshore vessel monitoring systems by changing the permit conditions via the review process stated in the byelaw.
- To introduce two types of permits for netting activity to differentiate between the needs of the commercial and recreational netting interests whilst providing a mechanism by which stakeholders can actively influence the management of fisheries within the district.
- To harmonise control measures with other D&S IFCA permit byelaws (e.g. minimum conservation reference sizes and bag limits) and where possible other control measures implemented by other IFC Authorities whilst also aiding public awareness about the activity of netting, identifying illegal netting activity and promoting individual responsibility.
- To introduce a byelaw that meets potential future needs with particular reference to required management for marine protected areas (MPA) within the district.
- To provide D&S IFCA with local netting effort data to both inform and improve future management decisions.
- To meet requirements regarding sustainable management of local bass stocks as specified in the D&S IFCA Annual Plan 2016-17⁴⁴.
- To build on one of the 2011-2015 D&S IFCA's stated high level priorities to develop recreational sea angling opportunities in the district⁴⁵.

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

0. Do nothing.
1. Create a netting permit byelaw.
2. Review and remake byelaws using a traditional byelaw model.
3. To delay IFCA action and rely solely on management of the activity through a Statutory Instrument or Defra fishing licence.
4. Voluntary measures.

All options are compared to Option 0, the preferred option is Option 1.

⁴⁴ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCA-Annual-Plan16-17.pdf>

⁴⁵ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCAAnnualPlan15-16.pdf>

Will the policy be reviewed? Yes. If applicable, set review date: Permit conditions are to be reviewed no later than three years after the byelaw comes into force and the byelaw no later than five years after the byelaw comes into force.

Does implementation go beyond minimum EU requirements? Yes

Are any of these organisations in scope? Micro Yes < 20 Yes

Small Yes

Medium No

Large No

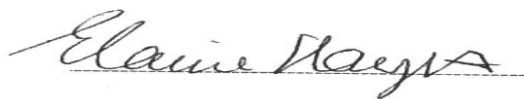
What is the CO2 equivalent change in greenhouse gas emissions?

(Million tonnes CO2 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 Chair of the Authority

Date: 16/10/2017



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Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV) (£)		
			Low:	High:	Best Estimate:
2016	2016	10 ⁴⁶			-559,000.38

COSTS (£)	Total Transition (Constant Price) Years		Average Annual (excluding transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate		0	64,942	-559,000.4

Description and scale of key monetised costs by 'main affected groups'

This byelaw manages netting activity within the District both “at sea” and within estuaries. Although a number of estuaries are already closed under current byelaws, this byelaw will remove fixed and drift⁴⁷ netting opportunities within all estuaries. The reduced access to stocks of bass and mullet represent a key monetised cost to commercial fishers. All responses⁴⁸ (from all consultation periods) and landing data from the Marine Management Organisation (MMO) have been analysed to assess financial impact. No detailed information was provided to challenge the Authority’s assumption that the financial importance (proportion of fisherman’s household income from estuary netting) was low.

Calculations of costs used in the impact assessment calculator

Average value of mullet landings from nets in the district = £63,942

Cost of permits (per year) = £1000 (100 permits each year at a cost of £20 for two years)

Total = £64,942.

Average value of mullet landings from nets in the district:

2011-2015 = £63,942

2015 = £46,078.

Average income from netting in estuaries:

£1,000 to £5,000.

⁴⁶ The standard timeframe for analysis is 10 years unless the situation requires a different amount of time for example the benefits will occur over a much longer period. If there is deviation from the standard 10 years this must be clearly explained in the main evidence section

⁴⁷ As defined in the byelaw. Seine nets for the capture of sand eel will be permitted.

⁴⁸ Economic data within the objection responses was limited to two separate individual responses.

Other key non-monetised costs by 'main affected groups'

Closure of estuaries (and changes to estuary boundary definitions) to all forms of fixed and drift gill netting. The closure of all estuaries to netting would remove current limited netting for bass.

Catch restrictions relating to the retention of species on board vessels actively fishing within the district will potentially lead to a small number of commercial vessels having to change their fishing pattern to remain compliant with local management measures.

Persons fishing recreationally will need to adjust to having effort restrictions placed on their netting activities and will need to adjust to the catch and gear limitations.

There are potential non-monetised cost implications to some leisure fishers issued with category two permits.

The byelaw provides scope to introduce new technology such as inshore vessel monitoring systems; however this is not an immediate requirement and does not present a monetised cost at this time.

An explanation of non-monetised costs is provided in the evidence base.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

No monetised figures are available for the benefits of the recommended management approach.

Other key non-monetised benefits by 'main affected groups'

- The introduction of the byelaw is a mechanism to balance the needs of persons engaged in exploitation of sea fisheries resources in the district. Although the netting permit byelaw is for the management and control of netting, there is an indirect relationship with other activities. It has been recognised in the making of this byelaw that fishing activities such as rod and line fishing on both a commercial and recreational level have significant economic importance.
- The Environment Agency (EA) submission highlighted the estimated value of the rod and line salmonid fisheries in key estuaries⁴⁹ within the district. The proposed restriction of netting in estuaries and the maintenance of the existing restrictions along the coast should support the continuation and possible growth of this sector.

⁴⁹ 13 sites were listed in the response by the EA with a total value of £40.67 million.

- The needs of other sectors have been recognised by D&S IFCA in the making of this byelaw.
- The byelaw is designed to meet D&S IFCA's conservation responsibilities but at the same time minimising the socio-economic impact from these restrictions.
- The new byelaw better reflects the needs of the different sectors taking sea fish resources. The introduction of this byelaw offers flexibility in managing netting activity whilst clearly separating different user groups.
- Marking of gear (for all users) will be greatly improved.
- The byelaw allows for the potential use of new technology and more efficient use of enforcement resources.
- This byelaw would provide similar benefits to the existing permit byelaws in supporting one of D&S IFCA's guiding principles to develop byelaws that tackle the problems of illegal, unreported and unregulated, fishing.
- Operating the permit scheme will give D&S IFCA far greater knowledge of the level of netting occurring and the amount of fish and shellfish being taken in the district to inform future management
- The tighter control on netting in estuaries will make illegal netting more readily identifiable to the general public, leading to better intelligence about the activity and reassurance that the observed netting is more likely to be legitimate and effectively managed.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

MMO landing figures represent the only accessible, district wide data set. There is a high probability that they do not reflect fully the landings for the commercial sector. Many of the vessels engaged in netting are from the under 10m sector where mandatory catch reporting is not required. Economic data is derived from records obtained through the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005.

It has been assumed that all mullet catches are taken from estuaries. The MMO data captures landings data from the under-ten metre sector from the buyers and sellers databases . The D&S IFCA acknowledge that private sales would not have been captured within these statistics.

Only two responses in the consultation provided data to indicate the level of catch and financial return that netting within estuaries provides them. One response included some landing/value data for the period 2000 to 2010 within the Salcombe estuary, although this submitted data can't be validated and therefore considered completely beyond dispute. The other response submitted data relating to catches taken from a fisherman working from the Taw Torridge area for a two month period. The information provided did not include a breakdown of the different fishing types and areas fished that had been used during the reported period. The information included private sales that would not have been captured within MMO landing statistics used in the impact assessment.

It is assumed that all mullet taken from nets have been caught within estuaries. Mullet are taken from areas outside of estuaries but this cannot be quantified.

It is assumed that the stocks of mullet are not at the same critical level as bass. However, being a slow growing species they are vulnerable to increased fishing effort that may arise from short to medium term restrictions on the bass fishery.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £:			In scope of OI3O?	Measure qualifies as
Costs 58219.1	Benefits 0	Net – 582119.1	No	N/A

Evidence base

1. Introduction

This impact assessment is for the Netting Permit Byelaw developed by Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA). This byelaw will affect all fishers using nets⁵⁰ within the D&S IFCA district. The evidence base was established throughout the making of this byelaw. Initially an impact assessment was created for consultation and the evidence “tested” during the formal consultation phase. All findings and the process followed has been documented in a comprehensive report⁵¹.

The key management measures that would be introduced through permit conditions are:

- All netting activity⁵² to be authorised under permit;
- No netting in estuaries (other than seine nets targeting sand eels);
- Maintain current estuaries boundaries except for the Taw Torridge, Parrett and Axe (Somerset);
- Extend seawards boundaries for Taw Torridge, Parrett and Axe (Somerset);
- Maintain current fixed net coastal spatial restrictions;
- Maintain three metre headline clearance of coastal fixed nets;
- Remove derogation to use a surface fixed net between 91 and 93mm mesh size;
- Extend Lundy MCZ netting restrictions to include all nets;
- Restrict individual recreational netters to a maximum of 25 metres of net in coastal areas;
- Requirement to tag all recreational nets;
- Restrict recreational catches of crab, lobster, spiny lobster, and bass;
- Introduce a bycatch of crab claws for the commercial netting sector;
- Requirement for all permit holders to submit catch data;
- Potential to introduce vessel monitoring systems on board netting vessels.

⁵⁰ As defined in the Netting Permit Byelaw

⁵¹ Townsend N (2017) The D&S IFCA Netting Permit Byelaw – The final development report

⁵² Nets defined under Netting Permit Byelaw 2016.

2. Overview of European Marine Sites (EMS)/ Marine Conservation Zone (MCZ)

Environmental Impact

Netting Habitat Regulations Assessments (HRAs) were completed for all EMS in the Devon and Severn IFCA District. In Appropriate Assessments for the Severn Estuary EMS, Plymouth Sound and Estuaries Special Area of Conservation (SAC), Start Point to Plymouth Sound and Eddystone Site of Community Importance (SCI) and Lyme Bay and Torbay SCI, the proposed netting permit byelaw was included as a proposed mitigation tool to monitor levels of netting and in some cases to introduce specific measures to protect sensitive species which are part of the designated features. Natural England (NE) agreed that this was a suitable method of monitoring netting levels. NE also suggested the need for a shad bycatch reporting mechanism for the Severn Estuary and Plymouth Sound, via the netting permit byelaw.

HRAs for netting in the Severn Estuary were taken to an Appropriate Assessment because the initial test could not rule out a likely significant effect. The most contentious issues were for all forms of fixed nets and potential interactions with the fish assemblage (comprised of approximately 100 species including bass, mullet, salmon and sea trout), shad and river and sea lamprey and intertidal hard substrates (specifically intertidal *Sabellaria spinulosa* reef). Disturbance to birds through shore-based intertidal netting activities also required an Appropriate Assessment. The commercial netting effort in the Severn Estuary was deemed to be low, but because of the potential for interactions between nets and sensitive features, some form of mitigation was deemed appropriate. In the Appropriate Assessment for the species and habitats (named), with respect to the overall fish assemblage the following was stated:

“The introduction of a permitting byelaw for both commercial and recreational netting will allow a direct mechanism by which the IFCA will be able to monitor effort levels. If deemed necessary permit conditions within the byelaw can be included which introduce spatial restrictions to protect species if effort levels change in the future.”

And specifically regarding salmon:

“D&S IFCA has proposed to re-introduce the previous EA closed areas to netting in the Severn Estuary EMS and Somerset Coast as well as maintain the current no- netting area in the upper Severn, and extend this ban to drift nets. The draft byelaw also proposes closing the Parrett and Axe estuaries to all forms of netting. This byelaw is currently out to public consultation.”

In the Appropriate Assessment for fixed netting and shad in the Severn Estuary EMS the following was stated:

“The introduction of a permitting byelaw for both commercial and recreational netting will allow a direct mechanism by which the IFCA will be able to monitor effort levels. Devon and Severn IFCA will use the permitting approach to monitor levels of commercial net fishing in the Severn Estuary and if an increase in effort is detected, will discuss whether a new HRA is required. If deemed necessary, permit conditions within the byelaw can be included which introduce spatial restrictions to protect species if effort levels change in the future.”

“Netting restrictions in the Upper Severn Estuary where shad may be more likely to aggregate have been proposed within the new netting byelaw to be maintained and extended to include drift nets. Additionally, the byelaw proposes reintroducing closed areas around areas historically important for salmon which may offer additional benefits to shad, especially where those areas include freshwater inputs. The byelaw also proposes prohibiting netting in the Axe and Parrett Estuaries.”

Following informal advice from NE the following was also added to the final draft of the HRA:

“Finally, on the advice of NE, Devon and Severn IFCA will introduce a by-catch reporting mechanism for shad by commercial fixed-net fishermen and will undertake a shad awareness raising exercise which will involve developing and distributing information on the rules relating to shad and identification of the species.”

In Plymouth Sound and Estuaries SAC, interactions between various netting forms and shad were only taken to a Test of Likely Significant Effect (TLSE) level as the low level of activity and lack of reports of shad by-catch were thought to have a low level of impact. Whilst NE accepted the conclusions of the HRA, in its formal advice, NE stated that:

“We advise that effort levels of netting within the site are monitored into the future as we feel this potentially poses the biggest risk of shad bycatch. If netting levels increase above the low level currently suggested within the HRA, we feel that this should trigger a reassessment. Our understanding is that your proposed netting permit bylaw will provide a suitable mechanism for you to adequately monitor the effort levels occurring within the site.

There is some uncertainty around the level of shad bycatch. Although it is thought to be very low, this is based in part on a lack of reports that it is occurring. We suggest there would be real benefit in introducing a shad bycatch reporting scheme in the site. This would allow bycatch to be better understood and should any future management be required, specifically targeted to the activities / locations / seasons where bycatch is occurring.”

However, Appropriate Assessments were required for netting on seagrass and reef habitats in Plymouth Sound and Estuaries SAC, and the proposed byelaw was suggested as a suitable mitigation method.

For the Start Point to Plymouth Sound and Eddystone SCI and the Lyme Bay and Torbay SCI, HRAs were completed for various forms of netting on reefs. For both sites Appropriate Assessments were required and the (at the time) proposed netting permit byelaw was included as a mitigation tool to monitor levels of netting. For both these sites the formal response from NE accepted the conclusions of the HRA as long as the netting permit byelaw was implemented:

“NE agrees that the planned D&S IFCA netting permitting bylaw will enable better monitoring of activity levels through the issuing of permits. We also understand that it will make provision for collection of more detailed information on activity levels should it be needed in the future. We would recommend confirming current activity levels when new information from the permitting bylaw is available.

It is NE’s view that if activity levels and distribution change from current levels, this should trigger a formal re-assessment of the impacts. Provided this is done, NE agrees that the permitting system allows for appropriate management (which could include limitations or spatial/temporal restrictions) to be introduced if required.”

Impact of nets on bass, salmon and sea trout

European sea bass (*Dicentrarchus labrax*) is an important fish species in Northwest Europe to both commercial fishermen and recreational anglers. Its biology, in particular its slow growth rate, temperature dependent recruitment and schooling behaviour at inshore and offshore sites, makes it a particularly vulnerable species to overfishing. Coupled with greatly increased market demand, the natural and anthropogenic pressures on European sea bass have led to a major decline in abundance, leaving stocks at a potentially critical level. Bass stocks are

reported to be below the minimum acceptable (safe) limit and therefore at significant risk of non-recovery. The European Commission's proposals for the management of bass during 2017 are that there should be no netting to target this species (including a complete ban on drift netting for bass – the technique currently allowed in some of D&S IFCA's estuaries under byelaws). The D&S IFCA Byelaw and Permitting Sub-Committee takes the view that the increase in the minimum conservation reference size of bass to 42cm has already reduced availability of legal size bass within the estuary and continued access to estuary netting for mullet will promote discarding of bass, as mullet and bass stocks are impossible to target separately within the confines of an estuary. In addition, the Authority takes the view that in the past some fishers have targeted mullet as a means to continue to illegally take bass from estuaries.

D&S IFCA has commissioned a PhD student to assess the movement/migration of bass in local estuaries and coastal waters using a range of methods including tagging/isotopes analysis with the project also aiming to provide additional evidence on the levels of salmon and sea trout by-catch from coastal fixed nets set at both three metres and five metres below the surface. It is envisaged that the PhD will help inform D&S IFCA's future management approach to netting.

The EA submitted their evidence highlighting the current state and importance of local salmon and sea trout stocks. The EA in their submission highlighted their concerns relating to the incidental bycatch of salmon and sea trout from nets set to catch sea fish⁵³. During the formal consultation the EA submitted an additional report focusing on the accidental capture of Salmon in the Taw Torridge estuary⁵⁴. This report (Risks posed to migratory salmonid fish species by sea fish netting in the Taw and Torridge estuary) is available upon request from D&S IFCA.

Additional evidence has been submitted by the EA relating to the Taw Torridge Estuary. This includes information relating to EA Officers' monitoring of salmonids being caught in nets and being returned to the water. The D&S IFCA Byelaw and Permitting Sub-Committee recognised that although salmonids were being returned to the water to achieve compliance with regulation there were potential negative impacts associated with the distress caused to the captured fish including, scale damage (abrasion from nets and handling) leading to the onset of fungal diseases and increasing the risk of mortality. The D&S IFCA Byelaw and Permitting Sub-Committee has taken the view that it would be impossible to allow estuary netting for mullet whilst achieving adequate protection for bass and migratory fish.

3. Rationale for government intervention

D&S IFCA have duties specified in the MaCAA and the implementation of this byelaw meets these requirements. D&S IFCA has identified the need to initially replace three of the existing byelaws with an overarching Netting Permit Byelaw. The current byelaws do not allow D&S IFCA to fully recognise and manage the interests and expectations of the wide range of stakeholders. Existing byelaws have resulted from an identified need to apply management measures to conserve stocks or habitat. Any benefit that these measures may have had to any of the different sectors was as an indirect consequence of the intervention rather than being a planned outcome.

⁵³ Sumner K. (2015) Review of protection measures for Atlantic salmon and sea trout in inshore waters,

⁵⁴ Holland M and Toms S (2015) Risks posed to migratory salmonid fish species by sea fish netting in the Taw and Torridge estuary

Under section 153(2) (d) of MaCAA, D&S IFCA has a duty to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Estuarine and coastal netting is currently controlled by a range of legislation including legacy byelaws, national and EU conservation measures, some of which are currently under review. D&S IFCA believes that the local, regulatory approach to managing netting in the district needs to be more flexible and adaptive to allow better harmonisation and integration with other conservation initiatives for sea fisheries resources whilst also helping to strengthen conservation initiatives for freshwater species.

The EA in their submission to the consultation highlighted their concerns relating to the bycatch of salmon and sea trout from netting activities targeting sea fish. D&S IFCA recognise that it has a duty under section 153(2) (b) to seek to balance the socio-economic benefits from exploiting sea fisheries resources with the need to protect salmon and sea trout.

Given these pressures on stock and the inability to fully recognise the different interests of a wide range of stakeholders, management intervention is required to redress market failure in the marine environment by implementing appropriate management measures (this Byelaw) to conserve stocks, features and to ensure negative externalities are reduced or suitably mitigated. Implementing this byelaw will support continued provision of public goods in the marine environment.

Fishing activities can potentially cause negative outcomes as a result of 'market failures'. These failures can be described as:

Public goods and services: A number of goods and services provided by the marine environment such as biological diversity are 'public goods' (no-one can be excluded from benefiting from them, but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.

- D&S IFCA must seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.

Negative externalities: Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

- D&S IFCA must seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote the recovery from, the effect of such exploitation.

Common goods: A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much

as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

- D&S IFCA must seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

In summary, the byelaw aims to redress these sources of market failure in the marine environment through the following:

- a. Management measures designed to conserve designated features of EMS and MCZ will ensure negative externalities are reduced or suitably mitigated.
- b. Management measures will support continued existence of public goods in the marine environment, by controlling the catch taken.
- c. Management measures will also support continued existence of common goods in the marine environment by reflecting the needs of the commercial and recreational sectors.

4. The problems you are trying to solve

Policy objectives and intended effect

IFCAs were established under the MaCAA to lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry.

The byelaw continues the process by which the Authority intends to replace all its inherited byelaws with activity based permit byelaws where possible. The introduction of the byelaw's permit conditions will enable D&S IFCA to flexibly manage fishing activity using a number of the measures summarised below;

- catch restrictions;
- gear restrictions and design;
- spatial restrictions;
- time restrictions.

The byelaw creates two categories of permits with differing management conditions designed to balance the needs of all users and to maintain a viable local commercial industry.

The byelaw creates a localised system of management by which those affected (permit holders) have an opportunity to participate in the continuing management decision making process. Permit holders will be contacted directly and provided with the information that underpins the proposed changes to permit conditions. Permit holders will be invited to comment on and suggest alternatives to the management proposals. This helps the permit holders to understand the reasons for the proposed changes and allows the permit holders to express their opinions and in turn D&S IFCA is better informed and improves its decision making. In future, D&S IFCA will be able to effectively collect relevant data to better inform its decision making through permit conditions. Continued engagement with stakeholders reduces the likelihood that emergency measures (byelaw/ Statutory Instrument) need to be used to manage unforeseen issues. All the local restrictions applicable to netting activity can be found

in one document (the permit). Permit conditions can be more readily translated into plain 'English' helping the fisher to understand more easily fisheries legislation that is inherently complicated. The byelaw is designed to accommodate future management needs therefore reducing the cost associated with developing new legislation to react to emerging issues.

5. Background including sectors affected

Background

This byelaw will affect all fishers using nets⁵⁵ within the D&S IFCA district. The Netting Permit Byelaw will apply to the whole of the D&S IFCA district.

Since 2011, D&S IFCA has been reviewing inherited byelaws. From 2013 to the present day, the Authority has developed a series of activity based permit based byelaws. The basic structure of each permit byelaw is similar with the main byelaw setting out the mechanics for management and the associated permits focussed on the specific management detail. Any changes in permit conditions would have to follow the procedure outlined in the body of the byelaw (under the section 'Review of Flexible Permit Requirements').

Affected sectors

A number of sectors will be affected by the introduction of this byelaw. Official objections were received to the byelaw. The Authority approved the circulation of a report – "Response and recommendation report for stakeholders" (22nd November 2016) to satisfy the requirement specified in the byelaw making guidance issued by Defra. This report is available upon request from D&S IFCA.

Netting Sector:

From MMO and D&S IFCA records it is believed that over 70 commercial fishing vessels may be netting in the district. The level of recreational netting is far more difficult to quantify as similar records are not available and is presently unquantified but is likely to be as high as 30 given the number of people undertaking recreational netting for sandeels in estuaries. The requirement to have a permit will start to remove the uncertainties in quantifying the levels of netting activity, thus better informing the decision making process.

Local economies and society including recreational sea angling:

D&S IFCA believes that through the various initiatives, including this Byelaw, it is demonstrating good practice in line with its duty to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district⁵⁶.

Bass is of great importance to recreational anglers throughout the south west of England. It is targeted from both the shore and private boats and is also an important species for the charter boats operating on the south and north coasts of the district. In 2012, D&S IFCA identified 73 angling charter boats operating out of ports on the south coast of Devon and 38 boats operating out of North Devon and the Severn Estuary. It is extremely difficult to quantify the importance of one species to recreational angling as a whole, but the existence of the extremely active and engaged organisation dedicated to the conservation of the species; Bass Anglers Sportfishing Society (BASS) goes some way to determining the importance of the fish

⁵⁵ As defined in the Netting Permit Byelaw

⁵⁶ Section 153 (2) (d) of the Marine and Coastal Access Act 2009

to the recreational sector⁵⁷. This organisation and supporters participated strongly during the formal consultation phase.

Both fishing and tourism are key sectors to the economy within the D&S IFCA district. Better management of local commercial and recreational netting can help to support local tourism. In this area there is an attraction and potential benefit for tourism associated with its connection to legitimate commercial fishing (including netting) conducted over generations. However, the activity of legitimate netting activities are often poorly understood by a wider audience and consequently netting activity is sometimes reported by the media in unnecessarily negative way. Public awareness of the importance of the netting sector and how it operates will improve through the introduction of the byelaw. The permit byelaw mechanism promotes engagement with stakeholders including those who apply for and subsequently are issued with permits to operate nets. Improving engagement is a key part of the D&S IFCA's communication strategy.

D&S IFCA have developed guiding principles for reviewing the management of different fishing activities. One such principle is to promote behavioural change. The inclusive mechanism offered by the permitting byelaw model encourages stakeholders to participate in consultations that can influence decision making and ultimately conditions of use within each permit.

There is often conflict between those netting and those pursuing other activities such as recreational angling, many of which are visitors to the D&S IFCA district. The introduction of a flexible management system (this byelaw) coupled with continuation of voluntary measures (angling zones) will potentially reduce this conflict and possibly increase expectations and improve the experience for recreational anglers, therefore encouraging this element of tourism and associated spending.

Estuary netting

A number of small vessels will be affected financially by the proposal to remove all netting from the estuaries except for seine netting for sandeels; however it is not thought that the effect of the closure will result in any full-time fishers leaving the sector. Commercial responses in the consultation periods were not generally detailed enough to identify how important estuaries were in terms of the income that resulted from the netting activities. Responses from the commercial sector during the formal consultation did not add significantly to the financial evidence already established during the pre-consultation period. Analysis of MMO landing data, as far as could be determined, suggested that netting in estuaries did not represent a significant proportion of fishermen's income for most but importantly did provide some income at times when access to the main grounds outside of estuaries were denied due to adverse weather. Concerns were raised over health and safety which is beyond the remit of the Authority. Commercial fishers believed that their impact on the stocks and environment were minimal and did not justify the complete closure of estuaries to netting. It has been recognised that some netters that work on a part-time basis, that have a smaller income from fishing may leave the sector. Full-time fishers have to compete with part-time fishers that only operate during the peak times and see fishing as a supplement to their income.

The greater significance is likely to be a social impact resulting from the loss of a netting fishery that has been undertaken for many generations on both the north and south coasts of the district. Fishermen have suggested ways to limit the amount of netting in estuaries similar to

⁵⁷ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCA-Annual-Plan16-17.pdf>

those set out in the Officers' report to the Sub-committee in November 2015. Minutes of the November 2015 sub-committee meeting record that members rejected the proposals to have limited access to netting in estuaries.

Responses from the recreational sea anglers would indicate that this sector would recognise the closure of estuaries to netting for sea fish as a significant step towards recognising and balancing their needs and interests with other sectors.

Boundary Change

Taw Torridge

During the development of this byelaw a boundary line for this estuary has been explained and demonstrated in chart form throughout the consultation phases. This boundary line would clearly separate areas between an estuary and the open sea. A boundary line is required as control measures are different within estuaries and coastal areas. The extension of the Taw/Torridge boundary will impact upon several commercial netters, however only four commercial fishermen responded to the pre-consultation. The level of income reported by the four commercial fishers in the Taw/Torridge ranged between £1000 and £5000. D&S IFCA is aware that up to twelve commercial fishermen occasionally operate drift nets within the sheltered confines of this estuary, but the manner in which they are currently worked is of particular concern. The nets are fished in such a way that they could easily fish as fixed nets with only small changes to the operation.

Observations of the nets by officers recorded a number of salmon being captured and returned to the water. The EA submitted evidence within the consultation in regard to the accidental capture (and release) of salmonids with the Taw Torridge estuary⁵⁸.

Netting for sea fish in the estuary is not a long established activity. The focus on sea fish netting has increased significantly following the buying out the rights of many of the previously licensed salmon netsmen. The available landing data indicates that the bass fishery is far more important, in relative terms, than the mullet fishery. Regardless of the implementation of this byelaw, it is likely that the minimum conservation reference size increase in bass will reduce significantly the amount of bass that is available to all fishers including netsmen.

Responses from the commercial sector during the formal consultation did not add significantly to the financial evidence already established during the pre-consultation period. Concerns were again raised over health and safety. Objections and points of concern raised during the formal consultation and decisions taken by D&S IFCA in regard to those suggestions have been documented in the minutes of meetings, in the "Response and recommendations report for stakeholders" (22nd November 2016) and also "Access for netting within estuaries and the decision making process" report (February 2017).

Other estuaries

The River Axe (Somerset) and River Parrett were referred to during the pre-consultation. Although the principle of adding further restrictions within these estuaries received positive feedback from recreational anglers, the proposed boundary lines were viewed by netsmen as being excessive.

Recommendations in regard to boundary change have been documented in the minutes of meetings, the "Response and recommendations report for stakeholders" (22nd November

⁵⁸ ⁵⁸ Holland M and Toms S (2015) Risks posed to migratory salmonid fish species by sea fish netting in the Taw and Torridge estuary

2016) and also “Access for netting within estuaries and the decision making process” report (February 2017).

Stock management

Bass

MMO landing figures for bass would indicate that, with only a few possible exceptions⁵⁹ commercial fishing vessels landing to designated ports within the Authority’s district would not have got close to, let alone exceeded the 2016 monthly catch restrictions during the previous year, suggesting that this Northwest Atlantic wide measure will not have much effect locally.

MMO landing figures also indicate that most of the bass landed in the district is taken as a bycatch in a mixed fishery and not a directed fishery. This would indicate that it is more difficult to restrict commercial catches of bass taken in the district. This difficulty is reflected in the fact that the European measures when applying a commercial moratorium on the landing of bass during February and March allowed demersal towed gears and seine net fisheries to land bass up to 1% of the overall catch taken. It is believed that estuaries do have larger aggregations of bass and in these areas the stock does become a targeted fishery. The proposal to remove all netting activities in the estuaries would reduce the amount of bass that can be taken by the commercial sector and supporting the recovery of this species from over fishing. In addition the byelaw will help to balance the local restrictions placed on the commercial and recreational sectors, with many of the latter believing that they have been disproportionately affected by the latest European Commission bass management measures.

Grey Mullet

The Bass Nursery Area designations remove the opportunity to fish for bass from boats in all of the main estuaries for most of the year if not all of it. From 1st April to at least the end of October, depending on the location, the only targeted commercial fishery is for grey mullet and possibly gilthead bream. The value of the commercial catch of mullet for the whole district in 2015 amounted to £46,078. The MMO landing data shows the value of this catch from ports in the district. It has been assumed that catches have been derived from fishing within estuaries.

Responses to the questionnaire⁶⁰ highlight that the level of netting in Salcombe and the Rivers Dart and Avon have been less in the past two years as a result of the Duchy of Cornwall reviewing the management in netting in these areas where the Duchy’s private rights to fishery exist. Local Salcombe netsmen have also reduced netting activity following a netting investigation that questioned the local drift net methodology with the Authority believing the method to be a form of fixed netting. Local netsmen also refrained from netting so that they were not associated with the well-publicised illegal fraternity.

Mullet is similar to bass in that it is a slow growing species and this characteristic coupled with its overall reproductive strategy makes the species vulnerable to overfishing. Stock data is not so readily available for this species but there is strong anecdotal evidence to suggest that mullet stocks have declined and continue to decline. Grey mullet is increasingly being promoted as an alternative to bass and with the reduced access to bass stocks it may be targeted more in the future. Overall the Authority’s precautionary approach to closure of estuaries to netting is prudent in relation to this species. Mullet is a prized species among a

⁵⁹ Analysis of MMO data identified one vessel in Plymouth exceeded the proposed 1.3 tonnes limit in one month during 2015. Not all ports as yet analysed but Plymouth represented the largest landings of bass in the District.

⁶⁰ Survey Monkey questionnaires used in pre-consultation periods for the Netting Permit Byelaw.

specialist group of the recreational sector and the relative difficulty in catching the species on rod and line makes it less attractive than bass to the general angler. Nevertheless, mullet is recognised as an important species among anglers and is one of the key fin fish species that characterise the estuaries in the district. During the process the D&S IFCA has determined that it is impossible to target mullet independently from bass with estuaries.

Salmon and Sea Trout

These species are recognised for their conservation status and socio-economic importance particularly to the recreational sector. In 2016, D&S IFCA along with Cornwall IFCA sought Counsel's opinion on the extent of the IFCAs' responsibility for salmon and sea trout. The advice indicated that IFCAs have a responsibility to consider the conservation of salmon and sea trout when making the Netting Byelaw but do not have a duty to consider the economic importance of salmon and sea trout.

As set out in the review of the EA data, whilst acknowledging the importance of the recreational value of the species, the Authority's focus lies in assessing how its management of finfish may support the protection afforded to the species.

The data suggests that with the exception of Salcombe Harbour, all the bodies of water referred to in this and previous documents as estuaries are identified as important salmon and sea trout rivers. The capture of salmon and sea trout is as an accidental bycatch as it is illegal for most vessels to sell wild caught fish. Only a limited number of licensed salmon and sea trout fishermen are authorised to land fish and gill tags, issued by the EA, must be attached to each individual fish offered for sale.

The numbers of salmon and sea trout caught in nets within estuaries is not known but monitoring of the netting activity in the Taw/Torridge estuary did reveal that a number of salmon and sea trout were caught and returned to the water. The relative confines of estuaries would suggest that similar methods of netting in other rivers may also pose a similar risk to that observed on the Taw Torridge. The EA submitted additional evidence within the formal consultation in regard to the accidental capture (and release) of salmonids.

Coastal netting

D&S IFCA has reviewed the available evidence relating to coastal fixed net fisheries. D&S IFCA believes that it would be taking a precautionary approach to management by retaining the current levels of restrictions whilst allowing for appropriate future additional restrictions via the use of a flexible byelaw mechanism. In addition, on the North coast D&S IFCA propose to reintroduce the fixed net restrictions that were previously in place for the Somerset coastline. The Wessex region netting byelaws were not automatically transferred to D&S IFCA. The EA had the expectation that these restrictions would be reintroduced when D&S IFCA reviewed its approach to netting in the district and therefore these provisions have been incorporated into the permits for the D&S IFCA Netting Permit Byelaw. The byelaw will initially maintain the current three metres headline restriction in coastal areas. By maintaining the majority of current coastal restrictions no financial loss will result.

Currently the coastal netting restrictions do allow, under derogation, the use of a small amount of surface net during the year in the three metre headline requirement areas. Numbers of issued derogations have fallen in recent years to low levels⁶¹. The increase in the minimum conservation reference size of bass to 42cm and the effectiveness of the current mesh (91mm to 93mm) in the surface net derogation at catching bass below this new minimum size is an

⁶¹ Five individuals (6 vessels) were derogated to use fixed surface nets for bass (91-93mm mesh) in 2015.

important point to consider. This derogation is no longer seen as appropriate in that it potential creates an unnecessary bycatch of undersize bass. The Netting Permit Byelaw removes the derogation for the use of a small amount of surface net during the year in the three metres headline requirement areas.

Netting around Lundy

The Byelaw will extend the existing restrictions on tangle nets and fixed gill nets to all nets in the area set out in the existing Byelaw 14 – Trawling and Netting Prohibition – Lundy Island Marine Conservation Zone (MCZ). D&S IFCA are not aware that any nets are currently lawfully set in this area.

Recreational netting

The Authority believes that the separation of different users (and appropriate restrictions for different groups) is not discriminatory; instead it is a justified approach to secure the correct balance for different fishery users. D&S IFCA has taken the view that a recreational catch restriction to mirror the Potting Permit Byelaw and the Diving Permit Byelaw. The Netting Permit Byelaw will also incorporate a bag limit for bass to reflect EU bass regulations with the effect that the measures will be directly enforceable via the byelaw. The protection of local bass stocks forms part of the rationale in regard to the introduction this byelaw. It is possible that if EU measures for recreational fishers are relaxed in the future, it may still be appropriate to maintain local restrictions that can only be the same or more restrictive.

A number of the responses during the consultation periods questioned whether any recreational netting should be allowed. D&S IFCA has concerns that some recreational netsmen, particularly on the south coast, are using significant amounts of nets and catching far more fish than can be reasonably be utilised for personal consumption. The review of netting has identified an intertidal stake net fishery that is predominantly undertaken by recreational fishers. Recreational fishers from Uphill reported that they use small boats to set up to normally 200m of net each in areas to the north of Brean Down, Somerset. This area overlaps the Burnham, Berrow and Brean Angling Zone.

D&S IFCA believes that netting as a recreational activity should continue but on a proportionately restricted basis. This would allow recreational users to catch sandeels for bait in estuaries and set up to 25 metres of net to catch fish and shellfish for their own consumption. In line with the Potting Permit Byelaw and Diving Permit Byelaw restrictions, recreational netters are not permitted to use store pots and must land the catch on the day of capture. This measure helps significantly with the Authority's ability to enforce the daily catch restrictions.

Bycatch of crab

The provision for a bycatch of crab is within the permit conditions. From the consultations there was not overwhelming support for the introduction of a bycatch of crab claws from the commercial sector. Those supporting the bycatch proposals highlighted that by having no allowance it was a potential waste of a resource. A weight limit was seen as preferable to a maximum number of claws. Suggested levels ranged between 30kg and 60kg per trip to an unlimited weight. Cornwall IFCA have a 30kg allowance whilst European measures apply either a maximum 1% bycatch by weight of the total weight landed from pots and 75kgs from other fishing methods. D&S IFCA and some fishermen have identified the risk that by relaxing D&S IFCA's current byelaw restriction, where no crab claws can be landed, it may lead to some fishermen retaining as much crab claw as permitted or removing claws from undersize crab rather than trying to remove entire crab that can be legally landed above the minimum conservation reference size. The permit conditions will introduce a bycatch of a maximum of

30kg per commercial permit holder per calendar day. D&S IFCA believes that it is necessary to introduce the measure at a level to reflect in part the concerns raised by some commercial fishermen. The fishery will be monitored for any unintended consequences and to only allow the retention on board of crab claws where netting has been the only activity whilst fishing in the district. It may also be necessary to consider placing a minimum number of claws per kilo to counter the risk that smaller claws from undersize crab are retained.

Catch restrictions

The use of catch restrictions within the permits will potentially affect persons that fish both inside and outside the district. It is assumed that the extent of netting activity inside and outside of the district will be similar to that of potting as it is likely to be carried out, in the most part, by the same vessels. Previous discussions with representatives of the commercial potting fleet in north and south Devon would indicate that the number of vessels affected by these conditions of use is likely to be low. Recognising that some vessels do fish inside and outside of the district on the same fishing trip, the catch restriction does not prevent the carriage of the catch caught offshore through the district. The permit condition, (paragraph 1.1) sets out that 'A permit holder or named representative is not authorised to fish under this permit if he has retained on board or has in his possession any catch that does not comply with any of the catch restrictions set out in paragraphs 1.2 to 1.6.3 inclusive'.

For example, this still allows fishermen to net inside the district and then outside the district and retain on board berried lobster if they then transit through the district to land. However, if a vessel nets outside of the district and catches berried lobsters and is then inspected whilst fishing within the district the retention of those berried lobsters will contravene the permit conditions. Byelaws only apply within the district, normally six nautical miles from the coast or in places on the north coast of the D&S IFCA district to the median line with Wales. The permit condition goes a significant way to addressing the potential enforcement weakness of proving where vessels have been fishing and where catch has been taken from.

The commercial (with no shellfish entitlement) and recreational catch limits proposed harmonise with the restrictions already in place through the Diving Permit Byelaw, Potting Permit Byelaw and EU bass regulations. Nationally, commercial vessels using pots or nets, that do not have shellfish entitlements are restricted to a maximum of five lobsters and 25 crabs per calendar day. The same restrictions, five lobsters and 25 crabs per calendar day will apply through the permit conditions to this sector of the commercial potting and netting fleet. The additional benefit of this approach is that this catch limit for these commercial vessels is directly enforceable by the Authority's enforcement officers. The Byelaw restricts the daily catch of recreational netters to two lobsters and three crabs and one bass (from 1st July to reflect EU regulations) per calendar day per person. The permit conditions can be amended via the review process to reflect the restrictions applied through EU Regulations.

Spiny lobsters are a Feature of Conservation Importance in designated MCZs within the D&S IFCA district. The total number of MCZ has increased to three to include Bideford to Foreland Point MCZ. The number of spiny lobsters reported caught in the Lundy MCZ and the Skerries and Surrounds MCZ by commercial potters is very low. Although the commercial value of spiny lobsters is high, ranging between £40 and £60 per lobster, the numbers caught would suggest that by prohibiting the removal of spiny lobsters from these two areas it is likely to cost the whole fleet around £1,500. The low capture rates are likely to be indicative of very low populations in the two MCZs so the removal of only a few individuals may have a significant impact on the stock. D&S IFCA believes that this warrants a precautionary approach. The removal of spiny lobsters from all three MCZ sites will be prohibited. A minimum conservation reference size (MCRS) has been introduced for spiny lobsters within other

permitting byelaws and this represents an increase from 95mm to 110mm carapace length. This MCRS harmonizes with Cornwall IFCA's current restriction.

D&S IFCA agreed that soft spiny lobster should be afforded the same protection as edible brown crab and lobster and the permits (catch restrictions) be amended to reflect what has now been considered to be an unfortunate oversight when the initial protection measures were formulated.

Gear restrictions

Surface markers, buoys or dhans, attached to netting gear, need to be marked with either the commercial vessel's Port Letters and Numbers (PLN) or the permit number. This will assist greatly in monitoring of fishing activity and help identify persons responsible for the gear and determining what gear is being used.

In the case of recreational gear, the use of tags will enable the restriction on nets to be enforced more easily. In the first instance tags will be issued at no cost to the permit holder. Lost or stolen tags can be replaced at a cost of £2 per tag but this cost would be borne by the permit holder. There is no initial requirement for commercial coastal nets to be marked with tags. There is now no provision to allow for the use of limited surface fixed nets (in specified coastal areas). Within estuaries all seine nets must have a tag fitted.

Enforcement bodies

The lead responsibility for enforcing any permit conditions would fall to D&S IFCA and therefore the additional enforcement cost would impact on D&S IFCA. The Authority recognises that it has a duty to ensure that the legislation it introduces is enforceable and administration of the permits resourced. The Authority operates a risk based approach to enforcement. The byelaw and permit conditions are designed (including the introduction of catch restrictions when fishing in the district), in part, to make enforcement of the management measures more effective.

Permits

Although D&S IFCA has the ability to restrict the number of permits issued this is not the policy adopted by the Authority. The number of permits issued will be unlimited. Fishing effort management by way of licences is already undertaken at a national level. Local restricted licencing or permit schemes (such as those used by other IFCA's) can bring additional benefits to those fishers within the scheme, such as greater access to stock, limited competition from other fishers, an increased sense of ownership and reward for adopting good fishing practices. Many contributors⁶² to the fisheries management debate support the use of such an approach. However among the many risks it is highly likely that a restrictive permit scheme becomes a valuable, tradeable document (even when every action is taken to prevent this from happening), it limits opportunity for new entrants to the fishery and may lead to increased effort as fishers believe that a track record of fishing may qualify them for a permit in the first instance. A restrictive scheme would also significantly increase the administrative burden on D&S IFCA. The current budget and staff resource would not be able to deliver this approach within existing or foreseeable resources.

The cost of the permit will be £20 and will be valid for a maximum of 24 months. The cost of the permit is set out in the Byelaw and can only change when the Byelaw is reviewed. The charge is based solely upon the estimated administrative cost in terms of staff hours and is

⁶²http://www.seafish.org/media/921067/2013.07.23_project_inshore_s2_v5.pdf

not an attempt at full cost recovery which may be more appropriate for a heavily monitored fishery. Inevitably this means that the same hours are incurred irrespective of whether the applicant is a commercial or recreational user. However, to reflect the requirement for recreational fishers to attach tags to their nets and some commercial fixed nets, the initial charge for tags will be met by D&S IFCA.

D&S IFCA believes that a charge of £20 for permit where the conditions of use may be varied without cost to the permit holders during that period, does not impose an excessive financial or regulatory burden upon any of its stakeholders. In addition, even for recreational netters, the value of the fish and shellfish (maximum amount) that can be removed in one day and consumed (rather than purchase from another source) would easily exceed the cost of the permit.

6. Options including the preferred option

In determining the most appropriate form of management following the better Regulation Principles⁶³ D&S IFCA must consider voluntary measures before proceeding with a statutory measure such as a byelaw⁶⁴.

0. Do nothing: this option was considered inappropriate. D&S IFCA is required to review the byelaws that it inherited. Byelaws apply to all persons and as such represent the best legislative tool to manage netting activities.
1. Create a netting permit byelaw introducing a flexible, adaptive approach to the management of all netting within the district whilst also providing a more cost effective option than other options.
2. Review and remake byelaws using a traditional byelaw model leading to the creation of rigid byelaws which are unsuited to dealing with future management needs whilst also producing significant costs involved with both their initial creation and potential amendment or remaking.
3. To delay IFCA action and rely solely on management of the activity through Statutory Instruments or Defra fishing licence. This approach was considered too rigid in its approach and insufficient for locally focussed management. This option would result in D&S IFCA not meeting its vision, Annual Plan commitments or its duties under s153 MaCAA.
4. Voluntary measures: due to the number of fishers affected by the management proposals it is unlikely that there will be sufficient voluntary compliance with the restrictive measures necessary to achieve the outcomes required by D&S IFCA.

All options are compared to Option 0; the preferred option is Option 1.

Recommended option – Option 1 A D&S IFCA ‘Netting Permit Byelaw’.

The recommended option reflects D&S IFCA’s aim to introduce a new approach to inshore fisheries and conservation management. The permitting byelaw will encourage active participation in management decisions. This option is recommended because D&S IFCA is viewed as the appropriate statutory organisation to lead on the sustainable management of inshore fisheries and protection of the marine environment. A permitting byelaw is the preferred approach due to the flexibility associated with permit conditions. There is also the

⁶³ [Link to BRPs https://www.gov.uk/government/publications/better-regulation-framework-manual](https://www.gov.uk/government/publications/better-regulation-framework-manual)

⁶⁴ This is only the case if voluntary measures are cheaper than other options. A full description of the voluntary measures envisaged and how effective these will be in terms of risk mitigation.

potential for further measures to be introduced, or existing management to be amended or removed. This option mitigates the risk of imposing inappropriate permanent restrictions based on the limitations of available evidence. Management is required for the reasons set out in the Impact Assessment but care should be taken to ensure decisions are amendable in light of better evidence or changing circumstances in an appropriate timeframe. The ability to change management requirements through varying permit conditions is likely to be less expensive than creating separate voluntary agreements. Where voluntary agreements are created by other initiatives D&S IFCA has the ability to support the management approach by introducing permit conditions if required.

7. Cost and benefits (Analysis of costs and benefits)

The analysis of costs and benefits is based on comparing Option 1 to Option 0.

Description and scale of key monetised costs by “main affected groups”

Calculations of costs used in the impact assessment calculator

Average value of mullet landings from nets in the district = £63,942

Cost of 100 permits (per year) = £1000

Total = £64,942

It has been assumed that all mullet catches are taken from estuaries. The MMO data captures landings data from the under-ten metre sector from the buyers and sellers databases⁶⁵. The D&S IFCA acknowledge that private sales would not have been captured within these statistics.

Average value of mullet landings from nets in the district:

2011-2015 = £63,942

2015 = £46,078

Average income from netting in estuaries:

£1,000 to £5,000.

The proposed permitting byelaw would require all persons that use nets to operate under a permit issued by D&S IFCA. The biennial cost of a permit is set at £20. The cost of the permit is to cover estimated administration costs incurred by D&S IFCA. This does not cover the cost to D&S IFCA from resourcing the continual review of permit conditions. **The numbers of fishers that will be issued with a permit is unknown, although it has been estimated that** over 70 commercial fishing vessels may be netting in the district. The level of recreational netting is far more difficult to quantify as similar records are not available and is presently unquantified but is likely to be as high as 30 given the number of people undertaking recreational netting for sandeels in estuaries. The requirement to have a permit will start to remove the uncertainties in quantifying the levels of netting activity, thus better informing the decision making process.

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http://resources.anglingresearch.org.uk/sites/resources.anglingresearch.org.uk/files/Economic_Impact_Sea_Angling_England_Drew_Report_2004.pdf

D&S IFCA are looking to introduce better ways of monitoring and control and believe that remotely accessed monitoring devices will play a key part in the future. Although not required initially, the byelaw has the ability to require netting vessels to fit a remotely accessed monitoring device. Purchasing of units and installation of units is likely to be approximately £1,000 with additional average airtime cost of between £150 and £200 per annum. Funding for the installation and purchase of the required units should be secured leaving the permit holder to finance the ongoing maintenance and annual airtime costs.

D&S IFCA operates a risk based approach to enforcement. Illegal netting in estuaries is identified as a high risk activity by D&S IFCA and as such a significant part of the enforcement budget is used to counter this risk. The introduction of restrictions on the recreational netting sector will require additional enforcement effort. However, no additional resource is available to meet this requirement. Operating on a fixed budget D&S IFCA will continue its risk based approach to enforcement and consequently focus on other fishing activities may be reduced to meet the required monitoring of the byelaw.

Other key non-monetised costs by “main affected groups”

Closure of estuaries (and changes to estuary boundary definitions) to all forms of fixed and drift gill netting would (for some stakeholders) represent a negative impact in terms of historical, traditional and social cost. Social impact is explained in more detail in the evidence base.

The closure of all estuaries to netting would remove current limited netting for bass. The opportunity to net for bass is already restricted by national and European legislation. The vast majority of estuaries are designated under the Bass (Specified Areas) (Prohibition of Fishing) Order 1990 (as amended)⁶⁶ prohibiting netting for bass for all or part of the year. In 2015, the increase in the MCRS for bass to 42cms⁶⁷ also reduced significantly the proportion of the bass available in estuaries that could be legally landed therefore already reducing the income that could be derived from fishing for this species in estuaries. Officers recorded complaints from Plymouth based estuary netters that the increase in MCRS would reduce their legal catch of bass by around 80%.

Catch restrictions relating to the retention of species on board vessels actively fishing within the district will potentially lead to a small number of commercial vessels having to change their fishing pattern to remain compliant with local management measures.

Persons fishing recreationally will need to adjust to having effort restrictions placed on their netting activities and will need to adjust to the catch and gear limitations.

With the D&S IFCA following an activity based permit byelaw strategy, there will be some stakeholders operating with more than one permit. This has potential non-monetised cost implications to some leisure fishers. The conditions of use restrict the catch for these category two permit holders. In addition, if these fishers are operating under the authorisation of more than one permit issued by D&S IFCA then the total number of crab and lobster that can be removed in any calendar day cannot exceed the permissible level offered by a single permit.

The introduction of the byelaw is a mechanism to balance the needs of persons engaged in exploitation of sea fisheries resources in the district. Although the netting permit byelaw is for the management and control of netting, there is an indirect relationship with other activities.

⁶⁶ <http://www.legislation.gov.uk/ukxi/1990/1156/made/data.pdf>

⁶⁷ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_203_R_0006

Fishing activities such as rod and line fishing on both a commercial and recreational level have significant economic importance.

Angling 2012⁶⁸, commissioned by Defra and published in 2013 built on findings from other reports that Recreational Sea Angling was a key economic sector involved in the exploitation of sea fisheries resources. D&S IFCA's district is a key location for both local and visiting anglers. The development of RSA opportunities created by the removal of netting in estuaries may lead to an increase in the RSA economic value of each estuary.

The Drew Report⁶⁹ commissioned by Defra, published in July 2004, estimated that the direct spend by sea anglers in England and Wales was £538 million. Invest in Fish South West Report⁷⁰ by Nautilus Consultants used data from the Drew Report to estimate that the direct expenditure in the South West, was £165 million.

Angling 2012, estimated that the direct spend by sea anglers in England was £831million. It is possible, that in the South West, that a conservative estimation of sea anglers spend in 2012 was £249 million⁷¹.

The EA submission highlighted the estimated value of the rod and line salmonid fisheries in key estuaries⁷² within the district. The proposed restriction of netting in estuaries and the maintenance of the existing restrictions along the coast should support the continuation and possible growth of this sector.

The needs of other sectors have been recognised by D&S IFCA in the making of this byelaw.

The byelaw is designed to meet D&S IFCA's conservation responsibilities but at the same time minimising the socio-economic impact from these restrictions

The new byelaw better reflects the needs of the different sectors taking sea fish resources.

The needs of other sectors have been recognised by D&S IFCA and it has implemented change. This byelaw builds on voluntary initiatives (Angling Zones) helping to reduce previous conflict between netting and angling interests. Pre-consultation has indicated that netting (coastal and within estuaries) is cited as a negative factor on the catching expectations of many leisure anglers. In addition, stakeholders and members of the general public have indicated that estuaries and in particular 'bass nursery areas', should be afforded additional protection from netting activity.

The byelaw is designed to meet D&S IFCA's conservation responsibilities but at the same time minimising the socio-economic impact from these restrictions. By the end of 2016, D&S IFCA was required to have identified the management framework to control the impact of all fishing activities undertaken within EMS. The same byelaw mechanism can be used to ensure that necessary management interventions can be taken for the protection of MCZ in the district. The byelaw also provides the flexibility to manage fishing activities in a timely, effective

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<http://webarchive.nationalarchives.gov.uk/20140305120543/http://www.marinemanagement.org.uk/seaangling/documents/finalreport.pdf>

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http://resources.anglingresearch.org.uk/sites/resources.anglingresearch.org.uk/files/Economic_Impact_Sea_Angling_England_Drew_Report_2004.pdf

⁷⁰

http://resources.anglingresearch.org.uk/sites/resources.anglingresearch.org.uk/files/The_Motivation,_Demographics_&_Views_of_SW_Recreational_Sea_Anglers.pdf

⁷¹ This figure was estimated from the above figures, not from the report, the rationale is that the Invest in Fish figure is approximately 30% of the total spend in 2004 Drew (England and Wales) and £249 million is 30% of the Sea Angling 2012 figure for England only.

⁷² 13 sites were listed in the response by the EA with a total value of £40.67 million.

way and provides the framework to consider developing new fisheries. The approach removes the need for further byelaws to deal with netting management and as such delivers significant saving to the public purse.

The use of the data available from vessel monitoring systems in the towed gear fleet has resulted in more effective and efficient use of enforcement resources. The potential use of similar technology to manage the netting fleet should result in similar benefits.

The new byelaw better reflects the needs of the different sectors taking sea fish resources by limiting the level of effort and the amount of fish and shellfish that can be taken from the non-commercial sector. The byelaw also allows for commercial effort to be restricted in a similar way. Reducing the competition from other sources will help to support the local fisheries retail economy in the district. This byelaw would provide similar benefits to the existing permit byelaws in supporting one of D&S IFCA's guiding principles to develop byelaws that tackle the problems of illegal, unreported and unregulated, fishing. This issue is also a national priority for the MMO.

At the same time the D&S IFCA believes that the gear and catch limits on the non-commercial sector are entirely reasonable and proportional to personal consumption and that both sectors will benefit from the improved sustainability of fish and shellfish stock brought about by this byelaw.

Different groups of stakeholders raise different management challenges. The introduction of this byelaw offers flexibility in managing netting activity whilst clearly separating different user groups. Treating these groups differently is not adverse discrimination; rather it reflects the different management challenges presented by the different sectors. This byelaw therefore provides appropriate fishing opportunities rather than adopting an overly precautionary approach and excluding one specific sector.

Operating the permit scheme will give D&S IFCA far greater knowledge of the level of netting occurring and the amount of fish and shellfish being taken in the district to inform future management. The permit schemes will also allow D&S IFCA to communicate directly with users to increase understanding and awareness of the management and allow permit holders to actively participate in shaping future management. This reflects strongly the Government's Localism agenda by encouraging local people to participate in the decision making process and helping to empower local communities.

Marking of gear (for all users) will be greatly improved, allowing better monitoring of netting effort. It helps to ensure that commercial and recreational netting effort is effectively managed. It can help prevent the tampering with or unauthorised use of other persons' gear and assist D&S IFCA and its stakeholders to identify legitimate activities. It can be part of the communication strategy to improve the understanding of the seasonality and scale of netting reducing the negativity surrounding netting that is derived from the public's preconceptions about the activity.

The tighter control on netting in estuaries will make illegal netting more readily identifiable to the general public, leading to better intelligence about the activity and reassurance that the observed netting is more likely to be legitimate and effectively managed.

The Authority accepts that precise data is not available for all aspects of the proposed management covered by the Byelaw (Permit conditions) and in such circumstances the Authority has proceeded on the best available evidence and, as required to do so, has applied the precautionary principle where data is unavailable. The Authority is entitled to proceed upon this evidentiary and precautionary basis. The Byelaw provides the opportunity to introduce a

mechanism to gather more precise evidence to inform future management decisions by requiring all permit holders to provide records of their fishing activity. This requirement is set out in the Byelaw in, paragraph 15 '*The permit holder must provide any relevant fisheries information required by the Authority for the discharge of its functions*'. The Authority is mindful of the fact that, where possible, as increased survey data and user evidence becomes available the permitting system will provide a flexible and responsive mechanism for timely adjustments to be made in the light of this increased evidence base. This process will be used to assess the impacts from the EA's proposals to increase the headline depth of coastal fixed nets to five metres.

8. Conclusions summarising recommended option

The recommended option is for D&S IFCA to introduce a new netting byelaw that seeks to balance the needs of all persons engaged in the exploitation of sea fisheries resources and seeks to balance the social and economic benefits of exploiting the sea fisheries resources in the district with the need to protect the marine environment from the effects of such exploitation.

The netting permit byelaw will remove all nets from the estuaries except for seine nets targeting sandeels, and restrict the use of fixed nets in coastal areas. The restrictions on netting will reduce the directed effort towards the grey mullet and bass fisheries in the estuaries, and protect other species caught as a bycatch in these fisheries including salmon and sea trout.

The reduced level of netting provides greater access to fish stocks for commercial and recreational fishers using rod and line.

The south and south west inshore marine plans are still in the early stages of development. Assessment of the Netting Permit Byelaw's compatibility with these cannot be undertaken at this stage but it does fulfil the principles set out in the Marine Policy Statement, namely;

- Achieving a sustainable marine economy
- Ensuring a strong, healthy and just society
- Living within environmental limits
- Promoting good governance
- Using sound science responsibly

Achieving a sustainable marine economy – D&S IFCA has used the best available economic data to understand the financial impact of the netting restrictions on the commercial netting sector. This loss of revenue will be offset by the unquantified, economic benefit gained by the businesses providing services to the recreational fishing sector and commercial rod and line fishers.

Ensuring a strong healthy and just society – D&S IFCA seeks to balance the needs and interests of all fishers and has applied different restrictions to each sector to reflect their needs from the public resources and to protect the marine environment from their activities. By restricting the netting effort and catches of the recreational sector it helps to support the commercial fishers by ensuring more fish is sourced by the general public through legitimate commercial outlets.

Living within environmental limits - the byelaw protects particular species that are under pressure at the current time. The netting restrictions are designed to reduce the bycatch of salmon and immature bass. The flexible nature of the netting permit byelaw means that should future habitat assessments alter existing evidence bases or highlight additional environmental concerns, then the review procedure within the Netting Permit Byelaw can be utilised to address changes in circumstances.

Promoting good governance – The Netting Permit Byelaw has been created to introduce increased flexibility and stakeholder participation. Control measures inherited from legacy byelaws have been reviewed and where fit for purpose have formed the basis for flexible conditions specified within the permits that are issued to fishers. The review procedure for flexible permit conditions clearly specifies that consultation with a range of consultees is required for any potential change in permit conditions. Permit holders and other stakeholders have been presented with a mechanism where they are able to identify changing circumstances and influence the decision making process and the activity being managed.

Using sound science responsibly – D&S IFCA has used the best available evidence to review netting activity and formulate the Netting Permit Byelaw. Three consultation periods were utilised to build the evidence bases documented in the required impact assessments. Where evidence has been lacking D&S IFCA has had to adopt a pre-cautionary approach. The review procedure for the flexible permit conditions allows for the introduction of new sound science to influence the conditions of use for fishers, whilst also recognising any potential social or economic impact that changes may present to stakeholders.

Although a significant amount of information has been inserted into this impact assessment it does not reflect the amount of information that has been collated and used throughout the process. D&S IFCA have fully documented all relevant information in a single report⁷³.

⁷³ Townsend N (2017) The D&S IFCA Netting Permit Byelaw – The final development report

5. Other Supporting Documents & Hyperlinks

The Annexes used within the Netting Permit Byelaw Impact Assessment (consultation) version can be viewed by visiting the D&S IFCA website or clicking on the links below. The resource library (Section F) contains both the Impact Assessments and the Annexes used within the original document.

[The Resource Library of the D&S IFCA website](#)

Document:	<u>The Impact Assessment (for consultation)</u>
Annex 1	<u>Actions and communication plan for the netting pre-consultation....</u>
Annex 2	<u>The pre-consultation -Observations, future discussion points and a summary of responses.</u>
Annex 3	<u>Analysis of MMO Landings Data 2011-2015</u>
Annex 4	<u>European sea bass (<i>Dicentrarchus labrax</i>) Ecology, stock status and management update.</u>
Annex 5	<u>Coastal netting impacts on salmon and sea trout: a review of available evidence</u>
Annex 6	<u>North Coast netting (Minehead to Weston super Mare)</u>
Annex 7	<u>Netting Survey 2014</u>
Annex 8	<u>Ecology and distribution of European Sea Bass in inshore and coastal waters in South West England</u>
Annex 9	<u>Review process flow chart</u>
Annex 10	Minutes of the Byelaw and Permitting Sub-committee meetings, <u>Nov 2015</u> , <u>Dec 2015</u> and <u>March 2016</u> .
Annex 11	<u>Estuary Netting – Options for management discussion paper</u>
Annex 12	Phase two <u>estuary</u> and <u>coastal</u> netting questionnaires
Report:	<u>Response and Recommendation Report for Stakeholders – 22nd November 2016.</u>
Report:	<u>Access for Netting within Estuaries & the Decision-Making Process</u>
Document:	<u>The Impact Assessment (final version – September 2017)</u>

Some other information was also considered by the D&S IFCA Byelaw & Permitting Sub-Committee during the creation of the Netting Permit Byelaw but were not added to the Final Impact Assessment. These can also be viewed in the resource library and are as follows:

Annex 13:	<u>Defra Letter – Protection of freshwater and migratory species</u>
Annex 14:	<u>Review of Protection Measures for Atlantic Salmon and Seatrout in Inshore Waters</u>
Annex 15:	<u>Environment Agency Report, Risks Posed to Migratory Salmonid Fish Species by sea Fish Netting in the Taw and Torridge Estuary</u>
Annex 16:	<u>A consultation response letter from the Environment Agency</u>