

Amendments to the Netting Permit Conditions – Proposal (5)

Officers Recommendation

That Members agree to amend the Category One Netting Permit Conditions as proposed in the formal public consultation, and set out below, with the changes to apply from 1st July 2026.

Proposal 5 - Removal of a requirement to use flags to mark fixed nets.

The current Category One and Category Two Permit Conditions include the following gear marking provision (paragraph 2.1(c)):

A permit holder or named representative is only authorised under this permit to use a net within the District, other than in any intertidal area, if:

- a) each net is clearly marked by at least one floating marker at either end of the net; and
- b) each of the markers must display clearly the port, letters and numbers of the vessel named on the permit or the permit number; and
- c) in each case where a fixed net is used the fixed net consists of a flag on at least one end of the net.**

The proposal is to **remove** the requirement to mark a fixed net using a flag on at least one end of the net.

Members have recognised that currently the Permit Conditions require that every net must be clearly marked, including use of port letters and numbers, or permit number. Members accepted that the use of flags to mark fixed nets is problematic for fishers. The proposal is to **remove paragraph 2.1 (c)**

Response:

There were 24 comments relating to proposal (5). There were **20 objections** to proposal (5), two responses that offered qualified support, and two responses that were neither in favour nor opposed. Five of the objections were from organisations (British Divers Marine Life Rescue, the Seal Research Trust, Devon Wildlife Trust, the Environment Agency, and the British Spearfishing Association).

Support:

There were no responses that fully supported the proposal.

Qualified Support

The qualified support was provided by the Angling Trust (and by extension the Bass Anglers Sportfishing Society) that endorsed the response by the Angling Trust.

The basis for qualified support from Devon Wildlife Trust centred on addressing three questions set out in their response.

1. That the remaining gear marking requirements (floating markers at each end, displaying the port letters, numbers, and permit number) will be actively enforced and that standards of compliance are adequate;
2. That D&S IFCA is satisfied that the IVMS coverage of commercial netters in the district is sufficiently comprehensive and reliable to serve as a practical substitute for physical flag differentiation;
3. That D&S IFCA will monitor any increase in reports of gear-related incidents or near-misses by recreational water users following the removal of the flag requirement.

No Clear View

Wembury Advisory Group neither supported or objected; however, they were concerned that removing the requirement may hamper detecting illegally set nets or potentially increase risks to entanglement of gulls and seals. The other response that was undecided highlighted the degrading of flags overtime leading to marine pollution.

Objection:

There were **20 objections** to the proposal which included both individual stakeholders and organisations. The most detailed objections were provided by the British Spearfishing Association, the Seal Research Trust, and Devon Wildlife Trust. The majority of responses focussed strongly on health and safety. Organisations, including the Environment Agency also commented on enforceability, with a view that the use of flags assists the detection of illegally set nets. The main points of objection were as follows:

- Safety to Life
- Navigational Risks and Propeller Fouling
- Ghost Fishing and Environmental Monitoring
- Regulatory Precedent and Enforceability
- Lateral Safety and Legal Risks

Consideration by B&PSC:

To address the point made by the Angling Trust, Officers do not view that IVMS coverage is a sufficiently comprehensive and reliable to serve as a practical substitute for physical flag differentiation. Adequate gear marking is still needed to identify fishing gear, but not necessarily each type of fishing gear.

The remaining gear marking requirements in the Netting Permit Conditions are:

- each net is clearly marked by at least one floating marker at either end of the net; and;
- each of the markers must display clearly the port, letters and numbers of the vessel named on the permit or the permit number

Safety to Life

The provision for the mandatory marking of fixed nets with flags was not introduced to improve or maintain health and safety or safe navigation. The purpose was simply to try and identify the nets that had been set as opposed to other static gear. D&S IFCA's management of fishing activity (and decision making) cannot be based on health and safety as the main rationale. It is beyond the remit of the organisation as it is not within the Authority's powers set out in the Marine and Coastal Access Act 2009. For example, D&S IFCA's Permit Conditions cannot make it a mandatory requirement for fishers to wear life jackets or to have a requirement for commercial dive fishing operators to have a standby diver ready in case of emergencies. This would be the remit of the Maritime and Coastguard Agency and the Health and Safety Executive.

It is the view of Officers that the remaining gear marking requirements achieve what is needed from D&S IFCA's perspective – gear belonging to different fishers can still be identified. Officer knowledge of vessels port letters and numbers (or permit numbers) and other indicators such as floats on the surface can be used to identify nets.

There is a significant risk to those engaged in diving other activities to assume that there is always 100% compliance with the requirement to mark fixed nets with flags. This assumption is potentially dangerous as individuals may become risk adverse if floats are present that they believe are pots rather than nets.

Officers acknowledge that there is not full compliance with the marking of gear requirements and this reduces even further in relation to the requirement to use flags. D&S IFCA does not have the resources to ensure consistent and effective District wide enforcement of gear marking.

If the provision for flags is removed, there is nothing to stop fishers continuing to mark nets with flags on a voluntary basis. Some may continue with this practice, in particular

in areas less effected by strong tides, and therefore areas that will likely be more popular for diving activity.

Navigation Risks & Propellor Fouling

Officers are not underestimating the problems that can result from entanglement in nets; however, there are similar risks associated with becoming entangled in floating lines used for potting, and other hazards on and below the surface that may or may not be connected with fishing activity. D&S IFCA's management of fishing activity (and decision making) cannot be based on ensuring there is improved navigation for vessels around the coast.

Ghost Fishing

Officers do not have the view that removing the requirement to mark fixed nets with flags increases the likelihood of nets being lost and therefore the start of ghost fishing. Fishing gear is sometimes lost for a range of reasons including poor weather. Officers have experience identifying abandoned gear, and with nets there are signs such as excessive weed and poor state of the nets. If the nets do not meet the remaining marking requirements, Officers can attempt to recover the lost gear.

Regulatory Precedent and Enforceability

Regarding flags assisting the identification of illegal nets, it is the view of D&S IFCA Officers that this is not the case. For several years, D&S IFCA's Enforcement Team have targeted illegal netting activity in the District and compared to historical records, lower levels of reporting of illegal netting are a testament to the effectiveness of the Enforcement Team to address this issue. Illegal netting has often been more likely to occur within estuaries within the District (and at night), rather than in coastal areas.

Illegally set nets are unlikely to be marked with flags or any clear marking as the intention is that they are not seen by Officers or members of the public and the person setting illegal nets does not want to be identified.

Lateral Safety and Legal Risks

The requirement to mark gear with nets was introduced to help the angling sector choose areas to fish where they were not competing with nets. It was never the intention to improve health and safety of all sea users.

It is the view of Officers that the removal of flags as a gear marking requirement does not increase legal risks to the Authority associated with persons becoming entangled in nets and action that could have been taken by the Authority in attempts to minimise those risks. D&S IFCA does not accept the statement made in the consultation that it is "failing in its duty to reduce risks to ALARP (As low as reasonably practicable)". The Authority

would potentially face legal challenge by retaining a provision based on rationale outside of its remit.

Furthermore, without setting a clear basis and rationale for retaining the gear marking requirement of flags, respondents could make assumptions that it is a measure relating to health and safety and could rely on D&S IFCA to enforce it, therefore adding to the risk of individuals operating at sea in either a commercial or recreational capacity.

This consultation has identified a serious risk to the safety of sea users particularly divers due to their assumption that there is high compliance with the marking of gear and the use of flags. It is important to note that each sea user has their own responsibility to consider the risks when undertaken their activity.

It is the Officers' view that although objections were received in the formal consultation, Members should proceed with the proposal (5) and amend the Netting Permit Conditions to remove the requirement to mark fixed nets with flags.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers

B&PSC Papers and meeting minutes ([Section B of D&S IFCA Website Resource Library](#)) and Agenda Item 6 (Annex A) – A summary of Response from the Formal Consultation