



Netting Permit Byelaw

**Response and recommendations report
for stakeholders**

22nd November 2016

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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 precautionary 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	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	Analyses 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 15 to March 16.
Annex 11	Estuary Netting – Options for management discussion paper
Annex 12	Phase two estuary and coastal 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 focused 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 databases¹. 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 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

¹ The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006

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 duties² 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

² Section 153 Marine and Coastal Access Act 2009

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 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 duties³ 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.

³ Section 153 Marine and Coastal Access Act 2009

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.

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 duties⁴ 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

⁴ Section 153 Marine and Coastal Access Act 2009

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 accidental bycatch as it is illegal for most vessels to sell wild caught fish. Only a limited number of licensed salmon and seatrout 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 duties⁵ 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.

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

⁵ Section 153 of the Marine and Coastal Access Act 2009

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 £1,500⁶ (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

⁶ (licence for 0.3 tonne and 1.1Kw engine power advertised for £1,200 on 17/05/16)

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.

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.

End of report.