

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 Other departments or agencies:	Impact Assessment (IA)
	Date: 31st May 2016
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
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Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£m ¹	£ ²	NA ³	No	NA

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 review⁴. 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)

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 district⁵. 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.

¹ To be documented in £ms and calculated for 10 years from implementation of byelaw

² To be documented in £ms and calculated for 10 years from implementation of byelaw – costs and benefits to business only.

³ As these IAs are not in scope of one in two out this does not need to be completed

⁴ Defra review of The Bass (Specified Areas) (Prohibition of Fishing) Order 1990 as amended

⁵ <http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2015/2015/Bss-47.pdf>

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 seafish⁶

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 goods⁷ 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 2016-17.⁸
- To aid public awareness about the activity of netting and help to identify illegal netting activity in estuaries.
- To build on one of the 2011-2015 D&SIFCA's stated high level priorities to develop Recreational Sea Angling opportunities in the district⁹.
- 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.

⁶ Sumner K. (2015) Review of protection measures for Atlantic salmon and sea trout in inshore waters,

⁷ As defined on page 11 of the Impact Assessment

⁸ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCA-Annual-Plan16-17.pdf>

⁹ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCAAnnualPlan15-16.pdf>

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	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the Byelaw and permit conditions, and (b) that the benefits justify the costs.

Signed by the Chair of D&SIFCA:

..... Date: _____

Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years 10 ¹⁰	Net Benefit (Present Value (PV) (£m ¹¹))		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition ¹² (Constant Price) Years	Average Annual ¹³ (excluding transition) (Constant Price)	Total Cost ¹⁴ (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.

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)¹⁵ prohibiting netting for bass for all or part of the year. In 2015 the increase in the Minimum Conservation Reference Size for bass to 42cms¹⁶ 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%.

¹⁰ 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.

¹¹ 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).

¹² 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

¹³ 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.

¹⁴ i.e. discounted as with NPV

¹⁵ <http://www.legislation.gov.uk/ukxi/1990/1156/made/data.pdf>

¹⁶ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_203_R_0006

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.

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 - £1,500¹⁷ (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

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

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 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	Discount rate (%)	3.5%
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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 OITO?	of Measure qualifies as
Costs: -0.064	Benefits: not quantifiable	Net: -0.064 ¹⁸	N/A	N/A

¹⁸-Linked to ENCB

Evidence base (For summary sheets and annexes)

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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>
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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 Byelaw¹⁹ 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 goods²⁰ 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.

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

¹⁹ https://secure.toolkitfiles.co.uk/clients/17099/sitedata/Misc/EA_fixed_engine_byelaws.pdf

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 approach²¹ 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 matrix²² 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 required²³.

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;

²¹ Fisheries in EMS policy document: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/policy_and_delivery.pdf

²² See Matrix: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/populated_matrix3.xls

²³ 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

- 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.

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.²⁴.

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.²⁵

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 nets²⁶ 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

²⁴ <https://secure.toolkitfiles.co.uk/clients/15340/sitedata/Misc/DSIFCA-Annual-Plan16-17.pdf>

²⁵ Sumner K. (2015) Review of protection measures for Atlantic salmon and sea trout in inshore waters,

²⁶ Nets as defined in the Netting Permit Byelaw

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 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 Principles²⁷, D&SIFCA must consider voluntary measures before proceeding with a statutory measure such as a byelaw²⁸.

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.

²⁷ Link to BRPs <https://www.gov.uk/government/publications/better-regulation-framework-manual>

²⁸ 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.

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

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 activity²⁹ to be authorised under permit;
- No netting in estuaries (other than seine nets targeting sand eels);

²⁹ Nets defined under Netting Permit Byelaw.

- 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, 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

contributors³⁰ 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&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.

³⁰ Including Stage Two Report of Project Inshore,
http://www.seafish.org/media/921067/2013.07.23_project_inshore_s2_v5.pdf

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 exceptions³¹, 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 (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

³¹ 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.

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 Report³². 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

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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 definitions³³ will support the current netting restrictions. The current restrictions are located in the close proximity of most 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 existed³⁴.

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 is it 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

³³ As defined in the permit condition interpretations

³⁴ 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

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 potential 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 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 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&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 of 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.