

Options for Management

Officers' Recommendation

That the use of a regulatory framework (byelaws), are appropriate for the continued management of potting, netting, and diving (for specified species) in the District.

1. Background

Defra published IFCA Byelaw Guidance in 2011. D&S IFCA follows this guidance when making or re-making its byelaws. Section 4 of this guidance sets out that all byelaws should be based on sound evidence, decision making and appropriate consultation. It also states that byelaws should be seen as one of a range of solutions available to D&S IFCA and should normally only be considered where non regulatory measures (voluntary codes) have been exhausted.

Options for management are to be discussed at the early stages of byelaw development by the B&PSC and the decisions taken need to be documented. When a byelaw is made, or re-made, an Impact Assessment must be created. Options for management that have been considered by the B&PSC must be set out within the Impact Assessment, including if voluntary measures have been dismissed as a credible alternative to a byelaw (or the management measures that extend from the Byelaw in the form of permit conditions). The risk of non-compliance and the effects of non-compliance are key considerations. The use of voluntary measures had to be considered during the creation of the three byelaws set out below:

2. The Relevant Byelaws

The relevant byelaws are as follows:

- The Potting Permit Byelaw (implemented in 2015)
- The Diving Permit Byelaw (implemented in 2015)
- The Netting Permit Byelaw (implemented in 2018)

All three byelaws provide the framework for permit conditions to be issued to manage the activities for both commercial and recreational fishermen.

3. Past and Current Considerations

Potting Permit Byelaw:

D&S IFCA considered voluntary measures during the development of the Potting Permit Byelaw in 2014 - 2015. However, due to the recorded non-compliance with existing legislation (pre-2015), the incentive to catch and sell high value shellfish, the number of fishers, and the area of sea and the length of coastline within D&S IFCA's District, it was believed that a voluntary agreement would be poorly adhered to and would pose an unacceptable risk to the fisheries and possibly the wider environment.

If a voluntary approach had been adopted for the recreational sector, some of the issues set out above would have equally applied. It was accepted that a code of conduct approach would not of dissuaded some recreational potters to refrain from their catching practices which were in conflict with the Authority's opinion of what a recreational activity should be.

In addition, the Authority would not have been able to obtain the same level of data from this sector that has be achieved by the permitting approach. There are 636 Potting Permits that are valid at this time, 186 Category One, and 450 Category Two. The permitting approach has

created direct communication links with fishers actively undertaking the activity. This inclusive form of management, with direct communication links, can continue to provide an opportunity for all potters to be properly represented in the Authority's management decisions.

Officers' View:

Nothing relating to the rationale accepted in 2014-2015 to dismiss the use of voluntary measures to manage potting activity has changed. It is highly likely that revocation of the current Potting Permit Byelaw, without replacing it with another byelaw would lead to the same issues identified in 2015. Two stand-alone legacy byelaws were revoked during the making of the Potting Permit Byelaw. The investigation tables published by D&S IFCA demonstrate non-compliance with implemented management measures, something that would have no formal penalty without regulation.

It is the officers' view that the development of a byelaw (that underpins permit conditions) is considered for development, rather than a reliance on voluntary measures to manage potting activity.

Diving Permit Byelaw:

D&S IFCA considered voluntary measures during the development of the Diving Permit Byelaw in 2014 - 2015. However, due to the recorded non-compliance with existing legislation (pre-2015), particularly landing of scallops during the closed season (as set out at the time), the incentive to catch and sell shellfish, the number of divers, the area of sea and the length of coastline within D&S IFCA's District, it was believed that voluntary measures would be poorly adhered to and posed unacceptable risks to the fisheries and possibly the wider environment.

If a voluntary approach had been adopted for the recreational sector, some of the issues set out above would have equally applied. It was accepted that a code of conduct approach would not of dissuaded some recreational divers to refrain from their catching practices which were in conflict with the Authority's opinion of what a recreational activity should be.

In addition, the Authority would not have been able to obtain the same level of data from this sector than can be achieved by the permitting approach. There are 319 Diving Permits that are valid at this time, 19 Category One, and 300 Category Two. The permitting approach has created direct communication links with fishers actively undertaking the activity. This inclusive form of management, with direct communication links, can continue to provide an opportunity for both commercial and recreational divers to be properly represented in the Authority's management decisions. At the time of developing the Diving Permit Byelaw, in their response to the formal consultation, the UK diving organisation welcomed the fact that the Authority had recognised the sector through the permitting approach.

Officers' View:

Nothing relating to the rationale accepted in 2014-2015 to dismiss the use of voluntary measures to manage diving activity (for specified shellfish species) has changed. It is highly likely that revocation of the current Diving Permit Byelaw, without replacing it with another byelaw would lead to the same issues identified in 2015. The number of investigations associated with non-compliance with the implemented management measures is low; however, without regulation in place, there is less deterrent.

It is the officers' view that the development of a byelaw (that underpins permit conditions) is considered for development, rather than a reliance on voluntary measures to manage the removal of specified species by diving in the District.

Netting Permit Byelaw:

D&S IFCA considered voluntary measures when developing the Netting Permit Byelaw in 2016 - 2018. However, due to the number of fishers affected by the management proposals during development of the Byelaw (and associated permit conditions) it was considered highly unlikely that there would be sufficient compliance with the restrictive measures, unless regulation was either maintained, or in the case of the Netting Permit Byelaw, expanded. The use of voluntary measures would not have aligned with the Authority's aims, all of which was set out in the Impact Assessment from 2017.

The permitting approach has created direct communication links with fishers actively undertaking the activity. This inclusive form of management, with direct communication links, can continue to provide an opportunity for both commercial and recreational netters to be properly represented in the Authority's management decisions.

Officers' View:

Nothing relating to the rationale accepted in 2016-2018 to dismiss the use of voluntary measures to manage netting activity has changed.

Illegal coastal and estuarine netting continues to pose a high risk to the environment and species of fish that are known to use these areas of D&S IFCA's District. It poses particular challenges to the Enforcement Team, as the netting is normally undertaken by small, less than six metre vessels that operate at night, with no lights, and manoeuvre at high speeds. It is hoped that the expected completion of the national roll out of IVMS to all licensed commercial fishing vessels will provide improved intelligence on this activity and improve detection rates.

Three stand-alone legacy byelaws were revoked during the making of the Netting Permit Byelaw. It is highly likely that revocation of the current Netting Permit Byelaw, without replacing it with another byelaw would lead increased levels of unacceptable netting activity. The use of voluntary measures would mean that no formal action that could be taken if the measures were not adhered to. The B&PSC recently recognised the failings of voluntary measures relating to "no netting within an angling zone", and determined that Netting Permit Conditions (regulation) should replace voluntary measures in the Emsstrom Angling Zone.

It is the officers' view that the development of a byelaw (that underpins permit conditions) is considered for development, rather than a reliance on voluntary measures to manage netting activity in the District.

Background Papers

B&PSC - Officers' papers and minutes of meetings – [Section B of D&S IFCA website Resource Library](#).

D&S IFCA Investigation Tables ([website page](#))