

Sussex IFCA Netting Permit Byelaw 2009

Consultation – May/June 2024

Response by Bass Angling Conservation



“seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way” MACAA 2009

Salmonid Protection

The purpose of the “x metres of water over a fixed net’s headrope at any state of the tide” rule is to protect Salmonids. The Salmon Act 1986 made it legal for fishers to set a fixed net in tidal waters, provided it was authorised by the local fisheries committee. It appears that all the local fisheries committees agreed at that time that keeping nets out of the top of the water column was an appropriate way to protect salmonids and many districts share the same byelaw wording, varying only in the number of metres specified.

However, the SAMARCH project findings mean SxIFCA and the Environment Agency needs to reconsider its approach to protecting salmonids. Evidence of salmonids swimming throughout the water column means protecting only the top 1.5 metres of the water column is no longer sufficient.

In 2015, the Environment Agency recommended¹: “For sea trout – total net ban (with or without physical and/or temporal restrictions) in all inshore areas (potentially defined by a depth contour or distance from shore measurement; see Section 4.4), unless there is evidence that sea trout are not present/vulnerable to local fisheries.”

¹ Environment Agency - Review of protection measures for Atlantic salmon and sea trout in inshore waters, Dr. Katie Sumner, Senior Research Scientist, Evidence Directorate October 2015

Charles Bacchus was the Environment Agency representative on SxIFCA Committee when the original proposed byelaw was developed. He left before the amendments of 2020 were confirmed. In 2020, David Curtis asked Charles by email about the SxIFCA Committee minutes that said "Charles Bacchus said that, as had been discussed at length at several Technical Subcommittee meetings, 1.5m gave good protection and most netting did not take place on the surface." Charles replied:

"I'm not sure the minutes accurately reflect the context of the discussion regarding the proposed netting measures. At that time the draft byelaw included 5 near shore areas closed to fixed netting with the remainder of the district subject to a 12 month 1.5m head rope restriction for fixed nets. As far as I'm aware little surface fixed netting takes place in deeper water in the district (ie outside of the then proposed closed areas) so in combination the proposals seemed reasonable as they provided protection for salmonids throughout the district. I did not suggest that 1.5m over the head rope provided adequate protection in isolation. Indeed the netting review was undertaken because the IFCA accepted that the existing Fixed Engine Byelaw required updating in order to better protect salmonids and marine species in our rivers and IFCA District."

Charles also commented: "No I haven't seen any SAMARCH results (despite a quick search of the website this morning) although I'd be surprised if sea trout didn't utilise the entire water column at some stage. Indeed, when asked at one meeting what the optimum protection for salmonids would be, I suggested the starting point for discussion could be no netting at all."

We have now reviewed the SxIFCA Technical Subcommittee minutes and note:

- "legal advice had been received from the Environment Agency regarding salmonid protection"². It may be that this advice is important to understanding if the proposed byelaw delivers sufficient protection to salmonids and so we would like SxIFCA to provide this advice to us and to make it available to the public.
- the Environment Agency representative, Charle Bacchus, was unhappy with the proposal to continue with the "1.5m of water over the head -rope" rule, in light of the spatial restrictions (netting exclusion zones) being abandoned, and wanted to see a 2m rule instead. "CB didn't feel that a 2m headline restriction was too large and could be an acceptable compromise"³.

² Meeting of 27 June 2019

³ Meeting of 11 December 2019

It is deeply concerning that the Environment Agency representative on SxIFCA Committee objected to the continuation of the 1.5m rule because it did not provide sufficient salmonid protection.

SxIFCA's current proposed byelaw fails to deliver the protection that the Environment Agency generally recommends and fails to deliver the protection that the Environment Agency's representative on SxIFCA Committee negotiated during his tenure (netting exclusion zones together with a 1.5m rule).

Drift nets

In 2015, the Environment Agency said⁴ the restrictions applying to fixed nets should also apply to drift nets "The recommendations in the above sections are therefore equally relevant to drift nets and they should be subject to the same restrictions."

It is unfortunate that the proposed byelaw appears to have been drafted without taking account of the Environment Agency's recommendation for drift nets and would allow drift nets to be set at the surface. However, as with its fixed netting proposals, SxIFCA now needs to reconsider its drift netting proposals in the light of the SAMARCH findings.

We have reviewed the MMO landing data for Sussex in 2023. Drift netters landed only 395kg of fish, with a value of just £1,472. Only three vessels were active, so an average value of less than £500 each before costs. Assuming a generous profit margin of say 50%, this represents an average profit of £250 for each of the three vessels. This extremely low economic value needs to be weighed against the risk to salmonids and the socio-economic damage to recreational fishing.

Seine and Ring nets

We note that according to the MMO landing data for 2023, the no fish at all were landed using seine nets or surrounding (ring) nets. Surely SxIFCA should take advantage of this and prevent seine nets and ring nets from being used in SxIFCA district in the future in view of their negative impact on salmonids and recreational fishing?

⁴ Environment Agency - Review of protection measures for Atlantic salmon and sea trout in inshore waters, Dr. Katie Sumner, Senior Research Scientist, Evidence Directorate October 2015

“At any state of the tide” wording

There is uncertainty as to the original purpose of these words, apparently drafted in 1986 in the course of discussions between the precursors of Defra, the IFCAs and the Environment Agency on how to protect salmonids from nets in coastal waters.

Simon Toms of the Environment Agency, in correspondence with David Curtis on SxIFCA’s original proposed byelaw, observed:

“In my view, the head line depth is too shallow and it does need to include the “at any state of tide” requirement.

The 3 m headline depth requirement at any state of tide is a general rule of thumb that is far more protective if applied with the at any state of tide condition.

Otherwise, commercial netmen would still be able to net in what is meant to be a protected area on high tide and the net would still be legal. However, If the net is not lifted on high tide, the net would become illegal on low water and this would clearly make enforcement much more onerous. The “at any state of tide condition ” would mean that if you know the depth of water from a sounder and the tidal range, the net could be determined to be illegal immediately and therefore removed without risk of killing more fish.”

In 2018, the Environment Agency wrote to SIFCA saying:

The Environment Agency has concerns about the enforceability of headline restrictions. Unless a net is on the surface, headline restrictions are more difficult to enforce than spatial limitations on where nets can be operated. Any depth headline restriction if within a final proposal, should specify as being at any state of the tide.

So the Environment Agency sees value in retaining the “at any state of the tide” wording so that the byelaw operates in practice as a spatial limit.

SxIFCA now says it is enforcing the netting byelaw as if this wording does not exist – it will only remove a net if it has less than 1.5 metres of water over the headrope at the time officers are attending the net. Yet it is unclear if this is a correct interpretation of the law and we are not aware of any legal advice having been sought on this point.

We believe the words “at any state of the tide” were included in current byelaw (and the netting byelaws of other IFCAs) to operate effectively as a spatial exclusion – no nets could be set in places where, at a lower state of the tide, the net would not have

1.5 metres of water over the headrope. This would prevent fishers from setting nets close to shore across high tide.

Water over the net headrope - enforcement

SxIFCA has made contradictory statements about its ability to enforce this rule.

On the one hand it has said "The Authority has enforced this restriction to date, and therefore there is no reason why it should not do so in the future, if and when the final proposed NPB is implemented".

But SxIFCA's Senior Management Team's report to the quarterly committee meeting on 24th January 2019 said: "The use of the prohibited area measured from the shoreline will simplify the 1.5m headrope regulation compliance for stakeholders and regulators alike.", indicating the enforcement of the rule is difficult.

In 2019, SxIFCA Officer Dr Alberto Kavadellas advised that it was difficult to enforce this byelaw, but Officer Sean Ashworth advised SxIFCA has no difficulty enforcing the current 1.5m netting byelaw and that they would remove a net that would clearly have insufficient water over the headrope later in the tide (a statement that SxIFCA now disagrees with, saying it would be too difficult to judge if a net would not have 1.5 metres of water over the headrope at some time later than the time of inspection).

In 2019, SxIFCA Technical Subcommittee member GF said "it was very difficult to enforce the existing regulation"⁵

As noted above, in 2018 the Environment Agency told SIFCA it "has concerns about the enforceability of headline restrictions. Unless a net is on the surface, headline restrictions are more difficult to enforce than spatial limitations on where nets can be operated."

We are aware of reports of it being common to see nets in SxIFCA district in areas where they cannot have 1.5 metres of water over them, indicating the rule is not well-enforced or well complied with.

It is difficult to avoid concluding the water over the net headrope rule is difficult to enforce and an alternative approach is needed.

There is no point making a netting byelaw that will perpetuate a known enforcement problem, since it will not achieve its aim. SxIFCA's previously proposed, but

⁵ Meeting of 11 December 2019

abandoned, netting exclusion zones would be far easier to enforce than the water over the net headrope rule.

As to how those netting exclusion zones should be delineated, we believe excluding nets by reference to a charted depth contour would be the best solution and we point to Northumberland IFCA as an example of where this approach is used, for example specifying "The net shall be placed seaward of the 5m depth contour line". We recommend that SxIFCA contacts NIFCA to find out how effective the use of a contour line to delineate an area has been.

Twait and Allis Shad

We are advised that the MMO's Registered Buyers and Sellers Landing data shows that four Sussex vessels were responsible for 100% of the UK's Allis and Twaite Shad catch in 2023, with 54% of catches in "Gillnets and entangling nets". This suggests SxIFCA needs to consider how it will protect these protected species from netting.

"seek to balance the needs of different needs of persons engaged in the exploitation of sea fisheries resources in the district" MACAA 2009

SxIFCA has previously said it has not considered the needs of recreational fishers (including sea anglers and spearfishers) at all when developing its netting bylaw. Reading through the relevant Technical Subcommittee minutes, it is noticeable that there was no discussion on how the rules for commercial netting would impact recreational fishers. It seems there was no attempt by SxIFCA to balance the needs of commercial netters and recreational fishers when drafting commercial netting proposals, despite the requirement in MACAA 2009.

The minutes of the SxIFCA Technical Subcommittee meeting of 7 December 2017 state "The driver for management issue was not purely protection of salmonids, TD said, but was about the interaction with sensitive fisheries habitats and nursery areas for **commercial fisheries species**" (our emphasis). But our fish belong to all of us, not just to commercial fishers and it is unwelcome to see SxIFCA suggesting otherwise and suggests bias.

SxIFCA documents say the abandonment of exclusion zones was due to feedback from commercial fishers. No mention is made of the feedback from recreational fishers.

We hope SxIFCA will make use of this consultation to identify the needs of recreational fishers and to make a conscientious effort to balance the needs of both commercial fishers and recreational fishers when proposing commercial netting rules.

Stakeholder	Needs
Sea anglers	<p>The ability to cast from shore (for some sea anglers 200 yards) without the risk of snagging on nets. We understand the Porpoises sea angling club in Hove closed due to nets being set too close to their local shore-based competition venue. We have seen discussions on sea angling forums about nearshore netting preventing sea angling. One poster observed “he actually netter 50 yards in front of me. If I hadn’t reeled my line in, he would have dumped the net straight on top of it”.</p> <p>Access to fish: nearshore netting strips large quantities of fish from the nearshore area. This damages the quality of sea angling in the short term and in the long term. Some sea anglers do not fish for several days following nearshore nets having been set, since experience tells them there is little point.</p> <p>Fish such as bass exhibit site fidelity and it may be years before young bass take the place of bass that have been removed.</p> <p>Commercial fishers can fish out to 6NM, but shore anglers can only fish out to 200 yards, so it is essential to shore anglers that there are good levels of fish available to catch in the 200 yards from shore and that these have not been removed by nearshore netters.</p>

We have received the following from the New Beach Angling Club in Pett Level.

“To whom it may concern

We are a small fishing club based at Pett Level. We have 55 members who once enjoyed plentiful fish in the Rye Bay area.

We used to have good competitions every two weeks with everyone catching fish.

The netting situation in Rye Bay can prevent us from getting to the fishing grounds due to the large amounts of nets in the area.

We no longer have competitions due to the lack of any fish in the last few years.

Any changes to the netting laws will impact this further.

We have seen nets being placed close to shore and drift netting being practiced in the Pett Level/Winchelsea Beach, so close to the beach swimmers and other water users are at risk.

The toll on birds and sea mammals must be considered as well.

Netting should be pushed further offshore to allow for other sea users to enjoy the benefits of net free zones.”

Impact Assessment

The Impact Assessment needs amending to take account of the above points. In particular it should recognise the damage to recreational fishing socio-economics of allowing netting to take place extremely close to the shore, and the recent SAMARCH findings.

The IA makes much of the need to protect nearshore areas yet fails to recognise that nearshore areas will not be protected since the proposals will allow netting extremely close to the shore at high tide.

The IA mentions the Water Framework Directive suggests “sensitive management in transitional and coastal waters (out to 1nm) in order to meet Good Ecological Status, but the netting proposal fails to deliver protection from nets in most of the 1NM area.

The IA remarks on a notable herring drift net fishery. According to the MMO landing data for 2023, this fishery involved 2 vessels, landed 29kg of herring with a total value before costs of £122.12. It seems ridiculous that SxIFCA should be compromising its protection of nearshore waters for a fishery that has a near zero or even negative economic value. At the very least, SxIFCA should be working to phase out this fishery.

We note that according to the MMO landing data for 2023, the no fish at all were landed using seine nets or surrounding (ring) nets. Surely SxIFCA should take advantage of this and prevent seine nets and ring nets from being used in SxIFCA district in the future?

The IA refers to an improved recreational experience. However for recreational fishers, allowing nets to be set very close to the shore (by removing the spatial aspect of the “at any state of the tide” language) is a very negative development.

It should be noted that the IA incorrectly refers to the "Maintenance of the 1.5m headrope regulation". The deletion of the words "at any state of the tides" reduces the protection provided by the regulation.