

Dublin, 12 July 2012

**Subject: Rules on marking and identification of fixed gears and beam trawl.**

Dear Director General Evans,

Thank you for your letter of 24 April 2012, where you address a number of issues raised by the North Western Waters RAC (henceforth, NWWRAC) regarding the interpretation of the rules on marking and identification of passive gear.

The NWWRAC appreciates your detailed overview in your response in page 1 of the decision-making process and underlying principles (objectives and approach) for the adoption of the Control Regulation (EU) No. 1224/2008 as well as the implementing rules of Regulation (EU) No 404/2011 that effectively derogated Regulation No 356/2005.

Furthermore, we would like to comment on some of the statements you made in page 2 in relation to the scope and interpretation of certain articles of EU Regulation No 404/2011 – i.e. technical modifications and changes on the marking of the gears in comparison to previous regulation.

These can be summarised in the following categories:

**a. Specific remarks – comments on articles of EU Regulation 404/2011**

1. Distance between marking flags and flag dimension - Article 15 (4(a))

Contrary to your statement, the dimension of the flag is not included in EU Reg. 404/2011. The only length specified in the regulation refers to the spacing between flags which shall be 20cm. We would like to ask you to provide a more comprehensive explanation on this matter to make sure there is a proper understanding by the end users – i.e. fishing vessels and fishermen affected by this Regulation.

2. Top sign in the end marker buoy - Article 15(5) and Article 16

The NWWRAC accepts your explanations and have no further comments on this point as this is explicitly dealt with in Annex IV of the Implementing Regulation.

3. Intermediary buoys - Article 17

The NWWRAC is satisfied that the length of the gear for marking an intermediate buoy has been raised from 1 to 5 nautical miles for passive gears. However, the intermediate buoys (without mast) shouldn't include any lights.

#### 4. General end marker buoys - Article 15(2)

Regarding the specification for mast height, it is worthy to note that the minimum height of the mast (measured from the top of the float to the bottom edge of the first flag) has been raised from 80cm in EC 356 of 2005 to 100cm in EU 404 of 2011. The text of the regulation is contrary to your statement that *“the size of the mast has been reduced from 1.5m to 1m”*. Closer inspection reveals that the 1.5m you refer to in EC 356/2005 refers to an arbitrary minimum total height of the mast, a specification that was omitted from EU 404/2011.

The only measure that has eased the use of the buoys is the removal of the radar reflector requirement from EU 404/2011. Along with the handling and operational improvements the radar reflectors removal will also shave 25cm off the height of the buoy. Unfortunately the increase in minimum mast height has compensated for any height saving benefit. The following table gives the dimensions of the components and the total height of an eastern and western buoy as specified in EU Reg. 404/2011.

Minimum height of mast from top of float to bottom of first flag	Flag (width)*	Distance between flags	Yellow flashing light (length)	Luminous band (width)	Minimum length of eastern buoy (from top of float to top of mast)	Minimum length of western buoy (from top of float to top of mast)
100cm	40cm	20cm	25cm	6cm	171cm	262cm

\*not specified in EU 404/2011, taken from EC 356/2005

#### 5. Pots and traps - Article 6 of Reg. (EC) 356/2005 and Article 11(2) (a) of Reg. (EU) 404/2011

We fundamentally disagree with your interpretation of article 6 regarding the inclusion of pots and traps in Regulation (EC) 356/2005. There is a fundamental difference between pots and traps and other forms of static gear (such as longlines or drifnets) which was reflected in the non-inclusion of pots and traps in Regulation (EC) 356/2005. The problems posed by the requirements to **mark** pots and traps are in no way comparable to those pertaining to other passive fishing gear; **identifying** pots and traps is an entirely separate issue which can be achieved very satisfactorily with polyform buoys as already described in our previous letter.

In addition to the practical and safety hazards posed to crew by these requirements, the requirements for buoy lights would pose a serious hazard to other sea users in areas where the concentration of gear lighting would reduce the likelihood of detecting the presence of small vessels at night.

Regarding your statement on the rationale behind the inclusion of pots and traps under the scope of the gear marking provisions of EU 404 of 2011, we would like to request more information as the reasons behind this decision, in our opinion, remain unclear.

For the sake of clarity we include your statement in your letter of response:

*“As far as pots and traps are concerned, we would like to point out that according to the previously applicable rule (Article 6 of Regulation (EC) No 356/2005), each passive gear carried on board or used for fishing had already to be clearly marked, in line with the FAO guideline that a gear marking system should apply to all types of fishing gear. The way of marking pots and traps is described in Article 11(2)(a) of Regulation (EU) No 404/2011, and was established after discussion with Member States”.*

The NWWRAC would like to point out that pots and traps have always been marked in accordance with national and European regulations (prior to EU 404/2011) as suggested by the FAO, i.e. with a buoy marked with the registration letters/ numbers of the vessel.

Therefore, we cannot agree with your interpretation above and we fear that the balance of this legislation might be biased towards the interests of Control and Enforcement authorities and agencies and against the legitimate interests of fishermen.

Finally, it is also important to indicate that Article 3 of EC Reg. No 356/2005 provides a clear and concise definition of passive gear – i.e. pots and traps are not included in the definition.

**For the above reasons, the NWWRAC would like to request clarification about whether pots and gears are excluded from the definition of passive gears as contained in Article 2(6)(c) Regulation (EU) No 404/2011, given that they cannot be based in the previous Regulation (EC) No 356/2005.**

**b. General remarks:**

The NWWRAC welcomes your point that European gear marking systems should be in line with FAO guidelines but we would like to remind you that the FAO proposed standard specifications for the marking and identification of all fishing vessels and fishing gears (referred in your letter as “FAO guidelines”) states that gear marking devices should be:

- a) Simple;
- b) Inexpensive;
- c) Easily manufactured having regard to locally available materials;
- d) Easily read or deciphered;
- e) Able to stay attached;
- f) Durable; and,
- g) Designed so that they don’t interfere with the operation and performance of the fishing gear.

The members of the NWWRAC (including many key representatives of the EU commercial fleet with passive gear) are of the opinion that the current European standardised form of marking gear is neither simple, inexpensive, easily manufactured or designed so that it does not interfere with the operation and performance of the fishing gear; and that further adjustments and improvements should be made to improve the crew safety.

As a result, the NWWRAC would like to know why was the scope of the regulation expanded given that concerns remain with the gear marking system set out in EC 356/2005 and highlighted by an EU funded study. In particular, it would be useful to explain the reasons why some of the recommendations were adopted and others were not. A list of the main accepted and rejected recommendations is annexed below.

We hope that you find our comments useful and we look forward to your reply to our queries.

Yours sincerely,



Bertie Armstrong  
NWWRAC Chairman

## Annex I.

### List of changes recommended to the gear marking system set out in EC Reg. 356/2005 made under BIM report (FISH/2007/03/Lot No. 3)

Proposed alterations to the end marker buoys specifically include:

- a) Removal of the requirement to double the number of components on the buoy in the western sector.  
**Not accepted**
- b) Reducing the required components to one flag, one luminous band, one flashing light and an overall mast height of 1.5m.  
**Not accepted - Western buoy requirement persists under EU 404 of 2011; total mast height of eastern buoy is 170cm approx. and western buoy is 260cm approx.**
- c) Removal of the requirement to use radar reflectors.  
**Accepted**
- d) Removal of the requirement to use intermediary buoys of the type specified in the current regulations.  
**Not accepted - Increase in the distance requiring intermediate buoys from 1.5nm to 5nm makes a big difference.**
- e) The opinions of fishermen, enforcement agencies, the RAC's and other stakeholders should be taken into account in modifying EC No. 356/205 (including any increase in scope).  
**Not accepted**