



# Byelaw Technical Working Group

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## Progress Report

**Report for the D&S IFCA Byelaw & Permitting Sub-Committee**

**February 2019**

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## Summary

The Byelaw Technical Working Group (BTWG) was established by the D&S IFCA Byelaw & Permitting Sub-Committee (B&PSC) on the 11<sup>th</sup> October 2018. The membership, function and reporting requirements have been set out in Terms of Reference. The BTWG do not have delegated powers for decision making.

In summary, the role of the BTWG is to conduct technical elements of byelaw (and permit condition) work on behalf of the B&PSC and report back with their recommendations and draft legal documentation that members of the B&PSC can view, discuss and potentially approve for on-going work.

To date the BTWG has met on two separate occasions:

- 26<sup>th</sup> November 2018
- 8<sup>th</sup> February 2019

The content of this report meets the reporting requirement as set out in the Terms of Reference by providing all members of the B&PSC with a documented account of work completed to date. This report will also be displayed on the D&S IFCA website as part of the Authority's commitment to transparency with officer papers used at meetings as set out in the D&S IFCA publication scheme.

## Tasks

The B&PSC set the following tasks for the BTWG:

1. To develop a draft Application Byelaw to replace the current Emergency Application Byelaw.
2. To develop draft Diving Permit Conditions in preparation for consultation to incorporate identified items as previously agreed by the B&PSC in 2018.
3. To develop a draft (amended) Mobile Fishing Permit Byelaw to recognise the required changes that have been and discussed and agreed by the B&PSC in 2018.

## Additional Information

The BTWG have been able to highlight an issue associated with the present Potting Permit Conditions regarding the use of bait when compared to the 2019 Landing Obligations. Members of the B&PSC will be briefed on this issue and some information regarding this issue is contained in this report.

Task 3 – the technical development of an amended Mobile Fishing Permit Byelaw, to satisfy the need to subject it to a five-year review, has not started at this time. Information relating to this element of working is contained within this report.

## Application Byelaw/Exemptions Byelaw

### Background Brief

The existing Emergency Application Byelaw enables the Authority to grant dispensations/relief from other Byelaws to enable exploitation of sea fisheries resources.

Conditions can be and are applied within the dispensations. Each dispensation is valid for a period not exceeding 12 months.

The Emergency Application Byelaw allows consents to be issued for:

- a) scientific purposes
- b) stocking purposes
- c) breeding purposes

If possible the B&PSC favoured that the scope of the Byelaw be increased to include educational purposes.

The initial expectation was that the Emergency Byelaw would be replaced by 9<sup>th</sup> May 2019. Failing this, a maximum extension of six months must be approved by the Secretary of State.

### Focus by the BTWG

- Examination of the relatively recently developed Emergency Application Byelaw to highlight any current weakness with content, wording and structure
- Examination of different drafting options and assessment of difficulty to complete the tasking.
- Consideration applied to the number (and complexity) of dispensations historically issued by D&S IFCA.
- Consideration of the time pressure to complete the work using different formatting options
- Consideration over the use of supporting documents such as Policy or Guidance documentation and the use of a pro-forma application form.
- Consideration in relation to transparency regarding the process and time frame associated with the issuing of dispensations.
- Consideration regarding the cost of officer time processing applications for dispensations

### Amended Application/Exemptions Byelaw

A draft Application Byelaw has been prepared but has been renamed the Exemptions Byelaw. To provide scope to the exemptions/dispensations that can be issued, the Byelaw has been linked (in paragraph 3) to the Authority's duties as set out in section 153 and 154 of the Marine and Coastal Access Act 2009. These duties are already relatively broad in nature and all exemptions/dispensations can be considered when compared to these duties but should not detract from the Authority meeting these duties.

The draft Exemptions Byelaw has incorporated the potential for the Authority to charge fees for the processing of applications (paragraph 12). Although not forming part of the Byelaw, an initial payment schedule of fees has been prepared based on the cost per hour of preparing the required paperwork. Members should consider and discuss the fees presented in the payment schedule and the rationale for establishing different fees.

## Impact Assessment

Although it would be relatively small, an Impact Assessment to accompany the Exemptions Byelaw is a requirement. At this time, this has not been prepared. If members are satisfied with the draft Byelaw, then this work will begin. The Exemptions Byelaw is an enabling byelaw and therefore the impact on stakeholders is expected to be non-existent or minimal. There would be some potential (monetised and non-monetised) benefits for the Authority. Stakeholders (normally organisations) would benefit from a successful application to gain an exemption/dispensation; however, the introduction of fees would need to be explained as it can be considered to be a monetised cost for the applicants especially if the application is complex and time consuming to process.

D&S IFCA can review its internal process for issuing exemptions/dispensations and possibly improve it; however, officer time will still be needed to process even the simplest of exemptions/dispensations. It was the view of the BTWG that the Authority should allow for the charging of fees within the Byelaw, however establishing the parameters for these fees should be discussed by the Byelaw & Permitting Sub-Committee. An assessment of how complex the historic dispensations have been to formulate, and the time taken by an Officer or Officers to complete the required task is being assembled and will be presented to members.

<b>Hours assembling the permission</b>	<b>Cost</b>
0 to 1	No charge
1 to 2	£50
Each additional hour	£50 per hour

A full transcript of the draft Exemptions Byelaw 2019 is set out below:



## **Devon and Severn**

### **Inshore Fisheries and Conservation Authority**

### **MARINE AND COASTAL ACCESS ACT 2009**

### **Exemptions Byelaw 2019**

The Authority for the Devon and Severn Inshore Fisheries and Conservation District in exercise of its powers under sections 155 and 156 and 158 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

## Interpretation

1. In this Byelaw-
  - a) “the Authority” means the Devon and Severn Inshore Fisheries and Conservation Authority as defined in articles 2 and 4 of the Devon and Severn Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No. 2212);
  - b) “the District” means the Devon and Severn Inshore Fisheries and Conservation Authority as defined in articles 2 and 3 of the Devon and Severn Inshore Fisheries and Conservation Order 2010;
2. The Authority, subject to paragraph 3, may consent to the undertaking of an activity within the District with or without conditions, for a period not exceeding twelve calendar months by any person, with or without a vessel, otherwise than in accordance with part or the whole of a Byelaw;
  - a) made by the Authority or
  - b) enforced by the Authority under the provisions contained in the Marine and Coastal Access Act 2009 (Transitional and Savings Provisions) Order 2011.
3. Authorisation may be given for any activity relating to the discharge of the Authority’s duties under sections 153 and 154 of the Marine and Coastal Access Act 2009.
4. An application for authorisation in accordance with paragraphs 2 and 3 may only be made by using the printed forms available from the Authority’s office or its website.
5. The application shall be determined within 60 days of receipt of the application at the Authority’s office by the Chief Officer or a Deputy Chief Officer and the Chair or a Deputy Chair of the Authority on behalf of the Authority.
6. Where the Authority grants a written authorisation, it shall;
  - a) be signed by the persons determining the application;
  - b) set out the reasons for granting of the written authorisation;
  - c) state any conditions upon which the written authorisation is granted and
  - d) be sent to the postal or email address provided on the application form.
7. Where the Authority has declined to grant a written authorisation, it must give written notice which shall;
  - a) be signed by the persons determining the application;
  - b) set out the reasons for declining to grant the written authorisation;
  - c) be sent to the postal or email address provided on the application form.
8. A person who fails to comply with any conditions within the Authorisation contravenes this Byelaw and is guilty of an offence.

9. An authorisation given under this Byelaw may be revoked by the Authority by written notice.
10. Written notice that the Authority has revoked an authorisation shall be sent to the postal or email address provided on the application form.
11. In making a determination under this Byelaw, the Authority may consult with other persons as it deems appropriate.
12. The Authority may charge a fee as it shall determine from time to time for determining an application or an appeal under this Byelaw.

I hereby certify that the above Byelaw was made and agreed by the Authority on xxxx 2019.

(Signature)

Matthew Mander

Acting Chief Officer

Devon and Severn Inshore Fisheries and Conservation Authority.

Brixham Laboratory, Freshwater Quarry, Brixham, Devon, TQ5 8BA.

#### **Explanatory Note (not part of Byelaw)**

This Byelaw enables the Authority to consider and potentially grant permission for a person or persons to conduct an activity that would otherwise be a contravention of a Byelaw or a Permit Condition within a Byelaw that the Authority has inherited or introduced. Any permission will only be issued, where in the view of the Authority, the permission does not detract from the Authority's duties as set out within section 153 and 154 of the Marine and Coastal Access Act 2009.

The Byelaw provides transparency regarding how any such application is considered and processed within a specified time. Any fee charged to the applicant is proportionate to the time taken to prepare the conditions relating to any permission that is granted. Expected fees are set out in the payment schedule that is highlighted to any stakeholder making an application.

#### **Recommendation of the BTWG**

The recommendation from the BTWG is that the B&PSC consider if this draft is suitable in its present format. If so, a "consultation" impact assessment will be created, and both can be sent to Defra with a view to the Byelaw being made. The Byelaw and "consultation" Impact Assessment will then be presented to members at the Byelaw and Permitting Sub-Committee in May 2019 with a view to members voting for the Byelaw to be made by the Authority. Officers can then be actioned to conduct a period of formal consultation. Following this consultation any objections can be addressed and a final Impact Assessment created to accompany its final submission to Defra.

The time needed to replace the emergency Byelaw will now extend beyond the 12-month period that is allotted to replace an emergency Byelaw. A six-month extension will be requested from the Secretary of State which will provide enough time to complete the process.

## Diving Permit Conditions

### Background Brief

Identified items for inclusion within the Diving Permit Conditions, in preparation for further consultation were as follows:

- Removal of reliance on deeming clause
- Retain Category Two Catch Restrictions but tailor restrictions for possibility of an additional daily allowance of scallops
- Add protection for spiny lobster (Recently cast shell)
- To add additional protection (no removal of) for spiny lobster in MCZ (Bideford to Foreland Point)
- To introduce (as far as possible) the Lundy Island “No Take Zone” legacy measure as a diving permit condition for both Category One and Category Two Fishers.

### Focus by the BTWG

- Examination of the existing format, numbering and interpretations
- To recognise that the Diving Permit Conditions only apply for divers removing crab, lobster and scallop and not the activity of diving
- Consideration over harmonizing the approach taken (permit content) as compared to other D&S IFCA permits for other fishing methods
- Consideration regarding additional use of Annexes linking to specific spatial permit conditions
- Recognition that Category Two Permit Holders do not require the ability to nominate a named representative to conduct the activity on their behalf
- Recognition that some wording needed refinement, so it was legally stronger
- To use additional wording to make the existing conditions easier to understand or clarify specific aspects of them

### Amended Diving Permit Conditions

Draft Diving Permit Conditions have been prepared. They incorporate all of the identified items previously agreed by members of the Byelaw and Permitting Sub-Committee.

### Key Changes

The amended Diving Permit Conditions prepared by the BTWG are set out in this report. The five species of shellfish (edible crab, spider crab, lobster, spiny lobster and scallop) have been consistently listed in full throughout the permit (where applicable) to clarify specific restrictions. The catch restrictions have been amended to effectively remove the reliance on the deeming clause that remains at this time in the overarching Byelaw. During the re-drafting process the overall protection of spiny lobster has gone slightly beyond the initial brief given to the BTWG. The prohibition on the removal of parts of edible crab and lobster (paragraph 1.2 - c) has been amended to include spiny lobster. Three new Annexes have been introduced to apply some of the required spatial restrictions. This includes the introduction of the Lundy No Take Zone, the prohibition on the removal of spiny lobster from three MCZ areas and also a prohibition (removal of defined shellfish and storage of defined shellfish) from an area at Lundy Island (Knoll Pins).

All changes made within the draft Diving Permit conditions will be explained during the focussed phase of consultation.

The draft Diving Permit Conditions are transcribed in full as follows:

# Devon and Severn IFCA Diving Permit Byelaw

## The Permit Conditions:

### Interpretations

In the following Flexible Permit Conditions:

“the Authority” means the Devon and Severn Inshore Fisheries and Conservation Authority as defined in articles 2 and 4 of the Devon and Severn Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No. 2212);

“berried edible crab” means any edible crab carrying any spawn attached to the body or some other exterior part of the crab, or which is in such a condition as to show that at the time when it was taken it was carrying spawn so attached;

“berried lobster” means any lobster or spiny lobster which is carrying any spawn attached to the tail or some other exterior part of the lobster, or which is in such a condition as to show that at the time it was taken it was carrying spawn so attached;

“co-ordinate” means a co-ordinate on the World Geodetic System 1984 Datum (WGS84);

“the District” means the Devon and Severn Inshore Fisheries and Conservation Authority as defined in articles 2 and 3 of the Devon and Severn Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No. 2212);

“mutilated lobster” means a lobster or spiny lobster where any of the five flaps of the tail fan is missing or mutilated in such a manner that could hide or obliterate a V-notch;

“V” notched lobster” means a lobster or spiny lobster with an indentation in the shape of the letter “V” or resembling the shape of a “V” made in any one or more of the five flaps on the tail fan;

### Species

“edible crab” means a crab of the species *Cancer pagurus*;

“lobster” means a lobster of the species *Homarus gammarus*;

“scallop” means a scallop of the species *Pecten maximus*

“spider crab” means a crab of the species *Maia squinado*;

“spiny lobster” means a lobster of the species *Palinurus elephas*.

## The Permit Conditions

### 1. Catch Restrictions

As provided by paragraph 19(a) of the Devon and Severn IFCA Diving Permit Byelaw, the following permit conditions apply:

- 1.1 A permit holder or named representative is not authorised under this Permit to remove from a fishery within the District any edible crab, spider crab, lobster, spiny lobster or scallop if the Permit Holder or Named Representative has retained on board or has in their possession any catch that does not comply with any of the catch restrictions set out in paragraphs 1.2 to 1.4.3 inclusive.
- 1.2 A permit holder or named representative is not authorised under this Permit to remove from a fishery within the District:
  - a) any 'V'-notched or mutilated lobster or spiny lobster;
  - b) any berried lobster, spiny lobster or edible crab;
  - c) any part of an edible crab, lobster or spiny lobster which is detached from the carapace of the crab or lobster;
  - d) any edible crab, lobster or spiny lobster that has recently cast its shell.
- 1.3 A permit holder or named representative is not authorised under this Permit to remove from a fishery within the District:
  - a) a female edible crab less than 150mm measured across the broadest part of the carapace;
  - b) a male edible crab less than 160mm measured across the broadest part of the carapace;
  - c) a scallop less than 100mm measured across the broadest part of the flat shell;
  - d) a lobster less than 90mm measured as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace;
  - e) a spider crab less than 130mm measured as the length of the carapace, along the midline, from the edge of the carapace between the rostrums to the posterior edge of the carapace;
  - f) a spiny lobster less than 110mm measured as the length of the carapace from the tip of the rostrum to the midpoint of the distal edge of the carapace;
- 1.3.1 All such species falling within the above prohibitions in paragraphs 1.2 and 1.3 must be returned immediately to the sea without further injury.
- 1.3.2 The measurement of the size of a marine organism will take place in accordance with the provisions laid down in Annex XIII Article 18(1) of Council Regulation (EC) 850/98.
- 1.4 Additional Category Two Catch Restrictions

- 1.4.1 A Category Two permit holder is not authorised under this permit to remove from a fishery within the District in any calendar day more than:
- a) a total of two lobsters, however comprised, from the species of lobster and spiny lobster, and
  - b) a total of three crabs, however comprised, from the species of edible crab and spider crab and
  - c) a total of **X** scallops.
- 1.4.2 Subject to the restrictions imposed under paragraph 1.4.1 (a), (b) & (c), a Category Two permit holder is only authorised under this Permit to remove from a fishery within the District, edible crab, spider crab, lobster, spiny lobster or scallop for personal consumption.
- 1.4.3 Where a Category Two permit holder fishes under one of more permits issued by the Authority, a Category Two permit holder is not authorised to remove from a fishery within the District in any calendar day more than:
- a) a total of two lobsters, however comprised, from the species of lobster and spiny lobster, and
  - b) a total of three crabs, however comprised, from the species of edible crab and spider crab and
  - c) a total of **X** scallops.

## **2. Gear Restrictions**

As provided by paragraph 19 (b) of the Devon and Severn IFCA Diving Permit Byelaw, the following permit conditions apply:

### **2.1 Category Two Gear Restrictions**

- 2.1.1 A Category Two permit holder is not authorised under this permit to use any container or any other device to store any edible crab, spider crab, lobster, spiny lobster or scallop in the sea or in an estuary within the District.
- 2.1.2 A Category Two permit holder is not authorised under this permit to land any edible crab, spider crab, lobster, spiny lobster or scallop removed from a fishery within the District other than on the day of capture.

## **3. Spatial Restrictions**

As provided by paragraph 19 (c) of the Devon and Severn IFCA Diving Permit Byelaw, the following permit conditions apply:

- 3.1 In the areas as defined by the coordinates set out in the attached Annex 1 of this Permit (Lundy Island No Take Zone), a permit holder or named representative is not authorised to remove any edible crab, spider crab, lobster, spiny lobster or scallop.

- 3.2 In the areas as defined by the coordinates set out in the attached Annex 2 of this Permit (Lundy, Skerries Bank and Surrounds, and Bideford to Foreland Point Marine Conservation Zones), a permit holder or named representative is not authorised to remove any spiny lobster.
- 3.3 In the areas as defined by the coordinates set out in the attached Annex 3 of this Permit (Knoll Pins), a permit holder or named representative is not authorised to use any container or any other device to store any edible crab, spider crab, lobster, spiny lobster or scallop.

#### **4. Time Restrictions**

As provided by paragraph 19 (d) of the Devon and Severn IFCA Diving Permit Byelaw, the following permit conditions apply:

##### **4.1 Category One Time Restrictions**

- 4.1.1 A Category One permit holder or named representative is not authorised under this permit to remove scallop from a fishery within the District during the months of July, August and September each year.
- 4.1.2 A Category One permit holder or named representative is not authorised under this permit to remove scallop from a fishery within the District during the period from 1900hrs to 0700hrs (local time) the following day.

##### **Note**

Annexes (Charts) will be created to accompany the spatial restrictions based on the formatting used in other D&S IFCA permit conditions.

##### **Recommendation of the BTWG**

The recommendation from the BTWG is that the B&PSC consider actioning officers to subject the amended draft Diving Permit Conditions (and associated Annexes yet to be created) as set out in this report to a period of consultation.

The findings of the consultation will be reported to members in May 2019. Based on the findings of the consultation, a decision can then be taken by the B&PSC to potentially introduce the amended Diving Permit Conditions and issue them to existing permit holders or any new applicant for a Diving Permit.

## Mobile Fishing Permit Byelaw

### Background Brief

The current Mobile Fishing Byelaw was the first permit type of byelaw introduced by the Authority. As part of the 5-year review of it, the BTWG are required to examine the present Byelaw, identify potential changes and how they can be incorporated into the permit byelaw structure.

The Byelaw must be reviewed after 5 years, however the deadline for completion of the work is more flexible.

### Focus by the BTWG

- Amendment is needed to the structure, numbering
- Amendment is needed to the interpretations
- Consideration of any weaknesses that exist with present wording
- Amendment of wording in the Permit Conditions for both Category One and Category Two Permit Conditions that are issued under the overarching Mobile Fishing Permit Byelaw
- To examine and consider amendment to Annexes associated with the Permit Conditions
- Consideration of the phrasing “relevant fishing vessel” for inclusion within the Byelaw
- Consideration of the issue of permits to non-powered vessels
- Removal of the Deeming Clause from the overarching Mobile Fishing Permit Byelaw
- Consideration related to the use of and issue of Certificate Discs to permit holders
- Environmental considerations relating to the use of Mobile Fishing

### Report by the BTWG

The review of this Byelaw does not present a change in the way D&S IFCA manages this fishing activity; however, for this exercise to be efficient, the Byelaw and associated Permit Conditions must be examined and amended at the same time. With some uncertainty regarding environmental assessment work and its conclusions at this immediate time, work has been suspended in the short term. It was not considered appropriate for the BTWG to recommend any changes at this time and potentially repeat the exercise later in 2019.

### Recommendation of the BTWG

The recommendation is that the B&PSC considers delaying further action on tasking the BTWG to make amendments for consultation until later in 2019 when more discussion information has firstly been presented to the B&PSC.

## Additional - Potting Permit Byelaw

### Background

Changes to the Potting Permit Byelaw and the associated permit conditions have not been actioned by the B&PSC at this time. However, during discussions of the BTWG, an issue with the present Potting Permit Conditions has been recognised that is associated with the [Landing Obligation 2019](#).

### **Report by the BTWG**

The present Potting Permit Conditions contain a section relating to the use of bait. It reads as follows:

- 2.5.3 A permit holder or named representative is not authorised under this Permit to use any finfish as bait within the District unless it meets minimum sizes set out in Annex XII, Article 17 of Council Regulation (EC) 850/98.

This Potting Permit Condition does not support the use of finfish that has been landed due to the Landing Obligation and subsequently sold for the use of bait. The present Potting Permit Conditions are more restrictive than other legislation.

### **Consultation**

As specified within the Potting Permit Byelaw, consultation would be required to introduce, remove or vary any of the flexible permit conditions, including the relaxation of permit condition 2.5.3.

### **Comment**

The B&PSC can consider amendment or removal of this Potting Permit Condition to reflect the landing obligation and the use of the resource as bait.

End of report. (12/02/19)