



Diving Permit Conditions

Have Your Say

Potential Changes to the Permit Conditions

What's the purpose of this information gathering exercise?

Your view is important. D&S IFCA is inviting you to have your say on several proposed changes to the Diving Permit Conditions.

- **The information gathering exercise ends on 12th April 2019.**

We are directly contacting everyone on our mailing list and are giving you options on how to respond. All stakeholders can respond even if they don't have a Diving Permit. You may wish to respond to one or more of the proposals.

This information gathering exercise is part two of a Three-Year Review of the Diving Permit Conditions. This review must take place.

What are Proposed Items?

There are several items, which are explained in more detail. In summary they are:

- **Number of scallops that can be taken by a recreational diver per calendar day (Category Two Permit)**
- **Applying additional restrictions to protect Spiny Lobster**
- **To introduce some spatial restrictions within the Diving Permit Conditions**
- **To remove a reliance on a deeming clause that is within the Diving Permit Byelaw**

You may wish to know how and why these items have been selected?

A report has been prepared to give you some background detail. It can be found [here](#).

The Proposed Changes and Questions

Catch Restrictions:

Number of scallops that can be taken by a recreational diver

The present Category Two Diving Permit Conditions allow for a recreational diver to take up to 15 scallops per calendar day. The setting of a daily recreational bag limit is not solely for conservation objectives. D&S IFCA has a duty¹ to balance the different needs of persons engaged in this fishing activity. The needs of Category One (commercial) permit holders are different to those in the recreational sector and this daily bag limit does not apply to that sector, whereas the closed fishing period for scallops in July, August and September does not apply to recreational divers (Category Two Permit Holders).

When specifying the original catch restrictions, the Authority believed it had achieved a fair balance between the divergent interests of commercial and recreational fishers. For non-commercial divers, the Authority believed that it had set limits which were entirely appropriate and proportionate to personal consumption. Although detailed landing data is not collected at this time, the permit system helps to improve estimations of total recreational take when full compliance with the restrictions is assumed.

On 11th October 2018 the Byelaw and Permitting Sub-Committee concluded that the present restriction should be subjected to consultation; however, a definitive level should not be suggested. It is open for stakeholders to provide their view on what constitutes the correct level of recreational take.

Questions:

- 1. What level number of scallops should be considered as being appropriate for a recreational diver using a Category Two Permit to take each calendar day?**
- 2. What reasons do you have for your suggestion?**

How would the Diving Permits be amended?

If changes are agreed, then paragraph 1.4.1 (Catch Restrictions) would be amended as follows:

- 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 total of two lobsters, however comprised, from the species of lobster and spiny lobster, and
 - a total of three crabs, however comprised, from the species of edible crab and spider crab and
 - a total of **X** scallops.

¹ MaCAA 2009 – 153 (d) – seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Protection of Spiny Lobsters that have Recently Cast their Shell

There is currently a lack of protection to “soft shell” spiny lobster in the present Diving Permit Conditions. It has been concluded that this has arisen in error during the development of the original diving permit conditions. This oversight has been addressed in the creation of the Netting Permit Byelaw and both the Mobile Fishing and Potting Permit Conditions have been subjected to consultation and amended to resolve this issue. It is the view of the Byelaw and Permitting Sub-Committee that the Diving Permit Conditions should also be amended to provide additional protection to spiny lobsters that have recently cast their shell.

Question:

- 3. Do you have any reasons why the Diving Permit Conditions should not be amended to provide protection for spiny lobsters that have recently cast their shell?**

Prohibition on the Removal of Parts of Spiny Lobster

Although not discussed in detail at past Byelaw and Permitting Sub-Committee meetings, it was recognised in the re-drafting process that the opportunity existed to add additional protection for spiny lobster regarding a prohibition on the removal of parts of the species. It was agreed that this additional condition is subjected to consultation.

Question:

- 4. Do you have any reasons why the Diving Permit Conditions should not be amended to introduce a prohibition on the removal of parts of spiny lobster?**

How would the Diving Permits be amended?

The present numbering of the Diving Permit Conditions would be amended. If changes are agreed, then paragraph 1.2 (Catch Restrictions) will now read as follows:

- 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.

Note

The new list (a-d) is presented in a slightly different way to the original Diving Permit Conditions. Although the words spiny lobster have been added to sections (a) and (b), this does not introduce a new restriction. The definition of “V-notched lobster” did originally include spiny lobster. The same is true regarding the definition of “berried lobster”. The addition of the wording spiny lobster in these sections are to add clarity rather than a new restriction.

Prohibition on the removal of Spiny Lobster from Tranche 2 Marine Conservation Zones (MCZ)

Current Diving Permit Conditions prohibit the removal of spiny lobster from within the Skerries Bank and Surrounds MCZ and also Lundy MCZ. For the Tranche 2 MCZ site, Bideford to Foreland Point MCZ, spiny lobster is a feature of conservation importance with a 'recover to favourable conservation' objective and therefore need protecting. D&S IFCA is able to introduce management to protect the feature, prevent deterioration of spiny lobster populations and ensure the conservation objective is furthered. It is the IFCA's statutory responsibility to seek to further the conservation objectives of the sites. Permit conditions related to mobile fishing, potting and netting have already been amended to achieve this objective. It is the intention of D&S IFCA to amend the Diving Permit Conditions to add protection for spiny lobster in the Bideford to Foreland Point MCZ.

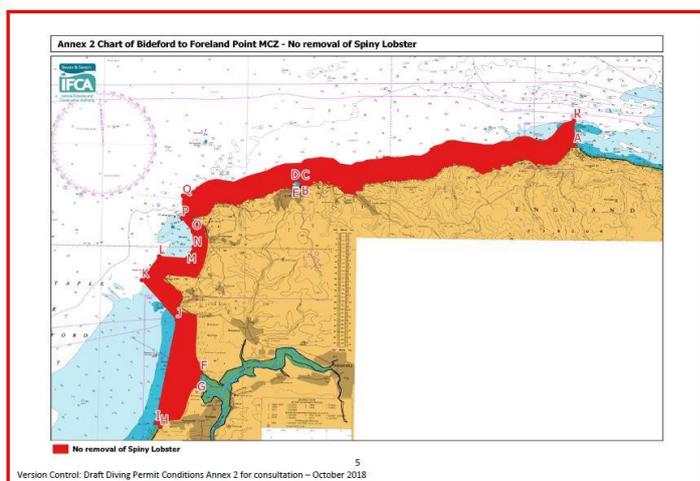
Question:

5. Do you have any reasons why the Diving Permit Conditions should not be amended to prohibit the removal of spiny lobster from the Bideford to Foreland Point MCZ?

How would the Diving Permits be amended?

The formatting and numbering of the existing Diving Permit Conditions will be amended. This condition would be categorised as a spatial restriction rather than a catch restriction. A chart (shown in draft form and in much smaller scale) would become part of the Diving Permit Conditions and should be read in conjunction with the spatial restriction text in section 3. The finalised Annex 2 Chart would define coordinates that apply in this coastal area.

- 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.



Adding the Lundy Island, No Take Zone to the Diving Permit Conditions

A stand-alone legacy byelaw is already in place and enforced by D&S IFCA. It is important to recognise that the legacy measure applies to all persons. No person can remove any sea fish from within the defined area at Lundy Island. The diving permits are issued for divers who wish to take crab, lobsters and scallops. Permits are not issued for divers that don't remove the defined shellfish or those that may want to take fin fish. **The legacy Byelaw would not be revoked as part of a potential change to the diving permit conditions.**

To add clarity for divers with permits it is considered beneficial to incorporate an element of this restriction into the present Diving Permit Conditions. This addition to the Diving permit conditions would not add an additional restriction to fishers however; this addition would potentially simplify restrictions for divers who do have a permit as more of the regulation will be in one place (the permit). An Annex (chart) can be created and issued with the permit conditions.

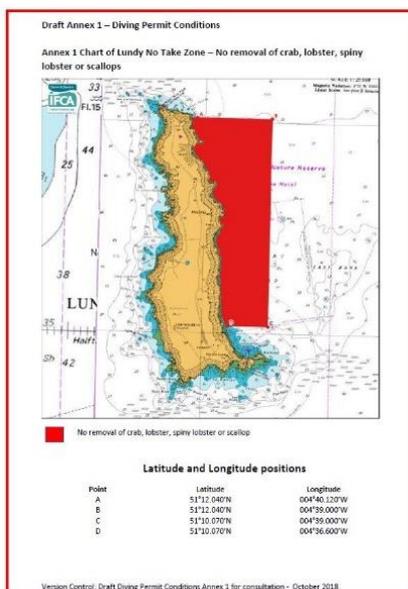
Question:

6. Do you have any reasons why the Diving Permit Conditions should not be amended to clarify that divers can't remove edible crab, spider crab, lobster, spiny lobster or scallop from the Lundy Island No Take Zone?

How would the Diving Permits be amended?

The formatting and numbering of the existing Diving Permit Conditions will be amended. This condition would be categorised as a spatial restriction rather than a catch restriction. A chart (shown in draft form and in much smaller scale) would become part of the Diving Permit Conditions and should be read in conjunction with the spatial restriction text in section 3.

- 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.



Knoll Pins (Lundy Island) Restriction

The current Diving Permit Conditions contain a spatial restriction that applies to the Knoll Pins area at Lundy Island. The current restriction reads as follows:

A permit holder or named representative is not authorised under this permit to remove any sea fish resources from or use pots for the purpose of storing sea fish resources within 100m of low water mark around the Knoll Pins as defined by mean low water spring tides.

The re-drafting process offers the opportunity to add clarity to this restriction and introduce a chart (Annex) to aid permit holders identify where the restriction applies. The area is already within the Lundy No take Zone so a prohibition on removal of sea fisheries resources is not required. It has also been recognised that the original wording is not legally suitable for continuing use as the Diving Permit Conditions only apply to shellfish species that are defined in the Diving Permit Byelaw. The proposal is to retain a restriction on the use of a store pot and the Permit Conditions would be amended.

How would the Diving Permits be amended?

- 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.

A Chart (Annex) would be prepared in a similar way to the others shown as examples.

Question:

- 7. Do you have any reasons why the Diving Permit Conditions should not be amended to clarify the restriction regarding the Knoll Pins area at Lundy Island?**

To Use Permit Conditions to Replace a Reliance on the Deeming Clause

As with the Mobile Fishing and the Potting Permit Byelaws, the implementation of the Diving Permit Byelaw was a significant change from the more traditional byelaw model. The format used to make the other permit-based byelaws was largely replicated when the Diving Permit Byelaw was constructed and therefore a deeming clause was introduced.

Why was a deeming clause introduced?

A deeming clause was introduced to support the effective enforcement of some of the management measures that were introduced in the Byelaw and permit conditions. Byelaws only apply within the District, normally six nautical miles from the coast or, in places on the north coast of the D&S IFCA District, the median line with Wales. Proving where vessels or individuals have been fishing and what was caught where is an inherent and significant challenge and a potential enforcement weakness for any byelaw. Measures that apply within

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the byelaws such as minimum conservation reference sizes can be different (more restrictive) than domestic or EU legislation. The absence of a deeming clause can reduce the ability to enforce the legislation and consequently the effectiveness of the management measures.

What are the alternatives to deeming clauses and how can this be achieved?

In 2016, the Department for Environment & Rural Affairs (Defra) issued advice to D&S IFCA. It was explained that deeming clauses are rarely used in the UK justice system. D&S IFCA's prosecuting solicitor was in agreement with the issued advice, and as an alternative, recommended that permit conditions should be fully utilized instead.

The deeming Clause can be removed from the Diving Permit Byelaw when it is reviewed and re-made. In the shorter term, the permit conditions can be amended to produce equivalent effectiveness as a deeming clause in a more legally acceptable manner. This has already been demonstrated in the development of the Netting Permit Byelaw where permit conditions (catch restrictions) were formatted in a different way.

The replacement on the reliance on the deeming clause has already been subjected to consultation for both the Mobile Fishing and Potting Permit Byelaws (permit conditions). Consistency of management is one of the guiding principles of the review of byelaws being undertaken by D&S IFCA. It is proposed that the Diving Permit Conditions are amended to harmonise with other permit conditions being issued for other methods of fishing.

How would the Diving Permits be amended?

A new section within the catch restrictions section of the permit would be added as follows:

- 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.

Further Explanation

The sizes of some shellfish are different outside of the D&S IFCA District. This new section directly links the use of the permit to the rest of the catch restrictions. A Diving Permit Holder can transit through the District with shellfish that doesn't meet the conditions as set out in the permit. They would not be able to remove shellfish from the fishery within the District whilst they have shellfish on board that doesn't comply with the Diving Permit Conditions.

Question:

- 8. Do you have any reasons why the Diving Permit Conditions should not be amended to remove the reliance on the deeming clause?**

How will your information help us?

We will collate the information you provide, and this may help our Byelaw and Permitting Sub-Committee in their decision making.

Why is D&S IFCA doing this work?

Because we must.

D&S IFCA must manage the exploitation of sea fisheries resources within its District. This is specified within the Marine & Coastal Access Act 2009.

Do you want more detail?

Our information guides are there to help you better understand our work and the reasons why we are doing it. Further detail about our review of Byelaws and the work conducted by our Byelaw & Permitting Sub-Committee can be found in our [guide](#).

How you can have your say

You have several options to choose from:

1. Contact us via email – consultation@devonandsevernifca.gov.uk
2. Write to us
3. Telephone us or come along in person and speak to one of our officers during dedicated time slots which are as follows:

Thursday 21 st March	(16.00 to 18.00 hrs)
Saturday 30 th March	(10.00 to 12.00 hrs)
Wednesday 3 rd April	(16.00 to 18.00 hrs)
Tuesday 9 th April	(16.00 to 18.00 hrs)

Visit us:

Devon and Severn IFCA
Brixham Laboratory,
Freshwater Quarry,
Brixham,
TQ5 8BA.

Phone us:

01803 854648

- **This information gathering exercise ends on 12th April 2019.**

How to follow our work?

If you are not already on our mailing list, then you can get yourself added by [contacting D&S IFCA](#). You will then be directly notified of all our consultations. You will also receive our free e-newsletter.

Keep an eye on our [consultation page](#) on our website to read about other work being done and how you can get involved and have your say.

Follow our [latest news items](#) displayed on our website or our face book page.

Explore our website [Resource Library](#) for an extensive range of our information and publications. It's all free.

What do we do with your information – Privacy Policy

We protect any personal data that you may provide. Any personal data submitted in this information collecting process will not be shared with others. The content of responses will be summarised and anonymised where appropriate for documenting in reports that will be presented to the Byelaw & Permitting Sub-Committee and published on our website.

D&S IFCA has a privacy policy which can be found by visiting our website (home page) www.devonandsevernifca.gov.uk

- You can change your preferences at any time.
- We have a duty to consult with D&S IFCA Permit Holders.

You can manage your preferences by contacting D&S IFCA.