



Diving Permit Byelaw

A Three-Year Review of the Permit Conditions



Supplementary Report – A Summary of Response from the Consultation on Focussed Items and Permit Condition Proposals

(8th March 2019 to 12th April 2019)

23rd April 2019

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1. Aim of this Supplementary Report

This supplementary report (April 2019) has been prepared for members of the Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) Byelaw and Permitting Sub-Committee (B&PSC). This supplement is intended to assist the decision making of members regarding a series of potential changes to the Diving Permit Conditions (Version Control 1st August 2018) as part of the mandatory Three-Year Review of the Diving Permit Conditions. This supplement report will also be published on the D&S IFCA website and will be available for all stakeholders to read. It includes embedded information (Hyperlinks) that give readers access to additional information. All additional information embedded in this report is freely accessible within different sections of the [D&S IFCA Website Resource Library](#).

A previous [supplement report](#), focussing on the response from phase one of the three-year Review of Diving Permit Conditions, was presented to and discussed by the B&PSC on 11th October 2018. The discussion items and minutes taken at that meeting have been combined to produce an overarching [Byelaw Development Report](#) that documents the complete process to date. Members agreed to subject several items for a focused period of consultation:

- **Number of scallops that can be taken by a recreational diver**
- **Protection of spiny lobsters that have recently cast their shell**
- **Prohibition on the removal of spiny lobster from MCZ¹ areas**
- **Incorporating the Lundy Island No Take Zone into the Diving Permit Conditions**
- **To use Permit Conditions to Replace a reliance on the Deeming Clause**

On 26th February 2019, the B&PSC were presented with a [progress report](#) of the work undertaken by the Byelaw Technical Working Group (BTWG) on behalf of the B&PSC. The BTWG highlighted how the Diving Permit Conditions had been formulated to potentially introduce the items selected by members for the focused consultation. The BTWG also highlighted that the re-drafting process would produce implications for Diving Permit Holders and go beyond the original items selected by members.

Additional Restrictions:

- **Prohibition on the Removal of Parts of Spiny Lobster**
- **Knoll Pins (Lundy Island) Restriction**

On 26th February 2019, members agreed to subject the additional restrictions, that had arisen from the re-drafting, to consultation along with the items originally selected. This supplement report focusses on how the final phase of consultation was conducted and its findings.

Process and making use of this supplement report:

1. Members to examine the collated response information from the final phase of consultation
2. Members to evaluate the collated response information in conjunction with the proposed measures set out in the consultation
3. Members to decide how to proceed with a view to the issue of amended permit conditions (including Annexes)

¹ Tranche 2 Marine Conservation Zones (MCZ)

2. Engagement with Stakeholders

An overarching Byelaw Development Report was produced to accompany the final phase of the consultation.

- [**Diving Permit Byelaw – A Three-Year Review of the Permit Conditions – Phase Two Consultation \(8th March to 12th April 2019\)**](#)

The relatively large overarching report documents how and why the specific items had been selected for the final phase of consultation. It provides details of how decision making is conducted by D&S IFCA.

Getting Stakeholders to Engage

Electronic engagement formed the basis for communication. An electronic (Mail chimp) email was directly circulated to over 1000 D&S IFCA email contacts (including members) with a request for it to be forwarded to others that may also have an interest in the subject matter. All stakeholders were invited to respond and not just those with a Diving Permit.

The “Have Your Say – Potential Changes to the Diving Permit Conditions” campaign was produced to highlight all the focussed consultation items and demonstrate how amended permit conditions would be formulated to potentially introduce those items. The email circular provided an easier read for stakeholders as compared to the overarching Byelaw Development Report.

Hard copies of information were not circulated and were not requested by any stakeholders, however all permit holders without an email address were notified by post about the consultation.

- [**Mail Chimp \(PDF\) Have Your Say Campaign**](#)



The D&S IFCA website was utilised to support the campaign and the [consultation page](#) was used to display the information. In addition, officers created a news item blog for the home page news scroll highlighting the “Have Your Say” campaign. The blog was also posted on the D&S IFCA Facebook page.

- **653 of the Mail Chimp e mails were opened by stakeholders**

Stakeholders had the opportunity to use all options provided to have their say including a dedicated email response address. Four dedicated “surgery sessions” were arranged for one to one interaction with officers via visits to the D&S IFCA offices in Brixham or the answering of telephone calls specific to the focussed consultation items.

3. Consultation Items and the Response from Stakeholders

A total of 24 written responses were received during the consultation period (8th March to 12th April 2019) that related to the items as proposed. Most responses were from individual stakeholders but there were responses on behalf of the South Devon & Channel Shellfishermen Ltd and the British Spearfishing Association. No stakeholders took advantage of the four separate and dedicated surgery session time slots that were made available to them for an interview with an officer to provide some feedback.

Some of the submitted responses included content that went beyond the scope of the consultation and was not directly related to the specific consultation items. Although not relevant to this consultation, the additional information received from stakeholders has been summarised later in this report.

The consultation item on the number of scallops that can be taken by a recreational diver (per calendar day) produced the most feedback and this has been separated from the other items, so it could be summarised in more detail with a mix of narrative and the use of a summary table.

Consultation Items (other than scallop numbers)

The consultation items (other than scallop numbers) were presented with an explanation of each one, and why D&S IFCA had the intention of introducing them. The proposed permit condition wording was demonstrated along with a question for each formulated around the following wording:

- **Are there any reasons why D&S IFCA shouldn't make changes as proposed?**

There was general support for the proposals (separated from the number of scallops that can be taken by a recreational diver) as shown in the table below:

Table 1 – Overview of Responses (other than the number of scallops)

Item	Supportive	No Comment	Not Sure	Against
Protection of Spiny Lobsters Recently Cast Shell	15	7	2	0
Prohibition on Removal of Parts of Spiny Lobster	15	7	2	0
Prohibition – Removal of Spiny Lobster from Tranche 2 MCZs	14	7	2	1
Adding the Lundy No Take Zone as a Diving Permit Condition	13	9	2	
Knoll Pins (Lundy) Restriction	13	9	2	0
To Use Permit Conditions to Remove Reliance on the Deeming Clause	13	9	1	1

Lundy Island

The permit changes relating to the Lundy Island No Take Zone and the Knoll pins were confusing to two stakeholders who could not see why the permits would need to be amended to accommodate these restrictions.

Spiny Lobster

One stakeholder could not see the relevance of the prohibition on the removal of parts of spiny lobster. In his view parts should be able to be taken, if not deliberately removed, providing they counted towards the overall bag limit for that day. He felt this would promote more careful handling of the species.

Another stakeholder, who is a member of the Ilfracombe and North Devon Sub Aqua Club, did not support the proposal to prohibit the removal of spiny lobster from the Bideford to Foreland Point Marine Conservation Zone (MCZ). The response stated that he and other divers do not typically remove them. He commented that diving effort along this part of the coastline is minimal with only two diving clubs (the other being at Appledore) and very few visiting boats. He acknowledged that there were other divers not within those dive clubs and a small number of free divers that may visit the area, but not in large enough numbers to pose a threat to the species recovery. If stocks do improve then he can't see a reason why the removal of the occasional specimen would cause any problems and a prohibition is therefore not required.

A response was received from the Executive Officer of the South Devon and Channel Shellfishermen Ltd. This response was completely focussed on the protection of spiny lobster and did not comment on the other proposals. This organisation is supportive of amendments that protect spiny lobster. They favour the introduction of a permit condition to prohibit the removal of parts of spiny lobster and measures which will protect those that have recently cast their shell. This organisation reported that its members have seen an increase of juvenile spiny lobster in recent years and are keen to ensure that any local stock is subject to management that will secure and enhance its levels for the future.

Deeming Clause

The proposal relating to the deeming clause was confusing to one stakeholder that, although not against the proposed change, would prefer a better explanation of what it means. The stakeholder that was against the proposal relating to the deeming clause had the view that the permit fee should enable him to remove scallop when diving within the District, regardless of any catch on board taken from another region.

Officer Comments

There is an opportunity for a further explanation and clarity to be given to permit holders about the use of permit conditions to replace a reliance on the deeming clause. This type of approach has been taken with policy and guidance for other aspects of permit conditions, for example mobile fishing and what permit holders must do if an Inshore Vessel Monitoring System fails to function correctly. If members action this requirement to clarify the meaning of the permit conditions to replace a reliance on a deeming clause, this can be achieved via a separate policy/guidance document or the use of news items created by officers.

Number of scallops that can be taken by a recreational diver

This proposal generated most interest with the stakeholders that engaged. The present Category Two Diving Permit Conditions allow for a recreational diver to take up to 15 scallops per calendar day. 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. Members of the B&PSC actioned officers to consult regarding the numbers of scallops that could be taken but not to specify an amount. The following questions were used:

Questions Asked:

- 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?**

The Response

Nearly all stakeholders that submitted a response regarding the specific consultation items made suggestions concerning the number of scallops that, in their view, is appropriate for a recreational bag limit. No stakeholders raised an objection to having a bag limit imposed via the permit. The British Spearfishing Association suggested a level of 50 scallops per day.

Numbers suggested per calendar day ranged from 6 per day to a larger daily amount of 50. One response questioned the D&S IFCA's evidence base and decision making when setting an original bag limit of 15 scallops per day for human consumption.

The rationale provided for an increased bag limit was mixed with the following key observations often cited:

- **Recreational Diving Activity is not conducted as often as other forms of recreational activity**
- **Scallops and not crab or lobster is the favoured as a species to be taken by divers**
- **Not all recreational dives result in the taking of scallops**
- **Natural restrictions such as weather, tides and visibility limit the opportunity to take scallops**
- **The limitations of the equipment used (such as air and the handling of a collection bag) limit the opportunity to take scallops**
- **The bag limit should be enough to feed a family of four**
- **The bag limit should be enough for a main meal and not a starter**
- **It would be beneficial for the daily bag limit of scallops to provide enough to freeze so they can be eaten and enjoyed on another occasion**

Some responses indicated that some divers feel that the permit fee of £20 has resulted in more recreational divers taking scallops on more of their dives to provide additional value from the investment. Some stakeholders felt that a higher bag limit for scallops would be suitable considering that there is no bag limit in other IFCA Districts. There was concern raised in the responses that recreational overfishing is being observed taking place in Dorset.

Table 2 – Summary of Responses (number of scallops)

Response Number	Suggested Number	Rationale/Comments
1	24	His diving activity is limited to 30 dives per season. Not all dives target scallops. Bag limits are important as have witnessed illegal sale of excessive scallops in Dorset
2	18 to 20	Possibly allow more for freediving which is more difficult and self-regulating.
3	50	Recreational diving limited to once or twice per month, increase would produce minimal impact compared to commercial fishing. Divers limited by their equipment to remain safe and only has a single mesh bag to collect catch
4	24	6 scallops per person for a meal is reasonable. 2 lobsters, 3 crab and 15 scallops not normally found at same site
5	50	Reasonable amount for a meal and allows a few to be frozen for another time. Recreational diving is not conducted every day, more likely to be weekly
6	30	Only dives sites about twice per year. Current level is too low. Cornwall has no restriction
7	20 to 25	A good balance between commercial and non-commercial takers
8	24	24 is a better number for a meal for 4 people. 24 is a safe level for divers to collect in a bag and handle
9	40	Only goes diving about once a week at most. Suggests that many recreational divers go even less
10	25	Recreational diving only takes place about 7 months of the year. Dives likely to be only once per week during those months. Increase would have minimal impact.
12	6	This is enough for one meal. D&S IFCA should also restrict the number of days which should ideally be for commercial fishing only. Has witnessed recreational overfishing in Dorset.
13	15	Current level is adequate. For shore diving it is hard to find scallop areas. Has only landed about 40 scallops from about 25 separate dives within Devon during 2018
14	15 to 40	Can only dive about 12 times per year. Would prefer a monthly limit.
15	50	Not seen any science to establish the initial numbers. Recreational fishers have minimal impact on stock as compared to commercial fishermen. Recreational fishers have less opportunity to fish with 2 scallop dives completed in 2018. A 50-scallop limit would discourage illegal sale but provide a good quantity for 2 or 3 meals for a family of 4 people
16	15	Very few recreational divers catch crab or lobster. More divers take photographs rather than take shellfish. Current levels are more than generous.
17	15 to 30	30 for shore dives, 15 when a vessel is used. Recreational divers don't "target" scallops but like the opportunity to collect if they find them
18	25	Only dives 3 or 4 times per year. A trip takes a lot of organising. Freediving sites are small in area so has concerns about overfishing these sites and therefore a lower bag limit may be appropriate. A higher limit is more appropriate for more accessible sites that are off limits to scallop dredgers and are therefore more popular for divers

Response Number	Suggested Number	Rationale/Comments
19	10 to 20	Consider 2 separate limits (local divers and visiting divers). Locals will dive more often, visitors more likely to dive twice per month
20	15+	Time to dive recreationally (conduct the hobby) is limited. 15 scallops are only just enough for a meal and a lower number than this would become a starter rather than a main meal
21	40 to 50	Only dived once per week last summer as did most of my colleagues. Only on a few of those occasions were some scallops found. Would prefer a surplus to freeze for additional meals throughout the year.
22	15	15 scallops is sufficient for a meal for a family. This level is unlikely to have an impact on stocks
23	30 to 50	15 is ok, but a fee for permit has effect of divers taking a catch home more often as they feel they have pre-paid for them. Recreational diving is limited with time to conduct the activity, wind, tide and visibility.
24	15	The current bag limit should not be reduced. Diving in the UK is in decline as stated in surveys and the BSAC. Many Divers prefer warmer conditions and better visibility abroad. Many recreational divers only dive once or twice per week, mainly weekends. Not all divers take scallops. Recreational divers often don't use the same technology as commercial operators such as GPS to locate beds of scallops.

3. Additional Information and suggestions submitted by stakeholders

Within the responses submitted by stakeholders there were some comments and suggestions that went beyond the scope of the focussed consultation. Some of these suggestions would be more suited to a review of the Diving Permit Byelaw, rather than the Diving Permit Conditions or, in the case of a ban on scallop dredging, a review of the separate Mobile Fishing Permit Conditions. The suggestions included the following:

- **Setting a different level of scallop bag limits for local divers and visiting divers**
- **Setting a monthly bag limit rather than a daily bag limit (100 per month)**
- **Reduce the allowance of crab and lobster but increase the number of scallops**
- **All divers must be made to attend an environmental awareness course**
- **Allow the take of 1 spiny lobster per year**
- **Prohibit commercial divers from taking spiny lobster**
- **Control the number of dive boats and how many days at sea they can operate**
- **All dive boats should have tracking devices fitted**
- **Ban scallop dredging**
- **Amending the closed season for commercial diving for scallops**

The Closed Season

The current scallop closed season that is a permit condition within all commercial diving permits (and the Category One Mobile Fishing Permits) prompted a written response from a commercial diver. It also provided the basis for an in-depth telephone conversation with a different commercial diver expressing his own views and those of several other commercial divers with D&S IFCA permits.

These responses highlighted that the relatively low numbers of commercial diving ventures (approximately 25 Category One Diving Permits) within the District are impacted by the current closed season (July, August & September). This period of the year has typically the calmest weather conditions to operate a commercial diving vessel. The responses highlighted that diving vessels don't always have the alternative option of fishing beyond the six-mile limit (as compared to a scallop dredger) due to factors such as depth of water and the safety issues associated with diving in deeper water. The closure has reportedly had the effect of making it difficult to maintain a stable crew to operate the vessels as the three-month closure removes income for the crew. One response requested that D&S IFCA recognise the fishing activity of diving as a more environmentally friendly activity and should be considered in a different light (with more appropriate permit conditions) to those conducting scallop dredging. The written response suggested that in return for a removal of the closed season restriction, an increased minimum conservation reference (MCRS) of 110mm could be introduced and coupled with a total daily catch limit and a restriction on the total number of days that could be used for fishing.

Officer Comments

Whilst the D&S IFCA consultations are constructed and circulated to encourage feedback, a decision-making process must be followed. D&S IFCA Officers do not take decisions, this is the task for the B&PSC.

The Three-Year Review of the Diving Permit Conditions has been conducted with two separate phases. The first phase was an open invitation for concerns and observations to be made regarding all aspects of the Diving Permit Conditions. The suggestions regarding topics such as the closed season were highlighted in the phase one response and more information submitted at that time may have influenced B&PSC in determining which items were selected for the second and focussed phase of consultation. Consulting on a change to the closed season for scallops was not selected as a consultation item (for phase two) when it was discussed in October 2018.

The [Guide to the Work of the Byelaw & Permitting Sub-Committee](#) (November 2018) focusses on how a fisher/stakeholder can trigger a review of permit conditions. It is not impossible for the B&PSC to action further consultation on additional items, however members have agreed principles for conducting a review of Byelaws (and Permit Conditions). Members have also set out their expectations regarding the timing of suggestions for permit condition changes. All permit conditions are reviewed at least every three years and the overarching Diving Permit Byelaw must be reviewed after five years which is due in 2020. A request for permit condition changes outside of these periods is not impossible; however, the Authority must consider its resources and the time taken to conduct consultation work. Any potential changes to permit conditions would (as best practice) require a six-week period of consultation which would include notifying all existing permit holders. There is also work required by the Byelaw Technical Working Group to formulate permit conditions that could be used to potentially incorporate any changes to management. Stakeholders (including fishers/permit holders) should be aware that their proposals for permit condition change should not be a repeat of an item or topic recently highlighted and subjected to a consultation unless significant new evidence has been provided to justify the work needed.

4. Further Information & Hyperlinks

All additional information embedded in this report is freely accessible within different sections of the [D&S IFCA Website Resource Library](#).

- [Overarching Byelaw Development Report \(Accompanies Phase 2 Consultation\)](#)
- [The Phase 1 Consultation Supplement Report \(Presented to B&PSC in October 2018\)](#)
- [The B&PSC Minutes \(11th October 2018\)](#)
- [The BTWG Progress Report \(Presented to B&PSC in February 2019\)](#)
- [The Diving Have Your Say Campaign Circular \(PDF Version\)](#)
- [The Present Diving Permit Conditions \(Version Control August 2018\)](#)
- [The Diving Permit Byelaw](#)
- [Guide to the Work of the Byelaw & Permitting Sub-Committee \(November 2018\)](#)

End