

The Five-Year Review of the Mobile Fishing Permit Byelaw, the Diving Permit Byelaw and the Potting Permit Byelaw:

Background

Work by the Byelaw & Permitting Sub-Committee (B&PSC) and the Byelaw Technical Working Group (BTWG) for the review of the Mobile Fishing Permit Byelaw is on-going, with discussions regarding the implementation of new permit conditions for the management of sand eel trawling forming part of the work needed to progress drafting work. The delay in this workstream to date enables other aspects of spatial access to be incorporated into the drafting work. Habitats Regulations Assessments and Marine Conservation Zone Assessments are on-going and the returning formal advice from Natural England may be influential within the development work. Soon a draft byelaw (with associated permit conditions) will be produced that recognises information available at a specific point in time. Other changes that may be required to management (as set out in associated permit conditions) may not feature in the re-made Mobile Fishing Permit Byelaw and associated permit conditions; however, an on-going review of the permit conditions process as set out in the Byelaw will cater for this eventuality.

It is envisaged that the drafting work, regarding the language used, structure of paragraphs and formatting (including Annexes) will provide the basis for similar re-made Diving and Potting Permit Byelaws and the associated permit conditions used to manage those fishing activities. Although the different byelaws manage different activity, it is desirable if there is consistency in how they are all formatted and presented. Both the Diving Permit Byelaw and the Potting Permit Byelaws are due for a review as set out in the 2020-21 Annual Plan with more focussed work expected to begin in the Autumn. As explained above, the reviews of permit byelaws provide the opportunity and requirement for reviews of the associated permit conditions.

Stability and Further Changes to Permit Conditions

Both the Diving Permit Conditions and the Potting Permit Conditions have been reviewed at least once since the respective Byelaws were introduced in 2015. The Potting Permit Conditions have been amended more than once and additional management has been introduced when required. Due to the requirements to manage the Live Wrasse Pot Fishery, changes have been introduced that have not always coincided with the planned and mandatory three-year review periods.

Although it was always the intention for the permit review process to allow for change, the flexibility that the process offers, is not without complication and generates large volumes of work. Changes followed by relatively short-term re-visitation of permit conditions with a view to further change can cause potential confusion for stakeholders. A period of relative stability with the current management is considered by officers to be of benefit in the short term, prior to the start of the reviews of both the overarching Potting and Diving Permit Byelaws.

- ***It is recommended that; the process required for any changes to existing Diving or Potting Permit Conditions that may be considered necessary in the shorter term are incorporated into the review of the overarching Potting and Diving Permit Byelaws (and associated permit conditions).***

Review of the Diving Permit Byelaw

This review is not expected to be as complicated as the review of the Mobile Fishing Permit Byelaw; however a previous decision of the B&PSC regarding the development of a Hand Working Permit Byelaw has resulted in the activity of spear fishing being determined as suitable for inclusion in a re-made Diving Permit Byelaw. The scope of the Byelaw will be expanded to include management of finfish, rather than being limited to crab, lobster and scallop. Another aspect of the Diving Permit Conditions relates to both commercial diving activity and the mobile fishing sector.

Scallop Close Season

The closed season for scallops (July, August and September) applies to both the commercial diving and “at sea” mobile fishing sectors. It was derived from a legacy Byelaw introduced by Devon Sea Fisheries Committee although its area of application was extended to the whole District.

The opportunity has existed for both sectors to highlight concern associated with the closed season during set permit condition review periods, this opportunity has not been taken. More recently there has been increased correspondence from commercial divers impacted each year from reduced access to scallop stocks in the summer months and on-going business difficulties as a result of the Covid-19 pandemic. Enquiries have requested relaxation of management on a local level and the potential intervention of Defra to direct relaxation of fisheries legislation in an attempt of supporting business. The potential for further reviews of present Diving Permit Conditions (scallop closed season focussed) and the time scale for potential change has been answered by officers, with the planned review of the overarching Diving Permit Byelaw (and associated permit conditions) being the answer provided.

The B&PSC have previously highlighted the scallop closed season as relevant to both the commercial diving and mobile fishing sectors. Although there are clearly differences in the two fishing methods the B&PSC have concluded that the topic of any potential change to the scallop closed season should not be limited to one sector alone.

Whilst there is no suggestion from officers that the review of both the Diving Permit Byelaw and the Mobile Fishing Byelaw (and associated permit conditions) should result in changes to the scallop close season; pre-consultation at an early stage can provide more information and possibly evidence that may assist the decision making of the B&PSC for potential change. A proactive approach to engagement with fishers demonstrates an inclusive management approach and meets expectations of Defra regarding byelaw making.

It is the view of officers that an informal “Have Your Say” consultation including both sectors at the earliest opportunity may be of benefit for future discussions by the B&PSC that will ultimately dictate on-going legal drafting of both the Mobile Fishing and Diving Permit Byelaws (and associated permit conditions).

Officers and members can consider alternatives to the present permit conditions relating to the scallop closed season which can help generate a reaction in the pre-consultation.

Even without pre-determined suggestions for potential change, it is possible that fishers from both sectors will take the opportunity to come forward with strong rationale for change or other compromise solutions.

The findings will be documented, and officers will have time to assemble other evidence that may support or oppose any change to the status quo. The documented work will be presented

and examined by the B&PSC during other discussions relevant to the development and finalisation of remade Mobile Fishing and Diving Permit Byelaws prior to formal consultation.

It is recommended that;

Officers prepare and conduct an “open” type of “Have Your Say” informal pre-consultation with all stakeholders regarding potential changes to the scallop closed season.