



# The Development of the Exemptions Byelaw 2019

A compilation of reports and information relevant to the creation of the Exemptions Byelaw 2019

Final Report - 11<sup>th</sup> June 2020

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## Version control

Author	Version	Comments
Neil Townsend	Final Report – 11 <sup>th</sup> June 2020	A compilation of previously published information and documentation into a single publication to aid stakeholders examine the process and decision making during the creation of the Exemptions Byelaw 2019

## 1. Executive Summary

The Exemptions Byelaw 2019 was made by the Authority on 13<sup>th</sup> June 2019. This is the point at which the Byelaw (in an advanced draft form) can be subjected to formal consultation; however, it is only when the Byelaw is confirmed by Defra, that it comes into force. The byelaw making process can last for many months or even years dependent on differing factors and complications encountered. The final Exemptions Byelaw 2019 was subjected to a prolonged quality assurance phase and was changed significantly before it was confirmed by Defra on 14<sup>th</sup> April 2020.

The introduction of the Byelaw enables the Authority to consider an application relating to scientific work or for stocking or breeding purposes where a fishing activity is undertaken that would otherwise be in contravention of one or more of the byelaws, or one or more of the permit conditions that are associated with the respective permit byelaw. Exemptions are often referred to as dispensations, but for the purposes of this report will be referred to as authorisations.

The development of the Exemptions Byelaw 2019 followed on from the implementation of an Emergency Application Byelaw in 2018. The Emergency Application Byelaw provided a temporary replacement to the legacy Application Byelaw introduced by Devon Sea Fisheries Committee (DSFC), which was discovered to have significant, but unforeseen, weakness. The legacy byelaw did not enable Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) to provide authorisations regarding new byelaws permit byelaws made by the Authority.

The Emergency Application Byelaw, that came into force on 9th May 2018, had to be replaced within a defined time frame (1 year). Development of a replacement took longer than expected and a six-month extension for the Emergency Byelaw was sought and approved by the Secretary of State to enable more time to complete the process of introducing its replacement.

During the confirmation phase, legal advice was received which had a bearing on the structure and content of the Exemptions Byelaw 2019 as advertised during formal consultation in 2019. Amendments were needed to satisfy Defra, and this resulted in changes to the Byelaw (as compared to the version advertised during formal consultation) and resulted in a further delay. From November 2019 until April 2020, D&S IFCA was limited in the number of authorisations that it could issue via the original legacy Application Byelaw made by DSFC.

D&S IFCA adhered to the “byelaw making” advice published by Defra during the making of the Exemptions Byelaw 2019 and, not without reservation, accepted the legal advice provided by the Marine Management Organisation and Defra during the confirmation phase. The Exemptions Byelaw 2019, that is now in place, differs considerably from the version advertised during formal consultation and has reduced scope regarding the types of authorisations that can be considered by the Authority. The mandatory final Impact Assessment reflects the objectives and content of the final Exemptions Byelaw 2019 that has now been confirmed. This report provides an explanation as to why changes were needed which is not apparent when reading the final Impact Assessment.

Multiple documents were created to accompany the creation of this new legislation and the key documents are highlighted in this report. This report has been created to provide a full step by step account of the byelaw and decision-making process and to highlight all the key information and evidence that has been documented and considered during the making of the Exemptions Byelaw 2019. This report combines the relevant documents that were used throughout the creation of the Exemptions Byelaw 2019 and is intended to aid all stakeholders understand the significance of each and why and when they were created.

## 2. How to use this Report

### Key information for readers:

- This is a large document and it is recommended that readers utilise the contents page;
- The development process is set out in a logical order from the start to its conclusion;
- Each chapter aims to briefly explain what the document or documents are and what significance they had during the process;
- Chapters may contain transcripts of relevant documents or reports that are also available to read as stand-alone items by visiting the resource library on the D&S IFCA website;
- This report contains hyperlinks (embedded information) to other information published in the separate documents before they were combined in this single publication;
- Due to its size, and the embedded information (hyperlinks), this publication is more suitable to be read in its electronic form.

### The key documents transcribed and embedded in this report are as follows:

1. Byelaw & Permitting Sub-Committee (B&PSC) Minutes
2. Officers' Reports referred to at B&PSC Meetings
3. The Exemptions Byelaw 2019 Impact Assessment (14<sup>th</sup> June 2019) created for consultation
4. The Exemptions Byelaw 2019 - Formal Consultation Report (August 2019)
5. The Exemptions Byelaw 2019 Final Impact Assessment (26<sup>th</sup> February 2020) created for final submission to Defra

### Other sources of information - [www.devonandsevernifca.gov.uk](http://www.devonandsevernifca.gov.uk)

D&S IFCA's website includes a Resource Library.

Minutes are taken of all D&S IFCA Byelaw & Permitting Sub-Committee meetings.

[File B of the Resource Library](#) contains the minutes from these meetings dating back to 2015.

[File F of the Resource Library](#) contains the Impact Assessments for the Exemptions Byelaw 2019 as well as pdf versions of consultation circulars.

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### 3. Background: Legacy Measures & Emergency Byelaw

In 2018, D&S IFCA received legal advice regarding the legacy Application Byelaw (26<sup>th</sup> February 1998) introduced by DSFC. The legacy byelaw stated the following:

#### DSFC Application Byelaw

*The following Byelaws shall apply to the whole area of the Devon Sea Fisheries District except in cases to which the provisions of Section 6 of the Sea Fisheries Regulation Act 1966 apply. Provided that nothing in these Byelaws shall apply to any person bona fide fishing for sea fish or removing shellfish for scientific purposes or for stocking or breeding under written authority in that behalf of the Local Fisheries Committee signed by their Clerk and in accordance with the conditions contained in that authority.*

#### The Emergency Application Byelaw

The Chief Officer received legal advice that the Application Byelaw was no longer fit for purpose. The original was not detailed enough, lacked suitable structure and the wording within it lacked clarity. The Byelaw was not suitable for D&S IFCA to issue authorisations (Dispensations/Exemptions) relevant to the new permit-based byelaws that had been implemented by D&S IFCA. As this was an old legacy measure, there was no Impact Assessment to accompany it which would have fully documented the rationale and intended scope of the Byelaw. The immediate need to replace the legacy Application Byelaw was unforeseen and in accordance with Section 157 of the Marine and Coastal Access Act 2009, the Emergency Application Byelaw was made and agreed by the Authority on 9<sup>th</sup> May 2018.

### 4. Foundations for the Exemptions Byelaw 2019

D&S IFCA's byelaw review work is conducted by the Byelaw and Permitting Sub-Committee (B&PSC) who have delegated powers from the Authority. On the 11<sup>th</sup> October 2018<sup>1</sup>, members of the B&PSC were presented with an [officers' report](#) to explore options on how to potentially develop a permanent replacement for the Emergency Application Byelaw. It was explained to members that the Emergency Application Byelaw had limited scope regarding the authorisations that could be considered which were limited to the following:

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

Officers explained to members that although a permanent replacement should be established by May 2019, the opportunity did exist via drafting to potentially widen the scope of the Application Byelaw (later named Exemptions Byelaw 2019). It was also recommended that the technical elements of the task may be more suited for the smaller Byelaw Technical Working Group (BTWG) to complete, with their work reported back to all members of the B&PSC. Minutes of the B&PSC meeting held on 11<sup>th</sup> October 2018 can be viewed in full [here](#).

A vote was taken.

***That the newly formed Technical Working Group conduct the drafting work for the creation of a permanent Application Byelaw with the requirement to report back to members.***

**Proposed: Simon Toms  
All in favour**

**Seconded: Cllr Hellyer**

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<sup>1</sup> The meeting date of the B&PSC was originally set for 16<sup>th</sup> August 2018 as indicated on officers' papers.

## Byelaw Technical Working Group

The BTWG was established by the 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 and the role of the BTWG is to conduct technical elements of byelaw (and permit condition) drafting work on behalf of the B&PSC. The work of the BTWG must be reported to the B&PSC and will involve draft legal documentation and recommendations for the B&PSC to consider. Since its formation, the work of the BTWG has been made available for members of the B&PSC so it can be viewed, discussed, and potentially approved for on-going work.

A progress report of the work conducted by the BTWG was presented to members of the B&PSC on 26<sup>th</sup> February 2019. The full report can be viewed [here](#), and the relevant content of the report has been transcribed (in purple text) as follows:

### 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.

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

A full transcript of the draft Exemptions Byelaw was incorporated within the BTWG Progress Report. The recommendation of the BTWG was as follows:

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.

The minutes from the B&PSC meeting held on the 26<sup>th</sup> February 2019 can be viewed [here](#). Members of the B&PSC voted as follows:

***That the Exemptions Byelaw has been suitably drafted by the BTWG for on-going work and creation of an accompanying Impact Assessment.***

***Proposed: James Marsden      Seconded: David Cuthbert  
All in favour***

## 5. Making the Byelaw

On the 13<sup>th</sup> June 2019 the B&PSC were presented with a final draft of the Exemptions Byelaw 2019 and an accompanying consultation Impact Assessment. Following discussion recorded in the [minutes](#), the following was proposed:

***That the Exemptions Byelaw is made by the D&S IFCA Byelaw and Permitting Sub-Committee***

***Proposed: James Marsden      Seconded: Jim Portus  
All in favour***

***That the Impact Assessment for the Exemptions Byelaw (subject to amendments identified in the meeting and previously) is approved for formal consultation***

**Proposed: Jim Portus    Seconded: James Marsden**  
**All in favour**

## 6. The Consultation Impact Assessment (14<sup>th</sup> June 2019)

The creation of an Impact Assessment is a mandatory requirement when a new byelaw is made. The [Impact Assessment \(14<sup>th</sup> June 2019\)](#) was formulated to document the rationale and objectives for the making of the Exemptions Byelaw 2019 and to provide stakeholders with the evidence base that had been assembled at that time.

Defra guidance on how to conduct the formal consultation was followed and exceeded by D&S IFCA. The Impact Assessment was used during a formal period of consultation that was conducted in 2019. The formal consultation period effectively allowed the Impact Assessment (and the evidence base it contained) to be “tested”. Stakeholders were given the opportunity to provide new evidence that was not already documented and the opportunity to submit letters of objection (or support) for the introduction of the Exemptions Byelaw.

The Impact Assessment (consultation version) for the Exemptions Byelaw 2019 has been transcribed below, however (for formatting reasons) it is not the exact template that was used in the original. No attempts have been made to change the content in any way, including any spelling or punctuation errors that may have been present in the original document.

### The Transcript

<b>Title: Devon and Severn IFCA Exemptions Byelaw 2019</b> <b>IA No: D&amp;S IFCA 005</b> <b>Lead department or agency: Devon and Severn Inshore Fisheries and Conservation Authority</b> <b>Other departments or agencies: MMO</b>		<b>Impact Assessment (IA)</b>		
		<b>Date: 14<sup>th</sup> June 2019</b>		
		<b>Stage: Consultation</b>		
		<b>Source of intervention: Domestic</b>		
		<b>Type of measure: Secondary Legislation</b>		
		<b>Contact for enquiries:</b> M Mander Acting Chief Officer, D&S IFCA <a href="mailto:m.mander@devonandsevernifca.gov.uk">m.mander@devonandsevernifca.gov.uk</a> 01803 854648		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion: Opinion Status: <span style="color: blue;">N/A</span></b>		
<b>Cost of Preferred (or more likely) Option</b>				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2016 prices)	In scope of One-In, Three-Out?	Business Impact Target Status
			No	n/a

**What is the problem under consideration? Why is government intervention necessary?**

It is in the interest of the Authority and its stakeholders for a Byelaw to be introduced that enables the Authority to consider the issuing of authorisations for a person or persons to conduct an activity that would otherwise be in contravention of a Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) Byelaw or Permit Condition. The Emergency Application Byelaw that came into force on 9<sup>th</sup> May 2018 must be replaced within a defined time frame. A six-month extension for the Emergency Byelaw has been sought and approved by the Secretary of State to enable time to complete the process of introducing this replacement Byelaw. Although the Emergency Application Byelaw satisfies elements of the policy objectives, the Authority has recognised that increased scope would be beneficial to develop new fisheries and to manage other fishing related activities. There are different scenarios where the Authority and stakeholders can benefit from the issuing of authorisations. This would include scientific work that could add to an existing evidence base or contribute to a longer-term data set, potential to explore new fisheries through pilot projects such as aquaculture or allow for other activities such as gear recovery from a Marine Protected Area to be controlled. The Authority has recognised that without an Exemptions Byelaw in place there could be an adverse impact on the Authority’s ability to manage inshore fisheries as the opportunity to gain a better insight or understanding of the marine environment would be more restricted.

**What are the policy objectives and the intended effects?**

- To replace the Emergency Application Byelaw
- To revoke the Application Byelaw introduced by Devon Sea Fisheries Committee
- To enable exemptions to be considered and issued that would not detract from the Authorities duties as set out within Section 153 and 154 of the Marine and Coastal Access Act 2009
- To clearly define the process for applicants on how an application will be determined and any exemption issued to applicants
- To clearly define what steps the Authority may take when considering an application
- To clearly define the requirements for the Authority in the case where an application is refused by the Authority
- To be transparent regarding the applicant’s responsibility to assemble the information or evidence as determined by the Authority so that the Authority can fully consider the application for an authorisation.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

0. Do nothing.

1. Create an Exemptions Byelaw

All options are compared to Option 0, the preferred option is Option 1.

<b>Will the policy be reviewed? Yes. If applicable, set review date:</b> The Byelaw will be subjected to a review no later than five years after the byelaw comes into force.					
Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Chair of the Authority

Date: 14/06/19



**Summary: Analysis & Evidence Policy Option 1**

**Description:**

**FULL ECONOMIC ASSESSMENT**

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV) (£))		
			Low:	High:	Best Estimate:
2016	2016	10 <sup>2</sup>			-

COSTS (£)	Total Transition (Constant Price) Years	Average Annual (excluding transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			-

**Description and scale of key monetised costs by ‘main affected groups’**

This Byelaw states that the Authority may require an applicant at the applicant’s expense to assemble information and evidence to support their application. This may produce a monetised cost dependent on the nature of the application; however, this cannot be accurately estimated. Each application can be different and result in differing levels of supporting information and evidence that is needed to be submitted for the Authority to assess each application on a case by case basis.

It is possible that some applications may require more extensive research than others to determine if they can be approved. This may involve consultation with other persons or organisations. Although the Authority can assist the applicant, in terms of guidance and effective communication, the applicant has the responsibility to assemble any required information to support their application themselves. It is envisaged that clear guidance and communication can potentially reduce any potential costs to the applicant associated with the application and consideration of it.

<sup>2</sup> The standard timeframe for analysis is 10 years unless the situation requires a different amount of time for example the benefits will occur over a much longer period. If there is deviation from the standard 10 years this must be clearly explained in the main evidence section

Most applications for exemptions have historically been for scientific work or for re-stocking of shellfish projects. A number of these are typically repeat applications each year. The number of applications that are expected each year would not exceed twenty-five. In 2017, twenty-four dispensations were issued, and this number fell to twenty-two the following year.

Most historic applications have been relatively simple to assess, and similar applications would therefore not incur an excessive burden in terms of the time needed by an applicant to assemble the required information.

#### **Other key non-monetised costs by ‘main affected groups’**

Careful consideration is needed for every application for an exemption and this will be done on a case by case basis. This would include a thorough assessment, including having regard to the South Marine Inshore Plan and the South West Inshore Marine Plan as set out in Section 58 of the Marine and Coastal Access Act 2009. Conditions associated with the potential exemption will be considered and set out within any written authorisation that is issued. The Byelaw states that the application shall be determined within 60 days of the receipt of the application by the Chief Officer or a Deputy Chief Officer and the Chair or a Deputy Chair of the Authority on behalf of the Authority. A non-monetised cost to the applicant may be the time that they may have to wait for their application to be determined and processed. It is possible that the exemption may not be issued at all, or if it is issued, may not provide permission for the applicant to conduct the full extent of their requested exemption.

It is envisaged that effective communication with the applicant at an early stage, if required, can highlight any immediate or significant concerns associated with their application. The Authority has the option to introduce a separate and refined application form and guidance for applicants that clarifies what information may be needed from them so that the Authority can process an application. These steps may limit the applicant’s expectations regarding the issue of their own authorisation or the expected time frame for the processing of an such exemption.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>			
<b>High</b>			
<b>Best Estimate</b>	0	0	0

#### **Description and scale of key monetised benefits by ‘main affected groups’**

All monetised benefits cannot be estimated. Exemptions can be issued providing that they do not unduly detract from the Authority’s duties as set out in sections 153 and 154 of the Marine and Coastal Access Act. This increased scope set out within the Byelaw caters for a wider range of possible scenarios and reduces the possibility that the Byelaw will need replacement or amendment in a period of less than five years. Reducing the risk that the Byelaw will need amendment or replacement could result in a cost saving to the Authority which would be associated with further development, advertising and implementation of a replacement.

### Other key non-monetised benefits by ‘main affected groups’

- The introduction of the Byelaw is a mechanism to allow controlled activities to take place that would otherwise be in contravention of one of the Authority’s Byelaws. This has benefits to both the Authority and those persons or organisations conducting the activity that would require an exemption.
- The needs of all stakeholders have been recognised by D&S IFCA in the making of this Byelaw. The activities undertaken with an exemption, such as scientific work, have the potential to improve the understanding of the marine environment which may result in improved decision making regarding the Authority’s management of fishing activities and restrictions imposed via the other Byelaws or Permit Conditions.
- The benefits for those seeking an exemption is that the application process and decision-making process is set out within the Byelaw. The determination and decision-making process is thus transparent and publicly accessible. This mitigates against accusations of bias if an exemption is not granted.
- The Byelaw has been formulated to provide more scope to the exemptions that can be considered and issued. Exemptions can be issued providing that they do not detract unduly from the Authority’s duties as set out in Sections 153 and 154 of the Marine and Coastal Access Act. This increased scope caters for a wider range of possible scenarios and lessens the potential that the Byelaw will need replacement or amendment in a period of less than five years and thereby saving additional work for the Authority that can be directed into other working.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Communicating the requirements for applicants to obtain an exemption for a potentially wide range of fishing related activities is a potential weakness as well as the resources available (staff resource) to process the applications in a timely manner and to potentially check and inspect that the exemption and written conditions are being adhered to in practice.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £:			In scope of OI30?	Measure qualifies as
Costs	Benefits 0	Net –	No	N/A

## Evidence base

### 1. Introduction

This impact assessment is for the Exemptions Byelaw developed by Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA). This Byelaw will affect all persons or organisations that wish to undertake specific activities that would otherwise be in contravention of another D&S IFCA Byelaw or Permit Conditions within those Byelaws. The scope provided within the Byelaw via its link to Sections 153 and 154 of the Marine and Coastal Access Act 2009, enables a greater range of potential activities to be considered as potentially suitable for the granting of exemptions. The way those applications will be assessed, as set out within the Byelaw, enables careful consideration of a range of material factors.

## **2. Rationale for government intervention**

D&S IFCA has duties specified in the Marine and Coastal Access Act 2009. To meet those duties, D&S IFCA enforces inherited Byelaws or new Byelaws that have been created and introduced by the Authority.

It is in the interest of the Authority and its stakeholders for an Exemptions Byelaw to be introduced that enables the Authority to consider the issuing of permissions for a person or persons to conduct an activity that would otherwise be in contravention of a Byelaw or Permit Condition within a Byelaw that the Authority has inherited or introduced.

One example would include scientific work that could add to an existing evidence base or contribute to a longer-term data set. Other examples may be the potential to explore new fisheries through pilot projects such as aquaculture and allow for other activities such as gear recovery from a Marine Protected Area to be evaluated and monitored. The Authority currently has an Emergency Byelaw in place that satisfies some of these requirements. However, the Exemptions byelaw has been formulated to broaden the scope of the potential exemptions that can be considered. The Emergency Byelaw that came into force on 9<sup>th</sup> May 2018 must be replaced within a defined time frame. A six-month extension for the Emergency Byelaw has been sought and approved by the Secretary of State to enable time to complete the process of introducing this replacement. The Authority has recognised that without an Exemptions Byelaw in place there could be an adverse impact on the Authority's' ability to manage inshore fisheries as the opportunity to gain a better insight or understanding of the marine environment would be more restricted.

## **3. Policy objectives and intended effects**

D&S IFCA must review all its inherited Byelaws. A legal weakness associated with the Application Byelaw (26<sup>th</sup> February 1998) was highlighted by the D&S IFCA prosecuting solicitor. This prompted the Authority to develop and introduce an Emergency Byelaw in the interim period.

The Authority has delegated powers to the D&S IFCA Byelaw and Permitting Sub-Committee (B&PSC) to conduct byelaw review working. The B&PSC has discussed options for a replacement of the Emergency Byelaw and its construction and scope. These discussions have been documented within the minutes of meetings and officer papers and reports presented to members. D&S IFCA is transparent with information as set out in the D&S IFCA's Publication Scheme and the D&S IFCA's Freedom of Information Policy.

The following bullet points set out the policy objectives and intended effects:

1. To revoke the Application Byelaw introduced by Devon Sea Fisheries Committee
2. To enable exemptions to be considered and issued that would not detract from the Authority's duties as set out within Sections 153 and 154 of the Marine and Coastal Access Act 2009
3. To clearly define the process for applicants on how an application will be determined and any exemption issued to applicants
4. To clearly define what steps the Authority may take when considering an application
5. To clearly define the requirements for the Authority in the case where an application is refused by the Authority
6. To be transparent regarding the applicant's responsibility to assemble the information or evidence as determined by the Authority so that the Authority can fully consider the application for an authorisation the application.

## Revocation

The introduction of this Exemptions Byelaw will enable the Application Byelaw (26<sup>th</sup> February 1998) to be revoked.

### **4. The options**

The option of no action was not appropriate in relation to this Byelaw. The option to replace the Emergency Byelaw was a requirement, but how to create a suitable replacement was discussed. The D&S IFCA B&PSC formulated a sub-group known as the Byelaw Technical Working Group (BTWG) to explore different drafting options. The BTWG has its own Terms of Reference which includes a reporting requirement to the B&PSC. A draft was developed by the BTWG which met the expectations of the B&PSC and on 26<sup>th</sup> February 2019 it was accepted as a suitable draft to progress. Minutes are taken of all B&PSC meetings and approved minutes and officer papers for any such meeting are published on the Authority's website. On 13<sup>th</sup> June 2019 the draft Exemptions Byelaw was presented to the B&PSC and approved so it could be subjected to a period of formal consultation.

### **5. Analysis of costs and benefits**

D&S IFCA has a record of past dispensations that have been issued. This record has allowed the Authority to determine the complexity regarding the determination of those applications and to develop a suitable application form and guidance (where required) to assist applicants gaining any required exemption.

Most historic applications have been relatively simple to assess, and similar applications would therefore not incur a need for high levels of supporting information and evidence to be submitted as part of an application.

All applications will be assessed on a case by case basis. It is possible that some applications may require more extensive research to determine if they can be approved. This may involve consultation with other persons or organisations.

Although the Authority can assist the applicant, in terms of guidance and effective communication, the applicant has the responsibility to assemble any required information to support their application themselves. It is envisaged that clear guidance and communication can potentially reduce any potential costs to the applicant associated with the application and consideration of it as set out within this Byelaw.

### **One in Three Out (OITO)**

OITO is not applicable for Byelaws as they are local government Byelaws introducing local regulation and therefore not subject to central government processes.

**Public goods and services:** A number of goods and services provided by the marine environment such as biological diversity are 'public goods' (no-one can be excluded from benefiting from them but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.

- D&S IFCA must seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.

**Negative externalities:** Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

- D&S IFCA must seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote the recovery from, the effect of such exploitation.

**Common goods:** A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long-term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

- D&S IFCA must seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

In summary, the Byelaws introduced by the Authority aim to redress these sources of market failure in the marine environment. Although this Byelaw enables exemptions to be issued that would authorise an activity that would not otherwise be possible to conduct, the activity would not be authorised if the activity detracts from the Authority's duties as set out in the Marine and Coastal Access Act 2009.

## **6. Environmental Impact**

Assessment of applications for exemptions will consider environmental impacts. The Byelaw sets out that exemptions can be issued for any activity relating to the discharge of the Authority's duties under Section 153 and 154 of the Marine and Coastal Access Act 2009. D&S IFCA has the intention of creating an application form for exemption requests which will clearly set out what the expectations are regarding submitted information such as:

- The nature of the activity
- Why it is being done
- Byelaw relevant for the exemption/derogation
- When the activity will take place
- Where it will take place
- How long will it be conducted for?
- The enclosure of other supporting information or documentation if required

Where an activity will potentially be conducted within a Marine Protected Area, the potential requirement for D&S IFCA to consult with Natural England will be highlighted to the applicant.

## **7. Other Material Considerations**

The Authority must consider all material considerations and when making a decision, such as making a Byelaw. The South Inshore Marine Plan, the South West Inshore Marine Plan and the UK Marine Policy Statement (UKMPS) are such material considerations and as set out in section 58 of the Marine and Coastal Access Act, the Authority will have regard to them when

making Byelaws and in the case of permit-based byelaws, the Permit Conditions that set out much of the management of a particular fishing activity. It is the view of the Authority that the Exemption Byelaw will not have an adverse impact on the South Inshore Marine Plan, the South West Inshore Marine Plan and will be compliant with the UKMPS and the same conclusion can be taken regarding the exemptions to D&S IFCA Byelaws that will be assessed on a case by case basis, having regard to all material considerations.

## 7. The Formal Consultation

### Engagement with Stakeholders

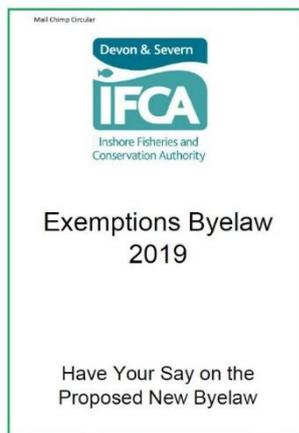
Different communication methods were used to engage with stakeholders. D&S IFCA were advised by Defra that, although other communication methods would be of use, it was advisable for D&S IFCA to advertise the proposed making of the Byelaw in a selection of different newspapers. The newspapers selected for the advertisements are set out below, with each displaying the advertisement for two consecutive weeks. The total cost of the advertisements was approximately £2200. The consultation ended on 15<sup>th</sup> August 2019.

#### Press – First Published 2/7/19

- **Fishing News**
- **Western Morning News**
- **Western Morning Press**

Each advertisement explained what the Byelaw was intended to achieve, how to view a full copy of the [Byelaw](#), how to view the accompanying consultation [Impact Assessment](#), and finally the process to follow to formally respond.

#### Other communication



D&S IFCA used a selection of other communication formats.

A [news article](#) was posted on the D&S IFCA on 1<sup>st</sup> July 2019 and was duplicated on the D&S IFCA Facebook page shortly afterwards.

A [Mail Chimp E-Mail campaign](#) was circulated on the 11<sup>th</sup> July 2019 to over 1000 D&S IFCA stakeholders that had supplied an email address. Stakeholders directly notified by this communication method included all permit holders that had supplied an email address and other interested parties listed on the master D&S IFCA contacts data base.

The Consultation Page on the D&S IFCA website was populated throughout the consultation with relevant information and information about how to respond.

#### **Improving Communication: Officer Comments:**

It was reported to the B&PSC that in the view of officers the advertising of draft byelaws within newspapers for formal consultation is less effective than the alternatives that exist and now used by D&S IFCA. Newspaper advertisements are expensive and less targeted than direct notification. Direct notification has been made possible for D&S IFCA by using contact

information collected from permit holders during their applications for a permit to conduct different fishing activities. D&S IFCA's list of contacts are not limited to permit holders and include other interested parties or individuals who have consented to receive information relevant to the core work of D&S IFCA.

Concerns relating to communication guidance within the formal consultation process were highlighted Defra in June 2019. The guidance in place for byelaw making is statutory and the current advice is that changing this would require approval from the Secretary of State or a Minister. It has been suggested that it will be more practical for all changes from the national byelaw review to be introduced at the same time. The MMO have stated that the next phase of the national review is for IFCA's to agree the detail of suggested changes arising from the review and then propose a timetable for implementation.

### Response from Stakeholders

The formal consultation ended on 15<sup>th</sup> August 2019. All responses were received by both the MMO and D&S IFCA. All responses were summarised into a report which was circulated and made available to all stakeholders that had submitted a response:

- [Exemptions Byelaw 2019 – A Summary of Response from the Formal Consultation \(23<sup>rd</sup> August 2019\)](#)

The report was presented to members of the B&PSC on 12<sup>th</sup> September 2019. Part of the report has been transcribed below (in purple colour text). No attempts have been made to change the content in any way, including any spelling or punctuation errors that may have been present in the original document.

### The Transcript

A total of three responses were received during the formal consultation which ended on 15<sup>th</sup> August 2019. The content of all the responses was supportive of the introduction of the Exemptions Byelaw 2019.

#### Response 1

This response was submitted by the Ilfracombe Harbour Master who in a simple response stated that the proposal to introduce the Exemptions Byelaw was fully supported.

#### Response 2

This supportive response was submitted by the South Devon and Channel Shellfishermen Ltd. The response highlighted the importance of the byelaw being created for the benefit of authorising required general scientific work, and in particular research directed towards crawfish/spiny lobster that may require the issue of an exemption so it can be completed.

#### Response 3

The final response was from the Wembury Marine Conservation Advisory Group (WAG). The group understand the need for the flexibility and practically that the Byelaw would introduce by enabling the gathering of evidence for assessing impacts on relevant species and habitats.

The group feel that it may be appropriate for all relevant stakeholders to be included in any consultation needed to implement an exemption, and if not, would still like to see increased transparency regarding the exemptions being issued.

It was also suggested in the response that any data generated as a result of an issued exemption should be made publicly available and potentially archived in a suitable centre such

as DASSH (the UK archive for marine species and habitats data). The group favours any mechanism that encourages sharing and availability of scientific information.

Officer Comments:

It is the view of officers, that the D&S IFCA website could be utilised to at least provide a general overview of the Exemptions being issued by D&S IFCA. A table could be created to demonstrate non-sensitive information such as what exemptions are being issued, why, where activities will take place under the exemption, and potentially include further links to additional information. A drop-down menu could be used from the home page Research Display.

Conclusion:

**It is the view of officers that based on the responses received in the formal consultation, no changes are required to the Exemptions Byelaw 2019 as set out in Part 4 of this report** (not transcribed).

B&PSC Decision Making

On 12<sup>th</sup> September 2019, members of the B&PSC considered the formal consultation response and the draft Exemptions Byelaw that had been advertised. Having studied and discussed the consultation responses, members agreed with the conclusion of the officers (as set out in the report). Based on the responses received during the formal consultation, it was the view of the B&PSC that no changes were required to the content of the Exemptions Byelaw 2019. The discussion was recorded in the [minutes](#) from the meeting of 12<sup>th</sup> September 2019 and the following was proposed:

***That the Exemptions Byelaw 2019 be submitted to Defra with a view to its confirmation by the Secretary of State.***

***Proposed: James Marsden                      Seconded: Cllr Hawkins***

***In favour            9***  
***Abstain              1***

Managing the Response to Stakeholders

On the 17<sup>th</sup> September 2019, the three stakeholders that had responded in the formal consultation were contacted by email and were informed about the decision and provided with a copy of the Consultation Response Report.

It was explained that a final Impact Assessment would be created to accompany the submission of the Exemptions Byelaw 2019 to Defra. It was also explained how the final Impact Assessment would be used to demonstrate how D&S IFCA had considered and managed the consultation response.

(intentionally blank)

## 8. Submission Package for Quality Assurance

In October 2019 a submission package was assembled for the MMO so the quality assurance phase could begin. The following documents were provided:

- The scanned representations/responses received during the consultation (3 of them)
- The scanned D&S IFCA response emails to those three stakeholders (3 separate scanned emails)
- The D&S IFCA Consultation Response Report (23<sup>rd</sup> August 2019) that was provided to the stakeholders as an attachment as part of their response.
- The minutes from the D&S IFCA Byelaw & Permitting Sub-Committee Meeting (B&PSC) from 13<sup>th</sup> June 2019 (the Byelaw “making” meeting).
- The pdf version of the Exemptions Byelaw 2019 - “Have your Say” email/mail chimp circular that was directly sent to over 1000 stakeholders.
- The scanned newspaper advertisements for both the Western Morning News and the Fishing News, published on 4<sup>th</sup> July and again on 11<sup>th</sup> July 2019.
- The draft minutes from the D&S IFCA Byelaw & Permitting Sub-Committee Meeting from 12<sup>th</sup> September 2019
- A signed copy of the Exemptions Byelaw 2019
- A Final Impact Assessment to accompany the Exemptions Byelaw 2019

On the 14<sup>th</sup> October 2019, receipt of the above information was confirmed, and the 28-day quality assurance process began.

### Feedback from the Marine Management Organisation

Feedback was provided during the quality assurance (QA) phase by the MMO legal team.

The MMO commented that the Exemptions Byelaw 2019 submitted for QA was slightly different in layout and style from the Emergency Application Byelaw of 9th May, however, on reading the Explanatory note, it was recognised that it is seeking to achieve the same outcome: “This byelaw enables the Authority to consider and potentially grant or decline permission for the conducting of 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”. The byelaw is entitled “Exemptions Byelaw” and still effectively an overarching stand-alone Exemptions Byelaw that applies across the suite of D&S IFCA byelaws including any future byelaw.

It was highlighted that unlike the Emergency Byelaw, the Exemptions Byelaw 2019 had removed references to the standard exemption’ (that is more typical in IFCA byelaws) relating to ‘scientific, stocking or breeding purposes’ and had been replaced at paragraph 2 ‘Exemptions’ by the Authority may grant an authorisation relating to “the undertaking of an activity within the District or any part thereof with or without conditions...” a provision which, has much wider application, as it would relate to any activity, rather than limiting it to scientific, stocking or breeding purposes.

The MMO did not consider that in its current format (at that time), the Exemptions Byelaw was legally robust and enforceable - as the byelaw has intended/unintended consequences in that it applies across the entire suite of byelaws – including those that already have a ‘scientific’ exemption contained within the provisions. It was also recognised that the Byelaw appears to further extend the type activities (across the entire suite of byelaws) on which an authorisation may be granted, stretching the intention and purpose of the powers in section 158(2) which allow for ‘supplementary provisions.

The IFCA's power to make byelaw is set out in the "heads" of S156 of MCAA, these state what the byelaw can include. However, S158(2) gives IFCA's the powers to include supplementary provisions in the byelaw – i.e. to make different provisions for different circumstances, including parts of the District etc. and to provide for exceptions or conditions. It is the MMO's understanding that the supplementary provisions referred to in S158(2) above should be contained within the relevant byelaw to which they relate, rather than standing alone.

In summary, it was the view of the MMO that the scope of the Exemptions Byelaw 2019 was too wide, and adjustment could be applied to the content and layout. Narrowing the scope of the Exemptions Byelaw to limit the issue of authorisations to scientific work, stocking or breeding was recommended.

### Reporting to Members of the Authority

On the 23<sup>rd</sup> January 2020, the status of the Exemptions Byelaw 2019 was reported to members of the Authority as follows (in purple text):

The Exemptions Byelaw 2019 was submitted to the MMO for final Quality Assurance assessment, in October 2019, the penultimate step before submission to Defra for consideration by the Secretary of State. In November 2019 the MMO notified D&S IFCA that it could not support the submission of the Exemptions Byelaw in its current state. The MMO considers that D&S IFCA do not have the powers to implement the Exemptions Byelaw 2019. The Byelaw states that an exemption can 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 (MaCAA). These two sections constitute the entire remit of an IFCA and as such the MMO believe that the scope of this byelaw is too wide to be enforceable or legally robust.

D&S IFCA officers have reviewed the MMO's comments and referred the matter back to D&S IFCA's legal adviser. D&S IFCA's legal position has not changed and it is the Officers' opinion that the MaCAA was drafted intentionally to enable such a byelaw to be made.

On 19<sup>th</sup> December 2019, on request from D&S IFCA, the MMO submitted the Byelaw to Defra. The MMO's submission included a covering letter confirming its position that the Byelaw was outside of the scope of the MaCAA.

D&S IFCA has requested that Defra set out a timeline for its consideration of the Byelaw. The Emergency Application Byelaw ceased on 9<sup>th</sup> November 2019. D&S IFCA can no longer consider exempting any activity from the requirements set out in any of its permit byelaws. This has resulted in seven scientific survey applications already being refused or withdrawn.

### Changes to the Exemptions Byelaw 2019

D&S IFCA didn't change its view that the original Exemptions Byelaw was fit for purpose as drafted and advertised during the formal consultation. After further correspondence with Defra, it was concluded that some adjustment to the Exemptions Byelaw would be needed so it could be confirmed as soon as possible and avoid further delay. This would include listing the Byelaws to which authorisations could be considered and to narrow the scope of the Exemptions Byelaw 2019 to state scientific work, stocking or breeding. A revised Impact Assessment would need to be created to accompany the amended Exemptions Byelaw 2019.

The Authority were informed about the planned changes to the Exemptions Byelaw 2019 on 12<sup>th</sup> March 2020 and officers proceeded to complete the required amendments to both the Exemptions Byelaw 2019 and a revised "final" Impact Assessment that would be re-submitted.

## 9. The Final Impact Assessment

The Exemptions Byelaw 2019 [Impact Assessment \(Final Version – 26<sup>th</sup> February 2020\)](#) has been transcribed below, however the format has been adjusted slightly and (for formatting reasons) is not the exact template that was used in the original. No attempts have been made to change the content in any way, including any spelling or punctuation errors that may have been present in the original document.

### The Transcript

<b>Title: Devon and Severn IFCA Exemptions Byelaw 2019</b>  <b>IA No:</b> D&S IFCA 005a  <b>Lead department or agency:</b> Devon and Severn Inshore Fisheries and Conservation Authority  <b>Other departments or agencies:</b> MMO		<b>Impact Assessment (IA)</b>			
		<b>Date:</b> 26 <sup>th</sup> February 2020			
		<b>Stage:</b> Final			
		<b>Source of intervention:</b> Domestic			
		<b>Type of measure:</b> Secondary Legislation			
		<b>Contact for enquiries:</b> M Mander Acting Chief Officer, D&S IFCA <a href="mailto:m.mander@devonandsevernifca.gov.uk">m.mander@devonandsevernifca.gov.uk</a> 01803 854648			
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> Opinion Status: N/A			
<b>Cost of Preferred (or more likely) Option</b>					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2019 prices)	In scope of One-In, Three-Out?	Business Impact Target Status	
£0	£0	£0	Not in scope	N/A	
<b>What is the problem under consideration?</b> <p>In 2018, Devon and Severn Inshore Fisheries and Conservation Authority (D&amp;S IFCA) determined that the Applications Byelaw inherited from Devon Sea Fisheries Committee (DSFC) is not fit for purpose. As a result, the Emergency Applications Byelaw was developed and came into force on 9<sup>th</sup> May 2018. The Emergency Application Byelaw must be replaced within a defined time frame (one year). A six-month extension for the Emergency Application Byelaw was sought and approved by the Secretary of State to enable time to complete the process of introducing a replacement byelaw. D&amp;S IFCA has recognised that without the Exemptions Byelaw 2019 in place there could be an adverse impact on D&amp;S IFCA's ability to manage inshore fisheries.</p>					
<b>Why is government intervention necessary?</b> <p>Although the Emergency Application Byelaw satisfied elements of the policy objectives, D&amp;S IFCA has recognised the need for a permanent replacement. It is in the interest of D&amp;S IFCA and its stakeholders for a byelaw to be introduced that enables D&amp;S IFCA to consider the issuing of an authorisation for a person to conduct scientific work or for stocking or breeding purposes that would otherwise be in contravention of an existing D&amp;S IFCA permit byelaw or permit condition or an inherited DSFC byelaw.</p>					

**What are the policy objectives and the intended effects?**

- To replace the Emergency Application Byelaw.
- To revoke the Application Byelaw introduced by Devon Sea Fisheries Committee.
- To enable exemptions to be considered and issued for scientific work, stocking or breeding purposes.
- To clearly define the process for applicants on how an application will be determined and any exemption issued to applicants.
- To clearly define what steps D&S IFCA may take when considering an application.
- To clearly define the requirements for D&S IFCA in the case where an application is refused by D&S IFCA.
- To be transparent regarding the applicant’s responsibility to assemble the information or evidence as determined by D&S IFCA so that D&S IFCA can fully consider the application for an authorisation.

**What policy options have been considered, including any alternatives to regulation?  
Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing.

Option 1: Allow the Emergency Application Byelaw to lapse and rely on the legacy Application Byelaw

Option 2: Create the “Exemptions Byelaw 2019”

All options are compared to Option 0. The preferred option is Option 2.

<b>Will the policy be reviewed? Yes. If applicable, set review date:</b> The byelaw will be subjected to a review no later than five years after the byelaw comes into force.					
Does implementation go beyond minimum EU requirements?				Yes	
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

I have read the final impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Chair of the Authority

Date: 07/10/19



Mike Williams

Summary: Analysis & Evidence Policy Option 2

Description:

**FULL ECONOMIC ASSESSMENT**

<b>Price Base Year</b> 2019	<b>PV Base Year</b> 2016	<b>Time Period Years</b> 10	<b>Net Benefit (Present Value (PV) (£))</b>		
			<b>Low: 0</b>	<b>High: 0</b>	<b>Best Estimate: 0</b>

<b>COSTS (£)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excluding transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	£0		£0	£0
<b>High</b>	£0		£0	£0
<b>Best Estimate</b>	£0		£0	£0

**Description and scale of key monetised costs by ‘main affected groups’**

There are no key monetised costs.

**Other key non-monetised costs by ‘main affected groups’**

**The applicant:**

The applicant at their own expense must assemble information and evidence to support their application for an exemption.

Some applications may require more extensive research than others and therefore may take more time to consider, process and issue to the applicant.

It is possible that after consideration the exemption may not be issued.

**D&S IFCA:**

D&S IFCA will consider how to use its resources, which can't be estimated in monetary terms, to prepare separate guidance or policy statements to clarify what levels of supporting information the applicant must provide to support their application. This can extend to the development and use of the D&S IFCA website.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	£0		£0	£0
<b>High</b>	£0		£0	£0
<b>Best Estimate</b>	£0		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no key monetised benefits.

## Other key non-monetised benefits by 'main affected groups'

### Stakeholders:

The Exemptions Byelaw 2019 has been formulated to provide clarity regarding the exemptions that can be considered and issued. Exemptions can only be issued for scientific work or for stocking or breeding purposes.

The activities undertaken with an exemption, such as scientific work, have the potential to improve the understanding of the marine environment.

### D&S IFCA:

D&S IFCA can benefit from the authorising of exemptions. In regard to scientific work and the accumulated data, it may result in improved decision-making regarding D&S IFCA's management of fishing activities and restrictions imposed via the other byelaws or permit conditions.

### Key assumptions/sensitivities/risks Discount rate (%)

3.5

Effectively communicating the requirements for applicants to obtain an exemption for scientific work or stocking or breeding purposes is a potential weakness as well as the resources available (staff resource) to process the applications in a timely manner. It is assumed that there will be compliance with the exemption and the written conditions that are issued.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £:			In scope of OI30?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

## Evidence base

### 1. Introduction

This impact assessment is for the Exemptions Byelaw 2019 developed by Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA).

The Exemptions Byelaw 2019 will affect all persons or organisations that wish to undertake specific activities that would otherwise be in contravention of another existing D&S IFCA permit byelaw or permit conditions within those byelaws or an inherited byelaw from Devon Sea Fisheries Committee (DSFC). The types of activities to be considered as potentially suitable for the granting of exemptions are set out within the byelaw and are limited to scientific work or for stocking or breeding purposes. The way those applications for an exemption will be assessed, as set out within the byelaw, enables careful consideration of a range of material factors.

### 2. Rationale for government intervention

D&S IFCA has duties specified in MaCAA. To meet those duties, D&S IFCA enforces the management restrictions within inherited byelaws. In addition, new byelaws have been

created and introduced by the Authority since 2011. Much of the management of key fisheries within the D&S IFCA District has now been incorporated into new permit-based byelaws.

In 2018 the Authority recognised that the Application Byelaw made by DSFC on 16<sup>th</sup> January 1998 (which came into force on 26<sup>th</sup> February 1998) was no longer fit for purpose. The legacy Application Byelaw allowed for exemptions (or dispensations as they were referred to) to be issued for the removal of shellfish for scientific purposes or for stocking or breeding purposes.

D&S IFCA received legal advice which clarified that exemptions could only be granted that related to inherited byelaws and not new byelaws made by D&S IFCA. As a result of this unforeseen scenario, the Emergency Application Byelaw was developed and introduced in 2018. The Emergency Application Byelaw has enabled exemptions to be issued that relate to the permit byelaws that have been introduced by D&S IFCA.

As a result of the introduction of the Emergency Byelaw, the legacy Application Byelaw has been removed from the D&S IFCA Byelaw Book that is on public display on its website. Although it has not been revoked, the Emergency Application Byelaw has been published as an alternative as it is the byelaw used by D&S IFCA to enable exemptions to be issued.

The Emergency Application Byelaw that came into force on 9<sup>th</sup> May 2018 must be replaced within one year, unless an extension is granted. A six-month extension for the Emergency Application Byelaw was sought and approved by the Secretary of State to extend the life of the Emergency Application Byelaw to 9<sup>th</sup> November 2019 and enable time to complete the process of introducing a replacement.

The replacement Exemptions Byelaw 2019 will enable the legacy Application Byelaw to be revoked and replaced with a more suitably worded replacement.

### **One in Three Out (OI3O)**

OI3O is not applicable for IFCA byelaws as they are local government byelaws introducing local regulation and therefore not subject to central government processes.

### **3. Policy objectives and intended effects**

It is in the interest of D&S IFCA and its stakeholders for the Exemptions Byelaw 2019 to be introduced that enables D&S IFCA to consider the issuing of authorisations (exemptions) for a person to conduct scientific work or for stocking or breeding purposes that would otherwise be in contravention of an existing permit byelaw or permit condition within a permit byelaw or a byelaw that the Authority has inherited. The Emergency Application Byelaw which expired on the 9<sup>th</sup> of November 2019 satisfied these requirements, but a permanent replacement is needed.

Exemptions issued under the Exemptions Byelaw 2019 could include authorisations for scientific work that could add to an existing evidence base or contribute to a longer-term data set, exploration of new fisheries through pilot projects such as aquaculture, and enable stocking or breeding activity. It is the intention to introduce an exemptions provision in any future byelaws yet to be developed by D&S IFCA.

D&S IFCA has recognised that without the Exemptions Byelaw 2019 in place there could be an adverse impact on D&S IFCA's ability to manage inshore fisheries.

The following bullet points set out the policy objectives and intended effects:

1. to revoke the Application Byelaw introduced by Devon Sea Fisheries Committee.
2. to replace the Emergency Application Byelaw that lapsed on 9<sup>th</sup> November 2019.
3. to enable exemptions to be considered for scientific work or for stocking or for breeding purposes that would otherwise be in contravention of the byelaws listed in the Exemptions Byelaw 2019.
4. to clearly define the process for applicants on how an application will be determined and any exemption issued to applicants.
5. to clearly define what steps D&S IFCA may take when considering an application.
6. to clearly define the requirements for D&S IFCA in the case where an application is refused by D&S IFCA.
7. to be transparent regarding the applicant's responsibility to assemble the information or evidence as determined by D&S IFCA so that D&S IFCA can fully consider the application by the applicant for an authorisation (exemption).

#### **4. The options**

- |           |   |
|-----------|---|
| Option 0: | Do nothing.   |
| Option 1: | Allow the Emergency Application Byelaw to lapse and rely on the legacy Application Byelaw |
| Option 2: | Create the "Exemptions Byelaw 2019"   |

All options are compared to Option 0. The preferred option is Option 2.

Option 2 is suitable as it could achieve the policy objectives, whereas the alternative options could not.

#### **5. Analysis of costs and benefits**

##### Key monetised costs

There are none.

##### Key non-monetised costs

##### **The Applicant:**

Rather than imposing a set fee, or a table of charges for assessing and processing an application for an exemption, the Exemptions Byelaw 2019 states that D&S IFCA may require an applicant, at their own expense, to assemble information and evidence to support their application. This may produce a monetised cost dependent on the nature of the application; however, this cannot be accurately estimated. Each application can be different and result in differing levels of supporting information and evidence that is needed to be submitted for D&S IFCA to assess each application on a case by case basis.

It is possible that some applications may require more extensive research than others to determine if they can be approved. This may involve consultation with other persons or organisations. Although D&S IFCA can assist the applicant in terms of guidance and effective communication, the applicant has the responsibility to assemble any required information themselves to support their application. It is envisaged that clear guidance and

communication can potentially reduce any potential costs to the applicant associated with the application and consideration of it.

Most applications for exemptions have historically been for scientific work. A number of these are typically repeat applications each year. In 2017, 24 dispensations were issued, and this number fell to 22 the following year. The total number of future applications cannot be accurately estimated.

Careful consideration is needed for every application for an exemption and this will be done on a case by case basis. This would include a thorough assessment, including having regard to the South Marine Inshore Plan and the Marine Policy Statement until the South West Inshore Marine Plans have been adopted. Conditions associated with the potential exemption will be considered and set out within any written authorisation that is issued. The Exemptions Byelaw 2019 states that the application shall be determined within 60 days of the receipt of the application. A non-monetised cost to the applicant may be the time that they may have to wait for their application to be determined and processed. It is possible that the exemption may not be issued at all, or if it is issued, may not provide authorisation for the applicant to conduct the full extent of their requested exemption.

The final version of the Exemptions Byelaw 2019 differs to the version advertised during formal consultation. The Exemptions Byelaw 2019 is now more limited in its scope and exemptions will only be considered that relate to scientific work, stocking or breeding purposes. The alternative version may not meet the expectations of stakeholders who are supportive of the introduction of the Exemptions Byelaw 2019 as originally drafted.

#### **D&S IFCA:**

Costs in terms of time and resource to process exemptions cannot be estimated and are therefore non-monetised. It is envisaged that effective communication with the applicant at an early stage, if required, can highlight any immediate or significant concerns associated with their application. D&S IFCA has the option to introduce a separate and refined application form and guidance for applicants that clarifies what information may be needed from them so that D&S IFCA can process an application. These steps may limit the applicant's expectations regarding the issue of their own authorisation or the expected time frame for the processing of any such exemption.

#### **Other key non-monetised benefits by 'main affected groups'**

Exemptions can be issued for scientific work or for stocking or breeding purposes.

The introduction of the Exemptions Byelaw 2019 is a mechanism to allow controlled activities to take place that would otherwise be in contravention of one of the existing D&S IFCA permit byelaws or the inherited byelaws. This has benefits to both D&S IFCA and those persons or organisations conducting the activity that would require an exemption.

#### **Stakeholders:**

The needs of all stakeholders have been recognised by D&S IFCA in the making of the Exemptions Byelaw 2019. The activities undertaken with an exemption, such as scientific work, have the potential to improve the understanding of the marine environment.

#### **D&S IFCA:**

D&S IFCA can benefit from the authorisation of exemptions. Regarding scientific work and the accumulated data, it may result in improved decision-making regarding D&S IFCA's management of fishing activities and restrictions imposed via the other byelaws or permit conditions.

The legal advice received during the development of the Exemptions Byelaw 2019 will be of use in future byelaw making. New byelaws, developed by D&S IFCA, will include an exemptions clause to allow for the undertaking of scientific work, breeding or stocking that would otherwise constitute an offence against that byelaw.

## **6. Rationale and evidence**

D&S IFCA has used the time extension for the Emergency Application Byelaw granted by the Secretary of State to fully consider the development of a replacement byelaw. Delegated powers have been provided to the D&S IFCA Byelaw and Permitting Sub-Committee (B&PSC) to conduct byelaw review working. The B&PSC has discussed options for a replacement of the Emergency Application Byelaw and the construction and scope of the Exemptions Byelaw 2019. Advice has also been taken from Defra in the final stages of preparing the Exemptions Byelaw 2019 for potential confirmation by the Secretary of State.

Officers' papers and reports that have been presented to and discussed by members of the B&PSC have been made publicly available on the D&S IFCA website. All B&PSC discussions have been documented within the minutes of the meetings. The complete byelaw making process, including an explanation of how the Exemptions Byelaw 2019 was developed for formal consultation and subsequently amended in preparation for potential confirmation will be documented in a separate D&S IFCA publication. D&S IFCA is transparent with information as set out in the D&S IFCA's Publication Scheme and the D&S IFCA's Freedom of Information Policy.

D&S IFCA has a record of past exemptions that have been issued. Most applications for exemptions have historically been for scientific work and a number of these are typically repeat applications each year. In 2017, 24 dispensations were issued, and this number fell to 22 the following year. This record has allowed D&S IFCA to determine the complexity regarding the determination of those applications for an exemption and to begin developing a suitable application form and guidance (where required) to assist applicants gaining any required exemption. Most historic applications have been relatively simple to assess, and similar applications would therefore not incur a need for high levels of supporting information and evidence to be submitted as part of an application.

All applications will be assessed on a case by case basis. It is possible that some applications may require more extensive research to determine if they can be approved. This may involve consultation with other persons or organisations. The Exemptions Byelaw 2019 provides for a 60-day period for an application for an exemption to be determined.

Although D&S IFCA can assist the applicant, in terms of guidance and effective communication, the applicant has the responsibility to assemble any required information to support their application themselves. It is envisaged that clear guidance and communication can potentially reduce any potential costs to the applicant associated with the application and consideration of it as set out within the Exemptions Byelaw 2019.

### Consultation with stakeholders

The proposed Exemptions Byelaw 2019 was subject to a six-week period of formal consultation that ended on the 15<sup>th</sup> August 2019. A draft impact assessment (consultation version) accompanied the byelaw during this period of consultation.

Different communication methods were used to engage with stakeholders which included advertising the making of the proposed byelaw in a selection of different newspapers with each displaying the advertisement for two consecutive weeks. The total cost of the

advertisements was approximately £2,200. The newspapers selected for the advertisements were as follows:

Press – (with advertising for two consecutive weeks)

- Fishing News (04/07/2019 to 11/07/19)
- Western Morning News (02/07/19 to 16/07/19)
- Western Daily Press (02/07/19 to 16/07/19)

Each advertisement explained what the Exemptions Byelaw 2019 was intended to achieve, how to view a full copy of the byelaw, how to view the accompanying consultation impact assessment, and finally the process to follow to formally respond.

D&S IFCA documented how the consultation was conducted and the content of the responses that were received in the following report: *Exemptions Byelaw 2019 – Formal Consultation – A Summary of Response from the Formal Consultation (23<sup>rd</sup> August 2019).*

This report can be found at the following address:

[www.devonandsevernifca.gov.uk/Resource-library/B-Internal-practice-and-procedure/Byelaw-Permitting-Sub-Committee/Sub-Committee-Papers/Sub-Committee-Papers-2019/12th-September-2019/Consultation-Report-Exemptions-Byelaw-2019](http://www.devonandsevernifca.gov.uk/Resource-library/B-Internal-practice-and-procedure/Byelaw-Permitting-Sub-Committee/Sub-Committee-Papers/Sub-Committee-Papers-2019/12th-September-2019/Consultation-Report-Exemptions-Byelaw-2019)

Other communication

D&S IFCA used a selection of other communication formats. A news article was posted on the D&S IFCA website on 1<sup>st</sup> July 2019 and was duplicated on the D&S IFCA Facebook page shortly afterwards. A Mail Chimp e-mail campaign was circulated on the 11<sup>th</sup> July 2019 to over 1000 D&S IFCA stakeholders that had supplied an email address. Stakeholders directly notified by this communication method included all permit holders that had supplied an email address and other interested parties listed on D&S IFCA's master contacts data base. The consultation page on the D&S IFCA website was populated throughout the consultation with relevant information and information about how to respond.

The consultation response

A total of three responses were received that were all supportive of the introduction of the Exemptions Byelaw 2019.

Response 1: This response was submitted by the Ilfracombe Harbour Master who in a simple response stated that the proposal to introduce the Exemptions Byelaw 2019 was fully supported.

Response 2: This supportive response was submitted by South Devon and Channel Shellfishermen Ltd. The response highlighted the importance of the Exemptions Byelaw 2019 being created for the benefit of authorising required general scientific work, and in particular research directed towards crawfish/spiny lobster that may require the issue of an exemption so it can be completed.

Response 3: The final response was from the Wembury Marine Conservation Advisory Group (WAG). The group understood the need for the flexibility and practicality that the Exemptions Byelaw 2019 would introduce by enabling the gathering of evidence for assessing impacts on relevant species and habitats.

The group felt that it may be appropriate for all relevant stakeholders to be included in any consultation needed to implement an exemption, and if not, would still like to see increased transparency regarding the exemptions being issued.

It was also suggested in the response that any data generated as a result of an issued exemption should be made publicly available and potentially archived in a suitable centre such as DASSH (the UK archive for marine species and habitats data). The group favours any mechanism that encourages sharing and availability of scientific information.

### Managing the Response

On 12<sup>th</sup> September 2019, members of the D&S IFCA Byelaw and Permitting Sub-Committee considered all three of the responses received during the formal consultation. It was concluded that based on the content of the responses, no changes were needed to the proposed Exemptions Byelaw 2019 as advertised during the consultation.

All three stakeholders that submitted a response during the formal consultation were notified about how their response had been considered by the D&S IFCA Byelaw & Permitting Sub-Committee.

During the quality assurance of the Exemptions Byelaw 2019 process, legal advice was given to D&S IFCA which has changed the content of the Exemptions Byelaw 2019 as advertised during formal consultation. Exemptions will now only be considered for scientific work, stocking or breeding purposes. It is not envisaged that the required changes to the Exemptions Byelaw 2019 would result in opposition to the introduction of the Exemptions Byelaw 2019 from those stakeholders that were supportive of the version advertised during formal consultation.

D&S IFCA is as transparent as possible with information. The D&S IFCA website offers the most suitable platform to provide stakeholders with information relating to the development of the Exemptions Byelaw 2019 and any exemptions issued under the revised Exemptions Byelaw 2019.

## **7. Risks and assumptions**

It is assumed that there will be compliance with the exemption and the written conditions that are issued.

Effectively communicating the requirements for applicants to obtain an exemption for scientific work, stocking or breeding purposes is a potential weakness as well as the resources available (staff resource) to process the applications in a timely manner.

New application forms for an exemption and potentially supporting guidance and policy documentation will be developed by D&S IFCA to mitigate against the risk that the applicant will fail to provide sufficient detail to support their application. This will mitigate against the risk that the applicant will face a delay in their exemption being issued or result in an exemption not being issued at all solely due to a lack of required information.

Highlighting the requirements for an exemption, and the process to apply for one, can be achieved via the posting of relevant information on the D&S IFCA website. In addition, sharing of information with organisations such as the Marine Management Organisation can ensure that increased numbers of stakeholders understand what activities or scenarios will require an exemption to be issued from D&S IFCA and what the stakeholder's responsibilities will be to potentially acquire an exemption. Guidance can also be provided for stakeholders regarding what activities, not catered for within the Exemptions Byelaw 2019, potentially require authorisation from the Marine Management Organisation.

## 8. Environmental impact

Assessment of applications for exemptions will consider environmental impacts. The Exemptions Byelaw 2019 sets out that exemptions can be issued for scientific work, stocking or breeding purposes. D&S IFCA has the intention of creating an application form for exemption requests which will clearly set out what the expectations are regarding submitted information such as:

- the nature of the activity;
- the reason for the activity;
- the byelaw from which the applicant requires exemption or derogation;
- the location of the activity;
- the timing of the activity;
- the enclosure of other supporting information or documentation if necessary.

Where an activity will potentially be conducted within a Marine Protected Area, the potential requirement for D&S IFCA to consult with Natural England will be highlighted to the applicant.

## 9. Wider impacts

### Public goods and services:

A number of goods and services provided by the marine environment such as biological diversity are 'public goods' (no-one can be excluded from benefiting from them but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision. D&S IFCA must seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.

### Negative externalities:

Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

D&S IFCA must seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote the recovery from, the effect of such exploitation.

### Common goods:

A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long-term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

D&S IFCA must seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district. In summary, the byelaws introduced by D&S IFCA aim to redress these sources of market failure in the marine environment. Although the Exemptions Byelaw 2019 would enable exemptions to be issued for scientific work and for stocking or breeding purposes, the activity would not be authorised if the activity detracts from D&S IFCA's duties as set out in MaCAA.

## **10. Other material considerations**

When making a byelaw, D&S IFCA must consider all relevant national policies. The South Inshore Marine Plan, the South West Inshore Marine Plan (when it is adopted) and the UK Marine Policy Statement (UKMPS) are material considerations as set out in section 58 of MaCAA. D&S IFCA will have regard to them when making byelaws and in the case of permit-based byelaws, the permit conditions that set out much of the management of a particular fishing activity. It is the view of D&S IFCA that the Exemptions Byelaw 2019 will not have an adverse impact on the South Inshore Marine Plan, the South West Inshore Marine Plan (when adopted) and will be compliant with the UKMPS. D&S IFCA recognise that any exemptions must be compatible with national policy objectives.

### **Annex A: South Marine Plan**

As per paragraph 58(3) of the MaCAA, D&S IFCA must have regard to the South Marine Plan when undertaking any decision which is not an authorisation or enforcement decision. By definition; as per paragraph 58(4), a byelaw and associated permit conditions would fall under the definition of 'authorisation or enforcement decision'.

The proposed Exemptions Byelaw 2019 ensures compatibility with the following objectives and policies of the South Marine Plan:

#### **Objective 3:**

To support diversification of activities which improve socio-economic conditions in coastal communities.

Specifically, S-FISH-1 and S-TR-1;

#### **Objective 5:**

To avoid, minimise, mitigate displacement of marine activities, particularly where of importance to adjacent coastal communities, and where this is not practical to make sure significant adverse impacts on social benefits are avoided.

Specifically, S-SOC-1, S-TR-2, S-FISH-2 and S-FISH-3;

#### **Objective 6:**

To maintain and enhance inclusive public access to, and within, the south marine plan areas appropriate to its setting.

Specifically, S-ACC-1;

#### **Objective 7:**

To support the reduction of the environmental, social and economic impacts of climate change, through encouraging the implementation of mitigation and adaptation measures that:

- avoid proposals' indirect contributions to greenhouse gas emissions
- reduce vulnerability
- improve resilience to climate and coastal change
- consider habitats that provide related ecosystem services

Specifically, S-CC-1 and S-CC-4

**Objective 10:**

To support marine protected area objectives and a well-managed ecologically coherent network with enhanced resilience and capability to adapt to change.

Specifically, S-MPA-1, S-MPA-2, S-MPA- 3 and S-MPA-4;

**Objective 11:**

To complement and contribute to the achievement of maintenance of Good Ecological Status or Potential under the Water Framework Directive and Good Environmental Status under the Marine Strategy Framework, with respect to descriptions for marine litter, non-indigenous species and underwater noise.

Specifically, S-NIS-1, S-ML-1, S-ML-2, S-UWN-1, S-UWN-2, S-WQ-1 and S-WQ-2.

## 10. The Completed Exemptions Byelaw 2019



### Devon and Severn

### Inshore Fisheries and Conservation Authority

### MARINE AND COASTAL ACCESS ACT 2009 (c.23)

### 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;
  - c) "vessel" means a ship, boat, raft or watercraft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and hovercraft or any other amphibious vehicle, used or capable of being used as a means of transportation on water.

## Exemptions

2. The Byelaws in force as at the date this Byelaw comes into force and listed in paragraph 3 and paragraph 4 do not apply to a person performing an act which would otherwise constitute an offence against that byelaw if that act was carried out in accordance with an authorisation issued by the Authority permitting that act for scientific, stocking or breeding purposes.
3. Paragraph 2 applies to the following Byelaws made by the Authority:

Mobile Fishing Permit Byelaw  
Potting Permit Byelaw  
Diving Permit Byelaw  
Netting Permit Byelaw

4. Paragraph 2 applies to the following Devon Sea Fisheries Committee Byelaws:

7. Shellfish – Scallops  
8. Shellfish - Re-deposit of  
9. Temporary closure of shellfish beds  
10. Winkles  
13. Prohibition of spear fishing in Lundy Island Marine Conservation Zone  
17. Fixed engines  
18. Size of vessels  
21. Parts of Edible Crab (*Cancer pagurus*)  
24. Harvesting of shore crab  
26. Protection of V-Notched lobsters  
27. Protection of undersized and berried lobsters  
28. Lundy "No Take Zone"

## Applications

5. An application for authorisation in accordance with paragraphs 2 and 3 may only be made by using the forms available from the Authority's office or its website.
6. The Authority may require an applicant at the applicant's expense;
  - a) to supply such information;
  - b) to produce such articles; and
  - c) to commission such investigations, examinations and tests;as may be necessary or expedient in the opinion of the Authority to enable it to determine the application.
7. If an applicant fails to comply with a requirement made by the Authority, the Authority may;
  - a) reject the application; or
  - b) refuse to proceed with it until the failure is remedied.

## Determination

8. The application shall be determined by the Authority within 60 days of receipt of the application at the Authority's office.
9. In making a determination under this byelaw, the Authority may consult with other persons as it deems appropriate.
10. Where the Authority grants a written authorisation, the authorisation shall;

- a) be signed by the person determining the application;
  - b) set out the reasons for granting 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.
11. Where the Authority has declined to grant a written authorisation, it must give written notice which shall;
- a) be signed by the person determining the application;
  - b) set out the reasons for declining to grant the written authorisation; and
  - c) be sent to the postal or email address provided on the application form.

#### **Obligations**

12. A person who fails to comply with any conditions within the written authorisation contravenes this byelaw and is guilty of an offence.
13. A written authorisation given under this byelaw may be revoked and notice of this revocation will be provided in writing by the Authority.
14. Written notice of revocation shall be sent to the postal or email address provided on the application form and shall take effect four working days after the date on which the notice was sent.

#### **Revocation**

15. The byelaw with the title "Application Byelaw" made by the Devon Sea Fisheries Committee on the 26<sup>th</sup> February 1998 in exercise of its power under sections 5 and 5a of the Sea Fisheries Regulation Act 1966 and in force immediately before the making of this byelaw is hereby revoked.

I hereby certify that the above byelaw was made and agreed by the Authority on 13<sup>th</sup> June 2019.



Matthew Mander

Acting Chief Officer

Devon and Severn Inshore Fisheries and Conservation Authority.

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

The Secretary of State for Environment, Food and Rural Affairs in exercise of the power conferred by section 155(4) of the Marine and Coastal Access Act 2009 confirms the Exemptions Byelaw 2019 made by Devon and Severn Inshore Fisheries and Conservation Authority on 13<sup>th</sup> June 2019.

The said byelaw shall come into force on 14 April 2020.

A senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs.



Colin Faulkner

Date: 14 April 2020

Deputy Director, External Fisheries Negotiations & Trade Policy

Department for Environment, Food & Rural Affairs

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

This byelaw enables the Authority to consider and potentially grant or decline permission for the conducting of an activity that would otherwise be a contravention of an existing permit byelaw or a permit condition within a byelaw that the Authority has introduced as set out in the Exemptions Byelaw 2019 or a byelaw that has been inherited as set out within the Exemptions Byelaw 2019. An authorisation may only be given for scientific work or for stocking or breeding purposes.

The byelaw provides guidance regarding how any such application is considered and processed within a specified time. The application will be determined within 60 days of receipt of the application.

The byelaw also provides the potential applicant with transparency regarding their responsibility to assemble the information or evidence as determined by the Authority so that the Authority can fully consider the application for an authorisation in accordance with the relevant paragraphs. If required, the Authority will be able to advise the potential applicant or applicants regarding the type and detail of information and evidence that must be submitted to support their application and the subsequent assessment of it.

## 11. List of embedded information (Hyperlinks)

- [Officers' Planning Report \(Agenda Item 9\) – B&PSC meeting 11<sup>th</sup> Oct 2018](#)
- [Minutes from the B&PSC Meeting \(11<sup>th</sup> October 2018\)](#)
- [Byelaw Technical Working Group Progress Report \(February 2019\)](#)
- [Minutes from the B&PSC Meeting \(26<sup>th</sup> February 2019\)](#)
- [Minutes from the B&PSC Meeting \(13<sup>th</sup> June 2019\)](#)
- [Draft Exemptions Byelaw for Formal Consultation \(13<sup>th</sup> June 2019\)](#)
- [The consultation Impact Assessment for the Exemptions Byelaw 2019 \(14<sup>th</sup> June 2019\)](#)
- [D&S IFCA consultation news article \(1<sup>st</sup> July 2019\)](#)
- [D&S IFCA Pdf version of the Mail Chimp E-Mail Consultation Circular](#)
- [A Summary of Response from the Formal Consultation \(23<sup>rd</sup> August 2019\)](#)
- [Minutes from the B&PSC Meeting \(12<sup>th</sup> September 2019\)](#)
- [The Impact Assessment for the Exemptions Byelaw 2019 \(final version\) – \(26<sup>th</sup> February 2020\)](#)

End.