

Scallop Closed Season

Officers' Recommendation

That D&S IFCA undertakes further pre-consultation with stakeholders to gather information on possible management options for the commercial dive scallop fishery

Background

The Scallop Closed Season was discussed at the B&PSC meeting in February 2021. At this meeting a summary report¹ of responses from the pre-consultation on the Scallop Closed Season and additional information was provided to all B&PSC members. The purpose of this report was to provide information to inform the development of the Permit Conditions for the Mobile Fishing Permit Byelaw and the Diving Permit Byelaw and contained consultation responses from the Scallop Closed Season 'have Your Say' 4-week consultation, research and scientific information on scallop spawning periods and comparative landings from dive and dredge vessels. The Officers' recommendation in this paper was that 'Formal consultation was undertaken with a view to amend to Category One Diving Permit Conditions authorising commercial divers to remove scallops from defined areas within the District during July, August and September.'

At the B&PSC Meeting the Officers' recommendation was proposed as the motion and was voted on. Eleven B&PSC members voted against the motion and two members abstained. Therefore, the proposal to go out to formal consultation was not carried.

Issues and Evidence

Members raised several concerns which led them to the decision not to support the Officers' recommendation. The concerns are listed below. Since the meeting, D&S IFCA Officers have had discussions with several scallop divers in the District and also with Charles Clover from Blue Marine Foundation who has led the creation of the Lyme Bay Reserve in East Devon. Fishing industry representatives on the Lyme Bay Consultative Forum have raised their concerns about B&PSC's decision and have made some suggestions that may lessen the concerns of the B&PSC members. Furthermore D&S IFCA Officers have considered the concerns raised and information gathered is included in the blue text below.

1. The peak index for Scallop spawning varies geographically and while this has been identified for some areas in the United Kingdom, no study as to when this occurs in D&S IFCA waters has been undertaken.

Whilst there have not been any dedicated studies on the spawning season in Devon, detailed information was provided to the B&PSC on the recognised spawning season for scallops (from peer reviewed research). The scale of the impact of the current scallop dived fishery is low (due to the low number of commercial scallop diving permits issued) and through D&S IFCA Diving Permit Byelaws conditions, restrictions such as

¹ A Summary of responses from the Pre-Consultation on the Scallop Closed Season and Additional Information - 10th February 2021 –B&PSC Meeting Paper (25th February 2021)

catch limits, can be introduced to manage the fishery to ensure the impacts on stocks is kept at a low level,

Since the B&PSC meeting in February, Cefas has produced an assessment of King Scallop stock status for selected waters around the English Coast (Lawler et al, 2021)². Data used in this assessment were for 2017-2020. This stock assessment informed a consultation on a proposal for a King Scallop closure in ICES area VIId from mid-August to mid-October for all over 10m vessels. Area VIId is the eastern channel fishery. On 13th August the MMO closed the VIId fishery in UK waters from 15th August to 4th October 2021. The closure was introduced because scallops in VIId had been fished at close to unsustainable levels. No such proposal was considered for ICES Area V11e (western channel including D&S IFCA's waters) .

D&S IFCA works closely with the University of Plymouth on their Master's Course in Marine Conservation and has been asked to provide proposals for students' projects for 2022. One such project offered is the assessment of scallop spawning season in D&S IFCA's District. If this project was to be taken up this will provide evidence that could support further management to the fishery if the results indicated the need for further measures.

2. Neighbouring regulatory practice is contradictory. To the West, Cornwall IFCA (CIFCA) and to the East, Southern IFCA (SIFCA) respectively have no closed season for such activity, while to the North of the D&S IFCA's District Welsh Ministers have implemented a more extensive closed season. No information was available as to whether CIFCA and SIFCA had considered imposing a closed season and, if so, why this had not been proceeded with.

CIFCA and SIFCA have not indicated that they will be introducing a closed season for scallop removal (by any method) in their Districts. CIFCA introduced a curfew for scallop dredging which harmonises with D&S IFCA 7pm to 7am curfew but did not bring in measures to harmonise with D&S IFCA's closed season. Both neighbouring IFCAs have different measures to D&S IFCA on many of their fisheries as they have different fishing sectors and local decision making.

3. Some stakeholders had supported no change to the closed season.

Whilst there were some stakeholders who supported no change to the closed season, a majority of the commercial divers supported a change and alternative suggestions to manage the dive fishery were provided, which included catch limits and an increase in MCRS. Whilst recreational divers are not subjected to the closed season some management suggestions were offered during the consultation.¹

² Lawler, A. & Nawri, N., (2021). Assessment of king scallop stock status for selected waters around the English coast 2019/2020. Cefas Project Report for Defra,+ 89 pp.

4. No catch limits have been introduced to commercial permits for hand gathering (dive caught) scallops.

Catch limits have been suggested in the responses to the call for information and also through more recent dialogue with the commercial scallop divers and Charles Clover of Blue Marine Foundation. Fishers accept that there would be a need for some regulation on the scallop dive fishery. Formal consultation would provide the opportunity for fishers and other stakeholders to offer further and more detailed options for management of the scallop dive fishery.

5. D&S IFCA has a policy of not introducing limitations on the number of permits issued under its Byelaws. At present some 25 permits are issued for commercial hand gathering of scallops by commercial divers. Concern was expressed that amending the closed season for such activity may result in an increased demand for commercial permits, such demand being impossible to predict accurately, as would be the resulting impact upon stocks.

In the B&PSC meeting in February 2021 a concern was raised as to the possible 'klondike' effect that may happen if the closed season was removed to commercial scallop diving permit holders. Whilst 25 permits have been issued to commercial divers that is across the whole district on both the North and South Devon coasts. The number of diving vessels tends to be small compared to other commercial fleets due to the Health and Safety regulations and requirements for commercial diving. Thirteen vessels' landings' data was analysed for South Devon, and it was clear that an even lower number of vessels were landing into the ports during the 4 years' worth of data investigated. As D&S IFCA has introduced the Permit based Byelaw approach the number of permits being issued can easily be monitored. D&S IFCA has been adaptive in its approach to managing other fisheries due to the flexibility of the permitting approach and the ability to change permit conditions as required. This ability to change permit conditions is key to monitoring and managing any fishery in the District.

In January 2022, the national roll out of IVMS on all commercial fishing vessels in England will commence. The MMO is looking to complete the majority of this roll out by the Summer of 2022. In this way all commercial fishing vessels can be monitored. The roll out will take place over several tranches depending on the size of the vessels but fishers can request to have IVMS fitted ahead of their sector tranche. This may create an opportunity for all commercial dive vessels in D&S IFCA's District to have IVMS installed prior to the summer months, and therefore monitoring of the level and location of the vessels' activities can be undertaken. The MMO is also looking to enforce the catch recording application 'Catch App' on all under 10m vessels in English waters. This app captures the volumes and species of sea fish removed from English waters and therefore will provide data to support sustainable fishing opportunities. This, together with IVMS on all vessels, will provide the ability to monitor the fishery and set trigger points on the number of permits issued. If permit number were to increase to above a set trigger level, a review of the permit conditions would take place. This adaptive management was the principle underlying management of the Live Wrasse Fishery in Plymouth Sound.

6. None of the vessels operating under these 25 permits are required to have Inshore Vessel Monitoring Systems (IVMS) fitted under national regulations and no current requirement by D&S IFCA for such fitment to such vessels exists.

As discussed above, the MMO will commence the roll out the National IVMS project in early 2022 for all commercial fishing vessels to have an operating positional monitoring system installed. This will meet these concerns and allow for the areas and levels of activity to be monitored.

7. The potential impact on scallop stocks was not possible to quantify, although officers believed potentially it may be low, and thus it was difficult to assess potential risks from relaxation of the closed season.

Through recent discussions with commercial divers in the D&S IFCA's District, there has been suggestions of a bag limit for divers should the closed season be relaxed for this sector. If D&S IFCA go out to consultation as previously recommend by Officers, this will give an opportunity for this sector to suggest management options that might allay the concerns relating to the impact on stocks and reduce such impacts.

8. Where a potential risk exists but evidence to assess it is absent or limited, as is the case here, then D&S IFCA is obliged by law to apply the 'Precautionary Principle'. Application of the Precautionary Principle would tend to preclude any amendment to a conservation measure, such as a closed season where evidence is unavailable or limited.

D&S IFCA has produced guidance on the Precautionary Principle and how it is used in decision making³. This following extract explains how IFCA can use the Precautionary Principle:

For IFCA's, when deciding how to discharge their statutory duties to manage fisheries in a sustainable way and balance socio-economic benefits with protecting the marine environment, it means that where there is no evidence, or more likely, gaps in the available evidence then the IFCA cannot use this to avoid making a decision but must apply the Precautionary Principle and make a decision accordingly. This requirement is confirmed in the Explanatory Notes to the Marine & Coastal Access Act 2009.

Although an IFCA cannot avoid making decisions where evidence is lacking or incomplete there is nevertheless a good degree of flexibility allowed in the decision-making.

"Precaution is not an all-or-nothing commodity: different approaches can be precautionary to different degrees. ... In principle, a 'precautionary approach' to a fishery is any approach which reduces the likelihood of stock collapse or significant impact on natural heritage or the supporting environment. Selecting the appropriate mechanism and choosing the 'degree' of precaution to be used, is a matter for ... judgement by decision-makers. Precautionary approaches can reflect the full panoply of mechanisms (e.g. regulations, incentives, spatial planning of fishing activity, etc), up

³ Devon & Severn IFCA: Decision Making & the Precautionary Principle Nov 2017

to and including prohibition ('strict precaution'). Often, however, precaution can be exercised through the proper application of a feedback loop between activity and impact which modifies the intensity of a process over time ('adaptive precaution'). Adaptive precaution is the preferred option where:

- *the activity is one which can be undertaken at different levels of intensity;*
- *it is technically feasible to establish a feedback monitoring regime; and*
- *institutional frameworks are sufficiently robust to guarantee that monitoring and feedback controls future mortality.”*

By utilising its Diving Permit Byelaw together with catch reporting and IVMS, D&S IFCA can apply an adaptive precautionary approach which is flexible, can respond to increased evidence gathering and ensures the maintenance of a proportionate balance between the risk to scallop stocks and the benefit to this sector. A similar approach was taken with the Live Wrasse Fishery where measures were implemented through the Potting Permit Conditions and Policy Statement to ensure a fully document fishery⁴.

9. The introduction of Highly Protected Marine Areas (HPMAs) is believed to be relatively imminent, and this could result in D&S IFCA having to change regulations once again, perhaps with more extensive conservation measures.

A shortlist of HPMAs is likely to be publicised in the very near future. It is unknown whether there will be any designated in D&S IFCA's District. If one is designated D&S IFCA will be required to manage the site and exclude all forms of fishing activity both commercial and recreational.

The extent of the HPMA network is unknown and may remain so for many years. Given this uncertainty if D&S IFCA considers it inappropriate to consider additional management of the commercial dive scallop fishery at this time, this would seemingly have to be applied to all other new or amended management considerations.

Conclusion

Given the responses from Officers and stakeholder to the concerns raised by Members of B&SC, Officers now feel it is appropriate to explore with stakeholders, through consultation, management options that would restrict the fishery and support effective monitoring.

Background Papers

- [A Summary of responses from the Pre-Consultation on the Scallop Closed Season and Additional Information - 10th February 2021 & B&PSC Meeting Paper \(25th February 2021\)](#)
- Lawler, A. & Nawri, N., (2021). Assessment of king scallop stock status for selected waters around the English coast 2019/2020. Cefas Project Report for Defra, + 89 pp.
- [Devon & Severn IFCA: Decision Making & the Precautionary Principle Nov 2017](#)
- Policy Statement and Potting Permit Conditions for the Live Wrasse Fishery 9th August 2021

⁴ Policy Statement and Potting Permit Conditions for the Live Wrasse Fishery 9th August 2021