



Development of the Diving Permit Byelaw Permit Conditions

Scallop Closed Season

A Summary of Responses from the - Have Your Say (A Review of the Diving Permit Conditions) Pre-Consultation

(19th November 2021 to 17th December 2021)

28th January 2022

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1. Aim of Report

This report (28th January 2022) has been prepared for members of the Devon and Severn Inshore Fisheries and Conservation Authority's (D&S IFCA's) Byelaw and Permitting Sub-Committee (B&PSC) and for all stakeholders to examine via its publication on the D&S IFCA website. The report demonstrates how the pre-consultation (Scallop Closed Season – Have Your Say – A Review of the Diving Permit Conditions – November 2021) was conducted and summarises the responses received that relate to each topic as set out within the pre-consultation (questionnaire). This report includes embedded information (Hyperlinks) that give readers access to additional information. All additional information embedded in this report is freely accessible within different sections of [D&S IFCA's Website Resource Library](#).

Process

This report provides information that will inform the B&PSC regarding potential changes to the Category One (commercial) Diving Permit Conditions. If the B&PSC identify changes that are appropriate, a final phase of formal consultation will be undertaken that demonstrates what the changes will consist of and how they will be implemented via the Category One Diving Permit Conditions and associated Annexes. Following the formal consultation, the B&PSC will determine if changes to Category One Diving Permit Conditions are to be implemented.

Executive Summary of the Consultation and its Findings

The pre-consultation began on 19th November and ended on 17th December 2021. The pre-consultation had the aim to gain feedback, (potentially the level of support) from the commercial diving sector in response to specific topics and sub-questions.

Topics

- **Access areas to remove scallops in July, August, and September**
- **Bag Limits (seeking views on quantities)**
- **Minimum Conservation Reference Size (potential changes)**
- **Technology (use of greater technology)**
- **Research**
- **A final section was included to gather any other information that may be relevant.**

A total of eight responses were received by the closing date (17th December 2021), with seven responses submitted by fishers operating under a current Category One Diving Permit. The responses demonstrate support for increasing access areas for the removal of scallops by commercial divers, as part of a package of management measures. The months of July, August and September are viewed as important months for commercial scallop divers to have increased access to scallop stocks to drive their businesses forward and meet demand from merchants, restaurants, and hotels for a high-quality product. It is recognised that there is the opportunity for the potential introduction of tailored management that can better separate commercial divers targeting scallops from fishers engaged in the mobile fishing gear sector (scallop dredgers). Regarding potential new management measures, there is acceptance that additional access can be part of a management package, although the extent of specific restrictions such as an increase in the Minimum Conservation Reference Size (MCRS) for scallops divided opinion. Most commercial divers that responded in the pre-consultation were not in favour of the implementation of a prohibition on the use of store pots.

2. Background Information

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

2020 – 2021

The Scallop Closed Season was discussed at the B&PSC meeting in February 2021. At this meeting a [summary report](#)¹ of responses from a previous pre-consultation (2020) on the “Scallop Closed Season and Additional Information” was provided to all B&PSC members. The purpose of the 2020 report was to provide information to inform the development of the Permit Conditions for the Mobile Fishing Permit Byelaw and the Diving Permit Byelaw. The report highlighted the potential for changes to Category One Diving Permit Conditions based on the 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.

In February 2021, the B&PSC identified gaps in information and evidence which were addressed in an Officers’ paper ([Agenda Item 7](#)) that was presented to the B&PSC in October 2021. After considering the Officers’ paper at the B&PSC meeting in October 2021, the B&PSC actioned a further pre-consultation with stakeholders to gather information on possible management options for the commercial dive scallop fishery.

3. How the Pre-Consultation was Conducted

The Scallop Closed Season – Have Your Say – The Review of the Diving Permit Conditions pre-consultation began on 19th November 2021 and ended on 17th December 2021.

A questionnaire was developed and directly circulated to 15 Category One Diving Permit holders (some permit holders operate more than one vessel) and 14 of these (Mail Chimp) emails were opened by recipients. Although information was posted on the website that could reach a wider audience, the overarching aim was to seek and collate the views of the commercial diving sector, that are active within the District.

A Mail Chimp platform was used for the direct circulation, with the pdf version of it available to view [here](#).

The Mail Chimp circular explained the purpose of the information gathering exercise and how the collected information would be used.

Options were provided for engagement as follows:

1. Contact us via email – consultation@devonandsevernifca.gov.uk
2. Write to us

Ideally the option for one-to-one surgery sessions would have provided another option for stakeholders to express their views. Due to Covid-19 and a change in working practices, this option was not available for this information gathering exercise; however, one response was provided via a telephone call.

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)

The [pre-consultation](#) focussed on five specific topics with a series of questions relevant to each topic. Topics included:

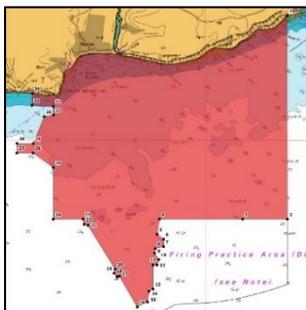
- **Access areas to remove scallops in July, August, and September**
- **Bag Limits (seeking views on quantities)**
- **Minimum Conservation Reference Size (potential changes)**
- **Technology (use of greater technology)**
- **Research**
- **A final section was included to gather any other information that may be relevant.**

4. Topics, Questions and Responses

A total of eight responses were received by the closing date of 17th December 2021, with seven of these responses provided by fishers operating under current Category One Diving Permits and the remaining response was from a previous Category One Diving Permit Holder. Responses have been summarised topic by topic and include quotations transcribed from the responses as shown in purple font.

4.1 Topic 1: Access areas to remove scallops in July, August, and September

The questionnaire highlighted that access to scallop stocks in July, August and September would be based on locations that are not accessible to fishers operating under a Category One Mobile Fishing Gear Permit (scallop dredgers and demersal trawlers). The proposed open areas for commercial divers to remove scallops in July, August, and September would only consist of locations (Marine Protected Areas) that are not accessible to demersal towed gear vessels as the areas are closed under Mobile Fishing Permit Byelaw Permit Conditions ([Annexes](#)). The proposed access areas for the removal of scallops in July, August, and September would in effect be “dive caught scallop only” areas. Examples of access areas were included in the circular.



Lyme Bay:

This site (shaded red) is closed all year to demersal towed gear vessels. It could become accessible to commercial divers removing scallops during July, August, and September each year.

The scallop closed season would apply to commercial divers in areas of the District that are not defined within specific Annexes (the white areas beyond the perimeter).

In addition to the area within Lyme Bay, other sites highlighted for potential access consist of the following:

- Part of Torbay;
- Parts of the South Devon Coast;
- Parts of Bigbury Bay;
- Parts of Plymouth Sound; and
- Parts of Lundy Island and the Severn Estuary (as defined)

Topic 1: Questions

- a) Are you in favour of increased access to scallop stocks within a three-month period - July, August, and September – a change to the current restriction?
- b) Should the summer opening be for a shorter period and, if so, for how long?
- c) What are your views on the suggested access areas?
- d) What difference will an increase in access to scallop stocks in July, August and September mean to you and your business?
- e) Do you have any other views or comments regarding access for commercial divers removing scallops?

Topic 1: Officers' Summary

The responses recognised the concept of potentially allowing increased access in areas restricted all year round for scallop dredgers, thereby creating more tailored management for commercial diving - "Dive only scallop collection areas". None of the responses raised any issues with the access sites as proposed. All fishers currently operating under a Category One Diving Permit were in favour of increased access in the months of July, August and September and favoured a three-month opening, rather than a shorter period.

The active fishers highlighted that greater access to scallop stocks during these months provides increased fishing opportunity and a potential reduction in the need to diversify into other fishing activities during this period. The responses highlighted that the weather conditions are generally more favourable in the summer months reducing health and safety concerns and increased access would have the effect of reducing fishing pressure at other times of the year. The ability to fish all year as part of a package of management measures was highlighted as a positive, allowing customer bases to be retained and supplied with a quality product that can be marketed as "Devon Dived Caught Scallops" (PGI - Protected Geographical Indication).

Additional benefits would include protecting the livelihoods of vessel crews that otherwise would see a significant reduction in their income. Although it was recognised that increased access would provide greater fishing opportunity, responses highlighted that commercial diving is to some degree "self-regulating" as divers have to contend with natural restrictions such as visibility, water depth and decompression issues.

One of the responses (without a Permit) raised concern regarding a summer opening as it could have a detrimental effect on the local scallop populations. This response highlighted that the scallop spawning season can run from April-September and can depend on a number of variables such as age and water temperature. This response also raised the point that scallops can have two partial spawning periods throughout their breeding season. A partial spawn in the spring and then another full spawning event in the autumn. This stakeholder had the view that continued collection activities during their spawning period is sacrificing sustainability for an increased revenue for scallop divers.

Selected Quotations

"As a commercial dive permit (holder) I feel that it would be a good idea to allow limited diving for scallops in the close season. Maybe a limited amount of days per week, or a limited amount of days per month. If there is a worry of overfishing perhaps not issuing anymore permits for a few years to see how the fishery continues".

"The loss of supply through the summer months also undermines the diver picked scallop industry by portraying it as an unreliable source of scallops, subsequently forcing those that want to support

sustainable fishing to return to supporting other, more environmentally damaging, ways of sourcing scallops”.

“I believe sustainable, selective and ethical forms of fishing that produce zero bycatch should be encouraged and supported by managing governing bodies”.

“We support the hand collections of scallops using divers due to the selectivity that occurs from having someone selecting only scallops of legal size. This practice has increased the sustainability of the market. With that being said, divers can only collect so many in a day. By increasing the number of days available for collections, greater numbers will be collected and removed from local populations. Stopping collections during the spawning periods will give the populations a greater potential to repopulate the stocks that have been removed keeping the population sustainable”.

“With coastal waters warming earlier in the season due to higher atmospheric temperatures there may be to opportunity to open the season again slightly earlier as the trigger temperatures for spawning may have been achieved earlier than traditional timelines, however, more research will need to be conducted to see if this is in fact the case”.

4.2 Topic 2: Bag Limits

The questionnaire highlighted that a fisher operating under a Diving Permit can be selective regarding the size of scallops and quantities removed in each area and that catch restrictions (bag limits) could be used in combination with access areas and time restrictions. The circular also highlighted that pre-consultation in 2020 gained feedback that some commercial divers would accept a daily bag limit of scallops taken from the access areas during July, August, and September and for bag limits to be enforceable, other restrictions may become a consideration.

Topic 2: Questions

- f) What is your view on a bag limit for scallops that are taken from access areas in July, August, and September?
- g) What level of daily bag limit do you think is appropriate?
- h) To support the implementation of bag limits, would you agree to the restriction where if you have dived in D&S IFCA’s District, you would not be able to dive elsewhere and retain scallops on that fishing trip?
- i) Would you support a prohibition on the use of store pots/devices for the storage of scallops at sea in July, August, and September?
- j) Do you have any other views or comments about daily bag limits?

Topic 2: Officers’ Summary

Bag Limits:

The responses indicate acceptance of a bag limit as part of a package of management measures; however, the suggested levels for a daily bag limit did vary as shown in the table below:

| Response | 01 | 02 | 03 | 04 | 05 | 06 | 07 | 08 |
|---|-------------|-------------------------------------|------------------------------------|--------------------------------------|-------------------------------------|---------|---------|-------------------------------------|
| Suggested Bag Limit (individual shells) | 2500 | 1200 (10 bags per vessel) | 2400 (20 bags per diver) | 2340 (19.5 bags per diver) | 2400 (20 bags per vessel) | No data | No data | 2400 (20 bags per vessel) |

The theme in several of the responses was that the implementation of a bag limit must be set at a reasonable level to recognise days when fishing is poor due to factors such as weather or reduced visibility. The drive from the commercial divers is to have greater fishing opportunity; however, the expenses of running their businesses (including fishing expenses – fuel, nitrox, dive consumables and crew wages) should be recognised when setting a bag limit to make it worthwhile. Although different bag limits were suggested, responses did indicate that some of the suggested levels were unlikely to be collected each day. One fisher highlighted that in their view 18 x 10 dozen bags would equate to “a very good day” and another commented that on a poor day the catch may equate to 600 scallops.

To recognise the setting of a bag limit and the need for it to be enforceable, six of the responses supported a restriction where if they have dived in D&S IFCA’s District, they would not be able to dive elsewhere and retain scallops on that fishing trip. One response stated that if divers wished to operate in other areas, they should be able to land their catch before going to a new area. One response was not supportive of this type of spatial restriction and stated that as he has spent £80,000 on a fishing licence, he would prefer to be able to fish in different areas as required.

Selected Quotations

“Bag limits have to be set at a workable limit even though the mobile scallop vessels have no limits I would have no problem with a bag limit as long as it’s economically viable”.

“I feel if the bag limit is good for both parties. I don’t believe abuse of the bag limit will be problem if it’s reasonable implemented”.

“In order to police this there may be a higher effort required by the IFCA to ensure catch limits are adhered to which may not be within their budget. If this is the case, then we would have to err on the side of caution to keep the populations sustainability as high as possible and impose heavy fines on people caught in an effort to deter illegal catches. We suggest something similar to a 99-1 rule that is currently in effect in Norway where if someone is caught illegally fishing, it is assumed that they have previously got away with it another 99 times and the fine is multiplied by 99. Vessel seizures like in Australia should also be considered”.

Store Pots:

Most responses were opposed to a prohibition on the use of store pots in July, August and September and the quotations (transcripts) below provide their rationale.

having no restriction – “This means we can keep supplying businesses with fresh produce to counter act the bad weather that effects diving more than any other fishing method”.

“.....this is an integral part of this Business. We store several days catch for our customers and if rough weather is forecast, we can keep our customers supplied even if we can’t go diving due to lack of Visibility. As with crab and Lobster potting, store pots and store bags are an integral part of the business”.

“I would be extremely against a prohibition of storage bags I understand that this would be to prevent the abuse of a bag limit but if the bag limit is reasonable, I don’t see how it would be necessary”.

“Storage bags are vital to conduct scallop diving, customers can often require large sums of scallop which can take multiple days to accumulate if we are unable to store scallop it would defeat the purpose of opening the three months”.

“I would not support a prohibition on the use of store nets as this would make the trip not commercially viable. If we were to have no scallops ordered on the days that the weather allows us to dive, then the trip would be pointless, and no income would be made”.

“The use of at sea store pots/devices have the potential to allow the scallops to continue to spawn (assuming they are not so densely populated in the pot/device to stop spawning activities) if they have not already done so”.

Two of the responses supported the prohibition on the use of store pots in July, August and September as it will reduce the risk that a daily bag limit would be abused and demonstrates that the diving sector is open to some “give and take”.

4.3 Topic 3: Minimum Conservation Reference Size

The pre-consultation information highlighted that a fisher operating under a Diving Permit can be selective regarding the size of scallops and quantities removed in each area fished. The current Minimum Conservation Reference Size (MCRS) is 100mm; however, other engagement work to date has highlighted that some commercial divers would be open to an increase in the MCRS for scallops.

Topic 3: Questions

- k) What is your view on an increase in MCRS for scallops – are you in favour?**
- l) What MCRS for scallop would you suggest as being appropriate?**
- m) Should an increase in MCRS for scallops taken by commercial divers apply all year or be limited to a three-month period?**
- n) What other views or comments do you have regarding the MCRS for scallop?**

Topic 3: Officers' Summary

There were mixed views on a potential increase in the Minimum Conservation Reference Size (MCRS) for scallops, when it should apply, and to which sector it should apply. Rather than having tailored management measures for commercial diving, some suggested that any increase should apply equally to the mobile fishing fleet (scallop dredgers) and if possible, a nationwide increase was suggested. One response highlighted that it may be overly complicated for enforcement agencies to have to enforce different size restrictions for different fishing sectors.

Size suggestions:

One response suggested if an increase is introduced, then it should be a voluntary increase in MCRS; whereas others had strong views that an increase (regulation) should be implemented with a size of at least 110mm all year round. The largest MCRS suggested in the responses was 120mm; however, this was an increase to be limited to the summer months in the proposed access areas for commercial divers and not district wide.

Some responses highlighted that the increase would make a huge difference to the size of harvested meat yield and would be an easy way of helping to keep stocks in a healthy and sustainable state. It was suggested that there is a greater demand for larger scallop more than 100mm (width of shell), and dive caught scallops of a larger size can be marketed in a different

way to those caught by scallop dredgers. The table below demonstrates the mixed views received.

| Response | Comments (summary) | Suggested Size |
|-----------------|--|--|
| 01 | A larger size in summer months when visibility is better. Smaller size in the winter months. | 105mm (summer) 100mm (winter) |
| 02 | Most divers land scallops over 100mm. Keep it the same as this allows for “chipping” of the shells. | 100mm |
| 03 | Keep it the same. If there is an increase apply to diving and mobile gear sectors. Many divers would favour an increase but there will be difficulty getting the mobile gear sector to agree. | 100mm |
| 04 | I don't think an increase is necessary. I leave about 70% of scallops untouched when I move from that area, including those above 100mm. If increased, it should be voluntary with a summer size of 105 -110mm and 100mm for rest of the year. | 100mm 105-110mm (voluntary in summer months) |
| 05 | No scallops on board my vessel are kept at a size less than 110mm. There should be an increase for both diving and mobile gear sectors. An increase is an easy way to keep stocks healthier. | 100mm to 110mm |
| 06 | (No suggestion or relevant comment) | No data |
| 07 | The MCRS should be increased if additional access is provided for commercial divers. Although increasing all year round would be beneficial, we do not believe this is necessary. | 120mm (summer months) |
| 08 | An increase would be a good thing – possibly over time research will support/demonstrate the benefits. There is nothing wrong with having different management measures for different fishing sectors. | 110mm (all year for divers) |

4.4 Topic 4: Technology

The pre-consultation information highlighted that the national roll out of the fitting of IVMS on all commercial fishing vessels in England is expected to commence in early 2022. 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. It was explained that this national initiative may create an opportunity for all commercial dive vessels in D&S IFCA's District to have IVMS installed prior to the summer months (2022), and therefore monitoring of the level and location of the vessels' activities can be undertaken.

Topic 4: Questions

- o) What are your views on the fitting of IVMS?**
- p) Would you consider an earlier fitting of IVMS on your own vessel as part of the management measures to give you greater access to scallop stocks?**
- q) Do you have any other views or comments regarding the fitting of IVMS?**

Topic 4: Officers' Summary

Six of the responses commented that the fitting of iVMS would be acceptable, with some of the responses demonstrating that they are also aware of the national requirements being implemented. Most responses also indicated that they would consider the earlier fitting of iVMS if this was possible with one suggesting that by the time permit conditions are potentially amended, many vessels will have already had the required units fitted.

Responses did raise concern regarding costs to fishers for the fitting of technology and for that reason, one of the responses indicated that they would prefer to wait until it becomes a mandatory requirement. One of the responses stated their support for the fitting of iVMS on "destructive" fishing vessels; however, their view is that it would be an expensive and pointless exercise for scallop divers as there are no restricted areas for diving. This response highlighted that they already submit landing declarations at the end of every fishing trip.

4.5 Topic 5: Research

The pre-consultation information highlighted that at present there are limited data available about stocks of scallops within D&S IFCA's District. Research undertaken by Cefas only takes account of areas that are fished by scallop dredgers and there is a lack of data for areas that are not fished, for example areas closed due to their designation as Marine Protected Areas. D&S IFCA works closely with the University of Plymouth and as part of their MSC in marine conservation, has provided a proposal for a project to assess the scallop close season in D&S IFCA District. A student has taken up the project and will be working with D&S IFCA to undertake research throughout 2022.

The pre-consultation also clarified that the Diving Permit Byelaw includes a provision that means D&S IFCA can request relevant fisheries information from permit holders and there is potential that fishers can assist with further research as the fishery is more closely monitored.

Topic 5: Questions:

- r) Would you be prepared to assist with or input into research work?**
- s) Would you facilitate on board survey work to be conducted by or supervised by D&S IFCA?**
- t) Do you have any other views or comments regarding on-going research work?**

Topic 5: Officers' Summary

Most responses were simple "yes" answers to questions **(r)** and **(s)**. Although there was some uncertainty expressed regarding exactly what may be required from fishers to support research, fishers are supportive of further research. One response indicated that they are already working (or in contact with) Plymouth University. Regarding question **(t)** "other views on research", one response indicated that on board research work should begin as soon as possible and another suggested more meetings with commercial divers to gain more insight into the activity and the challenges faced.

4.6 Other Information & Responses

The final question (u) in the pre-consultation provided the opportunity for any other comments to be submitted. One response highlighted concerns from a health and safety perspective and encouraged more checks and inspections on board commercial diving vessels. A selection of summarised quotations has been included.

“me and my crew have become scallop divers for the sustainability and eco friendliness of it and would like it to succeed”.

“scallop divers more limited than dredgers – big tides, visibility – the changes would give a more steady market when merchants, restaurants and hotels want the scallops”.

“.....this is the most important decision the committee has to make in many years. The livelihoods of many young fisherman coming into the fishing industry are at stake here. This will affect not only them but the local community, the fishing industry needs some good news, and this is one method of fishing that all the public are supportive of. I do hope Common sense prevails and the committee does the right thing it would be a shame to let this opportunity pass by”.

“I don’t believe heavy restriction on bags of scallop is necessary, demand is there for dived scallop, but it is substantially lesser then most people expect there is simply not enough demand or infrastructure to warrant an increase in vessels”.

“I would love to be able to explain just how little fishing days are available to us as when governed by nature, let alone to lose the three best weather months of the year. I think that it is unfair for the scallop diving industry to be viewed in the same category as the dredging fishery as we have many more factors restricting us from going to sea”.

“.....I believe that our objectives are same, to prove that scallop diving can be carried out in a sustainable and financially stable manner”.

5. Background Information (Hyper- Links to Information)

[A Summary of Responses from the Pre-Consultation on the Scallop Closed season and Additional Information \(10th February 2021\).](#)

[B&PSC Minutes \(25th February 2021\)](#)

[Agenda Item 7 – Scallop Closed Season \(B&PSC Meeting – October 2021\)](#)

[The Scallop Closed Season – Have Your Say – The Review of the Diving Permit Conditions \(pre-consultation Mail Chimp Circular\) – November 2021.](#)

End.