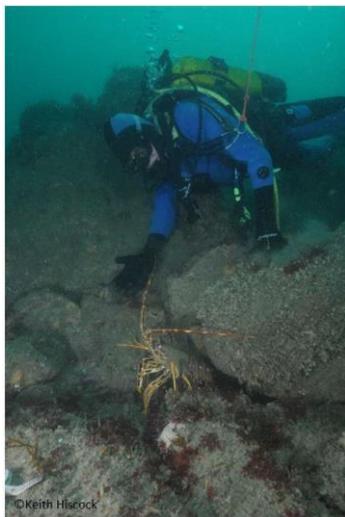




Diving Permit Byelaw

A Three-Year Review of the Permit Conditions



Phase Two Consultation

(8th March to 12th April 2019)

March 2019

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1. Aim of this Supplementary Report

The primary aim of this report is to provide all stakeholders with key information, so they can effectively engage in the second phase of consultation that relates to the Three-Year Review of the Diving Permit Conditions.

The report and subsequent editions has other aims as follows:

- **Demonstrate the measures that have already been taken to manage diving activity for the capture of scallops, crab and lobster**
- **Document the findings of the consultations and the evidence base used for decision making**
- **Demonstrate how, when and why decisions have been taken**
- **Provide background information to all stakeholders about D&S IFCA and how the organisation functions**

This consultation is the second and final phase of the Three-Year Review of Diving Permit Conditions and sets out the specific items that are being subjected to consultation, including demonstrating why they have been chosen by the Byelaw and Permitting Sub-Committee for consultation. The report also demonstrates how the Diving Permit Conditions would potentially be amended to introduce the items being subjected to consultation.

On completion of all phases of consultation, a single report will document the complete process and outcomes of the three-year review of the Diving Permit Byelaw permit conditions and will act as the overarching reference document. The findings of this consultation will be presented to the Byelaw and Permitting Sub-Committee in May 2019. The findings of the consultation will assist members in their decision making.

All stakeholders, regardless of their interest or fishing activity conducted, can engage in consultations conducted by Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA).

This report makes use of embedded information (hyperlinks) and is best suited for viewing in electronic format.

The Consultation Items:

These are fully explained within this document, but in summary they are as follows:

- Number of scallops that can be taken by a recreational diver (Category Two Permit)
- Applying additional restrictions to protect Spiny Lobster
- To introduce some spatial restrictions within the Diving Permit Conditions
- To remove a reliance on a deeming clause that is within the Diving Permit Byelaw

How to engage and follow the process

The consultation will begin on 8th March 2019 and end on 12th April 2019.

D&S IFCA will circulate a Call for Information email circular to all contacts that have provided an email address. Permit holders that have not provided an email address will be notified by post. In addition, stakeholders can visit www.devonandsevernifca.gov.uk to find more information. The D&S IFCA website has a latest news scroll and a consultation page.

2. The Consultation Items

Catch Restrictions: Number of scallops that can be taken by a recreational fisher

The present Category Two Diving Permit Conditions allow for a recreational diver to take up to 15 scallops per calendar day. The setting of a daily recreational bag limit is not solely for conservation objectives. D&S IFCA has a duty¹ to balance the different needs of persons engaged in this fishing activity. The needs of Category One (commercial) permit holders are different to those in the recreational sector and this daily bag limit does not apply to that sector, whereas the closed fishing period for scallops in July, August and September does not apply to recreational fishers (Category Two Permit Holders).

When specifying the original catch restrictions, the Authority believed it had achieved a fair balance between the divergent interests of commercial and recreational fishers. For non-commercial divers, the Authority believed that it had set limits which were entirely appropriate and proportionate to personal consumption. Although detailed landing data is not collected at this time, the permit system helps to improve estimations of total recreational take when full compliance with the restrictions is assumed.

On 11th October 2018 the Byelaw and Permitting Sub-Committee concluded that the present restriction should be subjected to consultation; however, a definitive level should not be suggested. It is open for stakeholders to provide their view on what constitutes the correct level of recreational take.

Questions:

- 1. What level number of scallops should be considered as being appropriate for a recreational diver using a Category Two Permit to take each calendar day?**
- 2. What reasons do you have for your suggestion?**

How would the Diving Permits be amended?

If changes are agreed, then paragraph 1.4.1 (Catch Restrictions) would be amended as follows:

- 1.4.1 A Category Two permit holder is not authorised under this permit to remove from a fishery within the District in any calendar day more than:
- a total of two lobsters, however comprised, from the species of lobster and spiny lobster, and
 - a total of three crabs, however comprised, from the species of edible crab and spider crab and
 - a total of **X** scallops.

Note

The numbers of lobsters and crab that can be taken are not being subjected to consultation. Section 3 of report provides additional information as to why this item was selected for consultation.

¹ MaCAA 2009 – 153 (d) – seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Protection of Spiny Lobsters that have Recently Cast their Shell

There is currently a lack of protection to “soft shell” spiny lobster in the present Diving Permit Conditions. It has been concluded that this has arisen in error during the development of the original diving permit conditions. This oversight has been addressed in the creation of the Netting Permit Byelaw and both the Mobile Fishing and Potting Permit Conditions have been subjected to consultation and amended to resolve this issue. It is the view of the Byelaw and Permitting Sub-Committee that the Diving Permit Conditions should also be amended to provide additional protection to spiny lobsters that have recently cast their shell.

Question:

3. Do you have any reasons why the Diving Permit Conditions should not be amended to provide protection for spiny lobsters that have recently cast their shell?

Prohibition on the Removal of Parts of Spiny Lobster

Although not discussed in detail at past Byelaw and Permitting Sub-Committee meetings, it was recognised in the re-drafting process that the opportunity existed to add additional protection for spiny lobster regarding a prohibition on the removal of parts of the species. It was agreed that this additional condition is subjected to consultation.

Question:

4. Do you have any reasons why the Diving Permit Conditions should not be amended to introduce a prohibition on the removal of parts of spiny lobster?

How would the Diving Permits be amended?

The present numbering of the Diving Permit Conditions would be amended. If changes are agreed, then paragraph 1.2 (Catch Restrictions) will now read as follows:

- 1.2 A permit holder or named representative is not authorised under this Permit to remove from a fishery within the District:
 - a) any ‘V’-notched or mutilated lobster or spiny lobster;
 - b) any berried lobster, spiny lobster or edible crab;
 - c) any part of an edible crab, lobster or spiny lobster which is detached from the carapace of the crab or lobster;
 - d) any edible crab, lobster or spiny lobster that has recently cast its shell.

Note

The new list (a-d) is presented in a slightly different way to the original Diving Permit Conditions. Although the words spiny lobster have been added to sections (a) and (b), this does not introduce a new restriction. The definition of “V-notched lobster” did originally include spiny lobster. The same is true regarding the definition of “berried lobster”. The addition of the wording spiny lobster in these sections are to add clarity rather than a new restriction. Section 3 of this report provides additional information as to how and why the items above were selected for consultation.

Prohibition on the removal of Spiny Lobster from Tranche 2 Marine Conservation Zones (MCZ)

Current Diving Permit Conditions prohibit the removal of spiny lobster from within the Skerries Bank and Surrounds MCZ and also Lundy MCZ. For the Tranche 2 MCZ site, Bideford to Foreland Point MCZ, spiny lobster is a feature of conservation importance with a 'recover to favourable conservation' objective and therefore need protecting. D&S IFCA is able to introduce management to protect the feature, prevent deterioration of spiny lobster populations and ensure the conservation objective is furthered. It is the IFCA's statutory responsibility to seek to further the conservation objectives of the sites. Permit conditions related to mobile fishing, potting and netting have already been amended to achieve this objective. It is the intention of D&S IFCA to amend the Diving Permit Conditions to add protection for spiny lobster in the Bideford to Foreland Point MCZ.

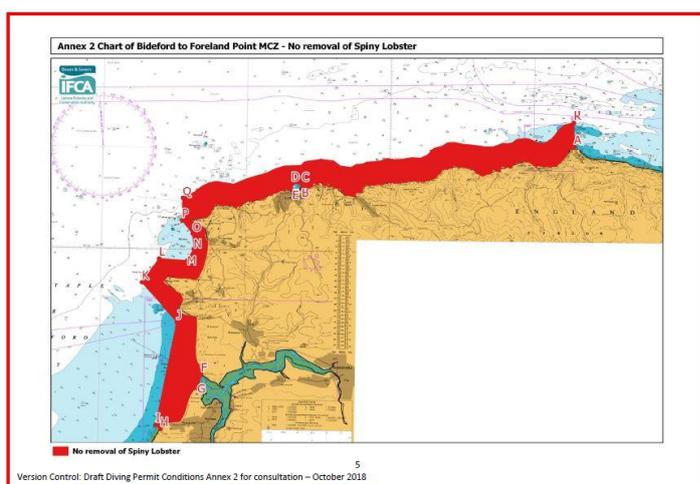
Question:

- 5. Do you have any reasons why the Diving Permit Conditions should not be amended to prohibit the removal of spiny lobster from the Bideford to Foreland Point MCZ?**

How would the Diving Permits be amended?

The formatting and numbering of the existing Diving Permit Conditions will be amended. This condition would be categorised as a spatial restriction rather than a catch restriction. A chart (shown in draft form and in much smaller scale) would become part of the Diving Permit Conditions and should be read in conjunction with the spatial restriction text in section 3. The finalised Annex 2 Chart would define coordinates that apply in this coastal area.

- 3.2 In the areas as defined by the coordinates set out in the attached Annex 2 of this Permit (Lundy, Skerries Bank and Surrounds, and Bideford to Foreland Point Marine Conservation Zones), a permit holder or named representative is not authorised to remove any spiny lobster.



Section 3 of this report provides additional information as to how and why this item was selected for consultation.

Adding the Lundy Island, No Take Zone to the Diving Permit Conditions

A stand-alone legacy byelaw is already in place and enforced by D&S IFCA. It is important to recognise that the legacy measure applies to all persons. No person can remove any sea fish from within the defined area at Lundy Island. The diving permits are issued for divers who wish to take crab, lobsters and scallops. Permits are not issued for divers that don't remove the defined shellfish or those that may want to take fin fish. **The legacy Byelaw would not be revoked as part of a potential change to the diving permit conditions.**

To add clarity for divers with permits it is considered beneficial to incorporate an element of this restriction into the present Diving Permit Conditions. This addition to the Diving permit conditions would not add an additional restriction to fishers however; this addition would potentially simplify restrictions for divers who do have a permit as more of the regulation will be in one place (the permit). An Annex (chart) can be created and issued with the permit conditions.

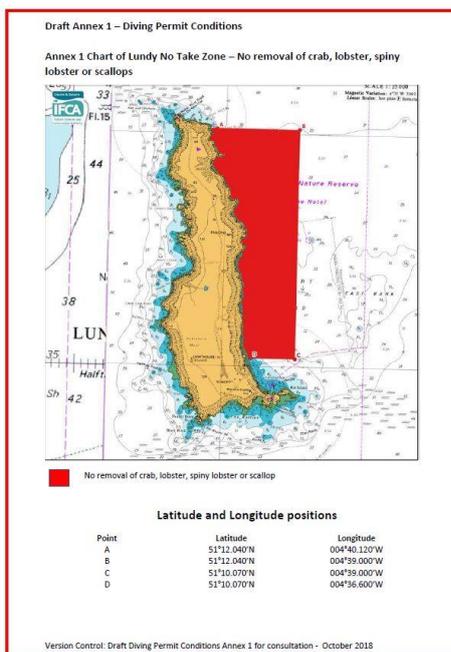
Question:

6. Do you have any reasons why the Diving Permit Conditions should not be amended to clarify that divers can't remove edible crab, spider crab, lobster, spiny lobster or scallop from the Lundy Island No Take Zone?

How would the Diving Permits be amended?

The formatting and numbering of the existing Diving Permit Conditions will be amended. This condition would be categorised as a spatial restriction rather than a catch restriction. A chart (shown in draft form and in much smaller scale) would become part of the Diving Permit Conditions and should be read in conjunction with the spatial restriction text in section 3.

- 3.1 In the areas as defined by the coordinates set out in the attached Annex 1 of this Permit (Lundy Island No Take Zone), a permit holder or named representative is not authorised to remove any edible crab, spider crab, lobster, spiny lobster or scallop.



Section 3 of this report provides additional information as to how and why this item was selected for consultation.

Knoll Pins (Lundy Island) Restriction

The current Diving Permit Conditions contain a spatial restriction that applies to the Knoll Pins area at Lundy Island. The current restriction reads as follows:

A permit holder or named representative is not authorised under this permit to remove any sea fish resources from or use pots for the purpose of storing sea fish resources within 100m of low water mark around the Knoll Pins as defined by mean low water spring tides.

The re-drafting process offers the opportunity to add clarity to this restriction and introduce a chart (Annex) to aid permit holders identify where the restriction applies. The area is already within the Lundy No take Zone so a prohibition on removal of sea fisheries resources is not required. It has also been recognised that the original wording is not legally suitable for continuing use as the Diving Permit Conditions only apply to shellfish species that are defined in the Diving Permit Byelaw. The proposal is to retain a restriction on the use of a store pot and the Permit Conditions would be amended.

How would the Diving Permits be amended?

- 3.3 In the areas as defined by the coordinates set out in the attached Annex 3 of this Permit (Knoll Pins), a permit holder or named representative is not authorised to use any container or any other device to store any edible crab, spider crab, lobster, spiny lobster or scallop.

A Chart (Annex) would be prepared in a similar way to the others shown as examples.

Question:

- 7. Do you have any reasons why the Diving Permit Conditions should not be amended to clarify the restriction regarding the Knoll Pins area at Lundy Island?**

Section 3 of this report provides additional information as to how and why this item was selected for consultation.

To Use Permit Conditions to Replace a Reliance on the Deeming Clause

As with the Mobile Fishing and the Potting Permit Byelaws, the implementation of the Diving Permit Byelaw was a significant change from the more traditional byelaw model. The format used to make the other permit-based byelaws was largely replicated when the Diving Permit Byelaw was constructed and therefore a deeming clause was introduced.

Why was a deeming clause introduced?

A deeming clause was introduced to support the effective enforcement of some of the management measures that were introduced in the Byelaw and permit conditions. Byelaws only apply within the District, normally six nautical miles from the coast or, in places on the north coast of the D&S IFCA District, the median line with Wales. Proving where vessels or individuals have been fishing and what was caught where is an inherent and significant

challenge and a potential enforcement weakness for any byelaw. Measures that apply within the byelaws such as minimum conservation reference sizes can be different (more restrictive) than domestic or EU legislation. The absence of a deeming clause can reduce the ability to enforce the legislation and consequently the effectiveness of the management measures.

What are the alternatives to deeming clauses and how can this be achieved?

In 2016, the Department for Environment & Rural Affairs (Defra) issued advice to D&S IFCA. It was explained that deeming clauses are rarely used in the UK justice system. D&S IFCA's prosecuting solicitor was in agreement with the issued advice, and as an alternative, recommended that permit conditions should be fully utilized instead.

The deeming Clause can be removed from the Diving Permit Byelaw when it is reviewed and re-made. In the shorter term, the permit conditions can be amended to produce equivalent effectiveness as a deeming clause in a more legally acceptable manner. This has already been demonstrated in the development of the Netting Permit Byelaw where permit conditions (catch restrictions) were formatted in a different way.

The replacement on the reliance on the deeming clause has already been subjected to consultation for both the Mobile Fishing and Potting Permit Byelaws (permit conditions). Consistency of management is one of the guiding principles of the review of byelaws being undertaken by D&S IFCA. It is proposed that the Diving Permit Conditions are amended to harmonise with other permit conditions being issued for other methods of fishing.

How would the Diving Permits be amended?

A new section within the catch restrictions section of the permit would be added as follows:

- 1.1 A permit holder or named representative is not authorised under this Permit to remove from a fishery within the District any edible crab, spider crab, lobster, spiny lobster or scallop if the Permit Holder or Named Representative has retained on board or has in their possession any catch that does not comply with any of the catch restrictions set out in paragraphs 1.2 to 1.4.3 inclusive.

Further Explanation

The sizes of some shellfish are different outside of the D&S IFCA District. This new section directly links the use of the permit to the rest of the catch restrictions. A Diving Permit Holder can transit through the District with shellfish that doesn't meet the conditions as set out in the permit. They would not be able to remove shellfish from the fishery within the District whilst they have shellfish on board that doesn't comply with the Diving Permit Conditions.

Question:

- 8. Do you have any reasons why the Diving Permit Conditions should not be amended to remove the reliance on the deeming clause?**

Section 3 of this report provides additional information as to how and why this item was selected for consultation.

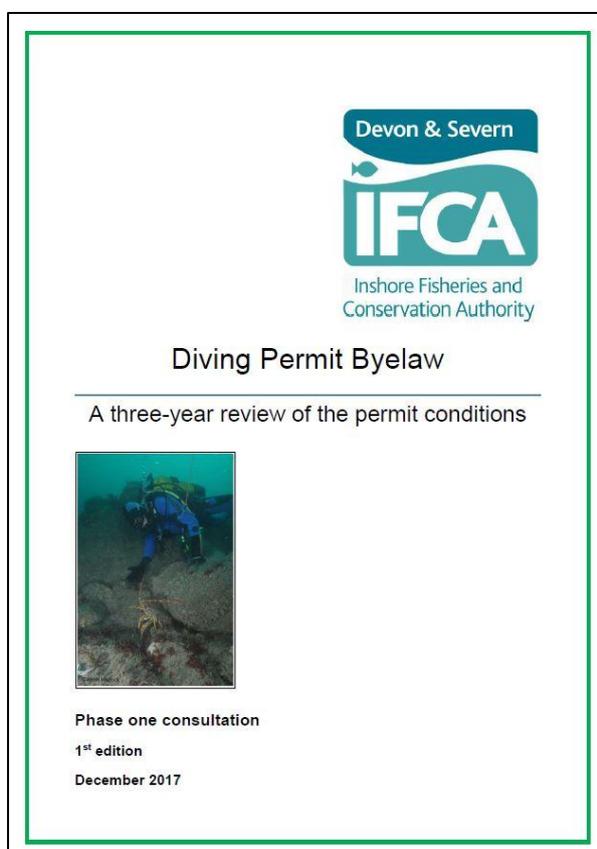
3. How were the consultation Items selected?

This consultation represents the second and final phase of the Three-Year Review of the Diving Permit Conditions.

Phase 1

The first phase began in December 2017 and ended on 12th January 2018. There were no specific items highlighted in the first phase consultation, however the consultation did provide an open invitation for all stakeholders to examine the present Diving Permit Conditions and identify any issues that they had.

A report was made available to help all stakeholders understand more about the review and is embedded ([Hyperlinked here](#)) and is still posted in [section F of the D&S IFCA Website Resource Library](#). (Byelaw Development Reports)



The report contained some key information such as:

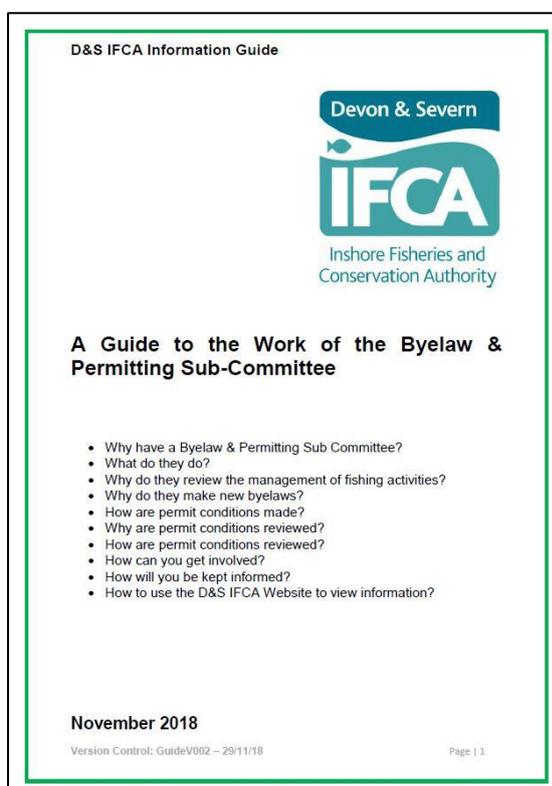
- **What restrictions are in the current Diving Permit Conditions**
- **What is D&S IFCA and what does it do?**
- **Why does D&S IFCA manage diving activity?**
- **How does D&S IFCA manage diving activity?**
- **The use of permits**
- **How are flexible permit conditions changed?**
- **How the review of the flexible permit conditions is conducted?**

Decision Making

Decision making is conducted by the D&S IFCA Byelaw and Permitting Sub-Committee. This group are tasked with conducting different aspects of byelaw working on behalf of the Authority. Core work includes:



A separate guide has been prepared to help stakeholders explore the work of the D&S IFCA Byelaw and Permitting Sub-Committee and is embedded ([Hyperlinked here](#)).

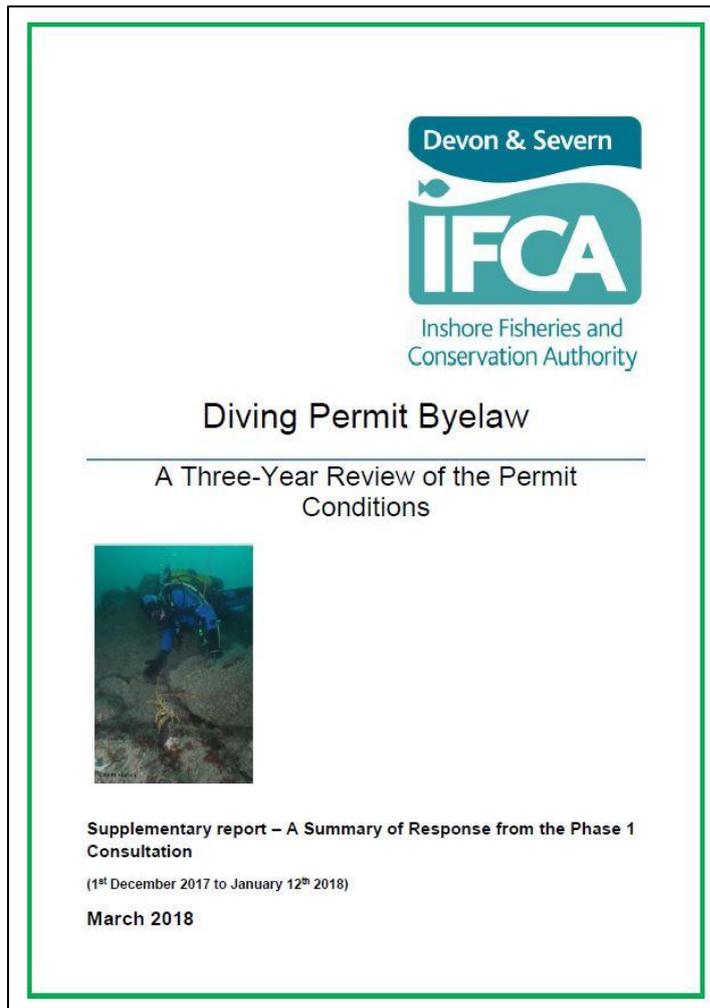


Meetings

The responses to the first phase consultation were collated and inserted into a report. This report was finished in March 2018 and was presented to members of the Byelaw and Permitting Sub-Committee (B&PSC) on 11th October 2018. The report was discussed by members at their meeting and they identified which items should be subjected to additional consultation.

Supplement Report – A Summary of Response from the Phase 1 Consultation

The full report has been embedded ([hyperlinked here](#)).



The report included the summarised responses from organisations, individual stakeholders (section 4) and also highlighted some other potential changes to the Diving Permit Conditions that could be considered (Section 5).

Section 4 and 5 of the Supplement Report has been transcribed in full below.

Minutes are taken of all B&PSC meetings and are posted in Section B of the D&S IFCA [Website Resource Library](#)

To aid readers, the relevant sections of the minutes taken on 11th October 2018 and the decisions taken by the B&PSC have been added to this report and are shown in purple text.

Responses from Organisations

Devon Wildlife Trust (DWT)

The response offered by this organisation focussed on several topics, with some (such as their support to see the application of otter guards fitted to pots, containers or other devices) more relevant to potting rather than the management of diving activity. Errors within the diving permit condition numbering (Catch restrictions) was highlighted for amendment. The response also suggested that elements of the wording within present catch restrictions be amended, and the word “berried” added within paragraph 1.1 (any berried lobster or “berried” edible crab).

In regard to the protection of spiny lobster, the DWT has recommended that ideally no spiny lobster should be taken from any area within the District by any permit holder. A suggested compromise was that Category One catch restrictions are amended to mirror those of Category Two permit holders and therefore restrict catches of spiny lobster to two per day. Their expectation is that, as a minimum, the Bideford to Foreland Point MCZ area should be added to the diving permits and the removal of this species be prohibited from this site.

The response from DWT also suggested permit condition amendments to add clarity to the existing restrictions, in particular the catch restrictions and the restrictions for the removal of berried species (edible crab).

Officer Comments

The amendments suggested by DWT to the numbering and wording used within the permits would be addressed if any diving permit conditions are subjected to further consultation. A permit re-drafting process provides the opportunity for the format of the diving permit conditions to be adjusted (minor changes to wording and numbering and placement of restrictions) to harmonise with other D&S IFCA permits as well as the opportunity to add proposed permit condition changes for consultation.

The addition of the wording “berried edible crab” is an example where amended diving permit conditions would both harmonise and add clarity to the catch restrictions.

- *Providing additional protection for spiny lobster and the inclusion of the Bideford to Foreland Point MCZ within the diving permit conditions has been identified as a discussion item later in this supplement.*

The recommendation from DWT to prohibit the removal of spiny lobster in all areas of the District has not been applied to other D&S IFCA permits used to manage other fishing methods. Neither has a two-spiny lobster per day catch restriction been applied to commercial fishers in other sectors.

Discussion by the B&PSC

Spiny Lobster

The response offered by Devon Wildlife Trust (DWT) was discussed at length by members. Conversation became more focussed on the suggestions from DWT regarding the protection of spiny lobster, rather than the formatting and numbering issues that would be addressed in any re-drafting exercise that potentially would be undertaken. Members acknowledged the officer comments documented in the supplement and DCO Clark explained that the

harmonising of protection measures across several fishing activities (and the issued permit conditions) would be beneficial. DCO Clark explained that increases of juvenile spiny lobster have been reported by several sectors and the longer-term objective would be to have a sustainable fishery and avoid a boom and bust type scenario. Stephen Gledhill inquired if there was any conclusive evidence to suggest why numbers were increasing and DCO Clark reported that although there are reports of increased catches in Devon, Cornwall and the Scilly Islands, gaps in evidence do still exist which may be filled by further research over time. DCO Clark explained the complex life history of the species and how several factors may have culminated in the recovery of the stock. Jim Portus commented on the increased conservation already implemented by D&S IFCA via the management measures set out in the permit conditions, adding that the protection of the species within MPA areas should remain the priority. Jim Portus stated that he would be less supportive additional restrictions applied to this sector such as a daily catch limit or catch restriction. David Morgan agreed that if further conservation measures are required then consideration must be extended to the management of other fishing sectors such as netting, potting and trawls. DCO Clark explained that an “invitation for information” initiative or scoping exercise could be considered as an alternative to the more focussed diving consultation. The Chair suggested that any such consultation information could be formulated, overseen by the members for potential amendment and then circulated to all permit holders (every sector). DCO Clark suggested that the “invitation for information” scoping exercise would be very open and ask questions to the industry on what further management (if any) they would like to see implemented to increase longer term sustainability of the fishery. The Chair summarised the discussions into an action item rather than a formal vote as follows:

New Action (11th October 2018)

4	DCO Clark	<p>a) To prepare and conduct an independent “invitation for information” scoping exercise to gather the views of the industry associated with the management of spiny lobster.</p> <p>b) To prepare a paper for the Sub-Committee focussing on what is known about the biology and life history of the species and where the gaps in knowledge lie.</p>
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Individual Responses

Six individual responses provided some information and this information has been summarised into themes. Some themes are more suited to a review of the whole Diving Permit Byelaw, rather than focus on the current permit conditions.

Closed Season for Scallop Fishing (Category One – Commercial Dive Permits)

Response was mixed and the simplest response stated “***open up the closed season to encourage diving***”. Other responses in relation to this theme were slightly more detailed. One stakeholder raised concern that the current closed season period is not adequately enforced.

The application of the closed season to the entire District (and applied to different methods) was another issue raised and in particular the inclusion of North Devon. One fisher explained that although he conducts commercial potting, the three-month summer scallop close season (a restriction for commercial divers) presents him with difficulty diversifying his fishing activity.

In his view, although there is demand for hand collected scallops, it is not a viable option for him to diversify his commercial fishing activity to include diving with this seasonal restriction in place. The local demand is often in the summer and weather conditions are often unsuitable for him to operate at other times of the year. This diver has a recreational diving permit but has recognised that his personal bag limit (all year access) is for personal consumption only. This stakeholder has suggested a regional approach to the application of the closed season for commercial fishing.

Officer Comments

The protection of the stock needs to be balanced against different factors which can include the needs of the different user groups. It is possible for the permit conditions to apply the closed season to different groups of fishers, different methods and in addition apply the closed season to different spatial areas.

The closed season was a legacy measure (Devon Sea Fisheries Committee) that was initially incorporated into the Mobile Fishing Byelaw. During the making of the Mobile Fishing Byelaw this restriction was applied to the whole of the D&S IFCA District, rather than the original areas that were only in the South of the District.

During the creation of the Diving Permit Byelaw, the summer closure in July, August and September of the scallop fisheries in the entire District was included into the diving permit conditions so the commercial sector as a whole (includes commercial divers) are able to support the protection of the scallop stocks during the spawning period.

The numbers of divers (commercial and recreational) who would operate within the District was initially an unknown quantity. At present there are 20 permits that have been issued to commercial divers. This compares to 200 recreational divers and 134 mobile fishing permits, the majority operating scallop gear.

During the making of the Diving Permit Byelaw it was considered more likely that most leisure divers would dive (or want to dive) during the summer months and also may wish to take scallops at this time. The year-round access for recreational divers to remove scallops was balanced against the year-round daily bag limit of 15 scallops per day.

During the making of the Diving Permit Byelaw, reservations about allowing recreational divers to remove scallops during this period (July, August and September) were expressed by the UK diving organisations, who were concerned as to the effect on the conservation of scallop stocks. The Authority took the view that the daily catch limit (set at a low enough level) would not significantly impact stocks. On that basis the Authority was content to extend this concession to recreational divers, notwithstanding the concerns raised by the UK diving organisations.

Discussion by the B&PSC

Closed Season – (Possible amendments to management via consultation)

The Chair asked all members in turn to raise their comments. The Chair asked the members if D&S IFCA should go out to full consultation on this. Jim Portus did not favour consultation being undertaken at this time. Jim Portus explaining the extent of national scallop assessment

work currently being undertaken in conjunction with Cefas. Although the five-year work stream was only half completed, Jim Portus felt that the eventual findings would be very beneficial to D&S IFCA in the future and help with decision making regarding potential changes to the closed season, potentially across more than one fishing sector. Cllr Hellyer raised the point that during the creation of the Diving Permit Byelaw, the application of a closed season was well supported by the major diving groups and felt more evidence should be assembled to justify any consultation at this time. David Cuthbert felt that if a closed season was in place to help protect the spawning stock then this should remain in place. He added that to separate this issue between different fishing sectors would not be his favoured option and David Morgan suggested that future changes relating to species management are perhaps more suited to wider spread consultation across the board rather than a focussed item in the Three-Year Review of Diving Permit Conditions.

Several members commented that determining what items (in general) should be selected for further consultation was challenging and PPO Townsend explained that Agenda Item six would provide an opportunity to examine and review these expectations. Both Richard White and Andrew Knights acknowledged the different impacts that different activities can produce but also felt D&S IFCA had demonstrated a clear rationale for the original implementation of the closed season and more information and evidence would be needed for changes to be considered. Stephen Gledhill suggested that the relatively low numbers of commercial diving permits (issued to date) may be attributed to the current measures (including the closed season) and amendments may produce unintended consequences. Members further discussed the merits of any consultation at this time, believing that additional evidence about scallops may be lacking. Jim Portus added that some information from the national assessments would potentially be available in January 2019 but could not guarantee if the detail would be detailed enough at that stage. The Chair asked members to formalise a vote.

That potential changes to the scallop closed season is to be subjected to consultation in the focused phase of the Three-Year Review of Diving Permit Conditions.

Proposed: Andrew Knights **Seconded:** Cllr Hellyer
In favour 3
Against 6

Catch Restrictions (Category Two – Recreational Dive Permits)

Four responses contain information relevant to the daily bag limits. Issues were raised in relation to the amount of shellfish that can be taken per day, the levels that are appropriate per species and comparisons were also made to the commercial take of species. A view was expressed that the removal of 15 scallops per day was a low level when compared to a commercial diver taking 500 to 1000 scallops per day, with five or six days fishing conducted per week. The same response suggested a compromise may be that one lobster per day be permitted rather than two per day in return for a higher quantity of scallops. Another stakeholder suggested that the introduction of a 15-scallop per day bag limit has actually encouraged recreational divers to remove more scallops than they would have in the past; the rationale being that they have “paid” for them (via the £20 permit fee) in advance and should try to get maximum value for the cost imposed. Another response stated that recreational bass restrictions were unfair and suggested 2 per permit holder, per day.

Officer Comments

The Byelaw restricts the daily catch of recreational divers to two lobsters, three crabs and 15 scallops per person (permit holder) per calendar day.

The present permit conditions (catch restrictions) do not include bass. Bass can't be included in the diving permit conditions as the Byelaw is only for divers who may take scallops, lobsters and crab. In addition, any Byelaw (or permit condition) cannot be less restrictive than EU or Domestic legislation. A local (Byelaw) recreational bag limit of two bass could not be introduced when a zero limit has been more widely imposed.

The setting of a daily recreational bag limit is not solely for conservation objectives. D&S IFCA has a duty² to balance the different needs of persons engaged in this fishing activity.

It is possible for the Sub-Committee to consider an amendment to the present daily bag limits for recreational divers via the permit conditions; however, the needs of Category One (commercial) permit holders will always be different to those in the recreational sector. None of the small number of responses have suggested what would be a suitable number of scallops to have in a daily bag limit for recreational fishers.

When specifying the original catch restrictions, the Authority believed it had achieved a fair balance between the divergent interests of commercial and recreational fishers. For non-commercial divers, the Authority believed that it had set limits which were entirely appropriate and proportionate to personal consumption. Although detailed landing data is not collected at this time, the permit system helps to improve estimations of total recreational take when full compliance with the restrictions is assumed.

Discussion by the B&PSC

PPO Townsend introduced the item and highlighted page seven of the members supplement. Conversation focussed of the recreational bag limits for scallops. Whilst Stephen Gledhill commented that he recalled the difficulties experience by members when the daily bag limits were initially formulated. recognising that a restriction is totally appropriate to differentiate between recreational and commercial fishers, the review process (with consultation) provides an opportunity to potentially refine the levels of scallops that can be taken. Jim Portus agreed that a consultation could provide more information, however it is difficult to know how effective the original measures have been if no assessment of how many scallops have been removed by diving has been undertaken. PPO Townsend explained that any estimations of total take based on permit numbers and daily take provides only a very poor estimation. Richard White commented that whatever evidence would potentially be supplied, it would always be challenging to set a level that is viewed as proportionate across the board, however he did suggest that consultation may provide feedback that could be of use to consider amendments. David Morgan agreed that although relatively low numbers of stakeholders had responded to phase one of the consultation, this topic was more suited to further consultation. Establishing the correct balance between commercial and recreational fishers would obviously be

² MaCAA 2009 – 153 (d) – seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

challenging, however this potential consultation item could be “open” with no suggested limits for scallops specified in the information circulated. Stakeholders would therefore not be influenced in their determination of what constitutes the correct level of recreational take. Richard White proposed the following for a vote:

That potential changes to the recreational daily catch limits for scallops are to be subjected to consultation in the focused phase of the Three-Year Review of Diving Permit Conditions.

Proposed: Richard White Seconded: David Morgan
All in favour

Members then examined and discussed the remaining elements of the supplement report. PPO Townsend explained that several summarised topics (raised by stakeholders) had been documented but were not possible to review via consultation for the reasons specified in the report.

Concerns Related to Effective Enforcement

Two responses raised concern that the current measures are being abused and not being enforced effectively by D&S IFCA. The current closed season and the landing of shellfish were the key focus points and this stakeholder referred to a lack of port inspections by D&S IFCA in Westbay (Dorset) and Lyme Regis (on the border between Devon and Dorset). Responses also implied that the permit system is not well understood and therefore the restrictions are unknown to many recreational divers, many of which are only visitors to the District. The response suggested that those who do comply with the restrictions are disadvantaged and nothing is being done to deter those that do not comply with the restrictions.

Officer Comments

- This is not a topic that can be addressed by a review of the permit conditions.***

Informing all stakeholders about their obligations associated with fishing activity forms part of the communication work undertaken by D&S IFCA. A new communication strategy has been developed which will be reviewed on a regular basis. Members and stakeholders will be encouraged to input into any such review in due course. 200 recreational diving permits are currently in use, with some of these issued to stakeholders who are only occasional visitors to different areas of the District.

D&S IFCA has implemented an intelligence led enforcement strategy and is part of a National Intelligence sharing system. D&S IFCA works closely with other enforcement organisations including the Marine Management Organisation and Southern IFCA.

Suspicious activity can be reported to D&S IFCA who also have an out of hours phone number – 07740 175479. Good quality intelligence helps officers plan enforcement activity and allocate resources.

Concerns Related to the Introduction and Structure of the Diving Permit Byelaw

The content of two responses questioned the rational and merits of introducing the Diving Permit Byelaw. Comments included:

- Why should I have to have a permit to pick a lobster off the seabed?
- The permit system is a failure on many levels and I have yet to see anyone with a recreational permit.
- The cost of the permits and the hassle getting a permit puts off recreational divers getting a permit and visiting the District (taking trips on charter vessels)
- What level of information has been obtained by the issue of a small number of recreational diving permits?
- A small bag limit should be allowed without the need for a permit (threshold concept)
- Night fishing (diving) for fish at night is not sporting and should be restricted

Officer Comments

- *This review process is focussed on the permit conditions rather than a review of the Diving Permit Byelaw or its structure.*

The rationale and decision-making process for the introduction of the Byelaw is documented in the Diving Permit Byelaw Impact Assessment and other documents such as minutes from Sub-Committee meetings. Items such as the cost of permits, why should stakeholders have a permit, and could a small amount of shellfish be taken without the need for a permit (threshold concept) are not discussion points at this time.

- *The Diving Permit Byelaw (as a whole) is due for a review in 2020.*

The Diving Permit Byelaw manages diving for the capture of scallops, lobster and crab and 220 permits are valid at this time, 200 of these being Category Two (recreational) permits.

- *Fin fish are not included in this Byelaw (interpretations) and permit conditions cannot be introduced to regulate night fishing for fin fish. D&S IFCA will be reviewing management of a range of “Hand Working Activities” in due course.*

Other Identified Items

Items highlighted for discussion and potential additional consultation include the following:

To Use Permit Conditions to Replace a Reliance on the Deeming Clause

As with the Mobile Fishing and the Potting Permit Byelaws, the implementation of the Diving Permit Byelaw was a significant change from the more traditional byelaw model. The format used to make the other permit-based byelaws was largely replicated when the Diving Permit Byelaw was constructed and therefore a deeming clause was introduced.

Why was a deeming clause introduced?

A deeming clause was introduced to support the effective enforcement of some of the management measures that were introduced in the Byelaw and permit conditions. Byelaws

only apply within the District, normally six nautical miles from the coast or, in places on the north coast of the D&S IFCA District, the median line with Wales. Proving where vessels or individuals have been fishing and what was caught where is an inherent and significant challenge and a potential enforcement weakness for any byelaw. Measures that apply within the byelaws such as minimum conservation reference sizes can be different (more restrictive) than domestic or EU legislation. The absence of a deeming clause can reduce the ability to enforce the legislation and consequently the effectiveness of the management measures.

What are the alternatives to deeming clauses and how can this be achieved?

In 2016, the Department for Environment & Rural Affairs (Defra) issued advice to D&S IFCA. It was explained that deeming clauses are rarely used in the UK justice system. D&S IFCA's prosecuting solicitor was in agreement with the issued advice, and as an alternative, recommended that permit conditions should be fully utilized instead.

The Diving Permit Byelaw is due for a complete review in 2019. However, in the shorter term, the permit conditions can be amended to produce equivalent effectiveness as a deeming clause in a more legally acceptable manner. This has already been demonstrated in the development of the Netting Permit Byelaw where permit conditions (catch restrictions) have been created as follows:

“A Permit holder or named representative is not authorised to fish under this Permit if he has retained on board or has in his possession any catch that does not comply with any of the catch restrictions set out in paragraphs X to X inclusive.”

The fisher has the option to apply for a permit and be bound by the restrictions or not apply for a permit and not fish within the D&S IFCA's District. Although a similar result is achieved, this presents a different legal solution that is more acceptable.

Officer Comments

The replacement on the reliance on the deeming clause has already been subjected to consultation for both the Mobile Fishing and Potting Permit Byelaws (permit conditions). Consistency of management is one of the guiding principles of the review of byelaws being undertaken by D&S IFCA. Adding this as a consultation item harmonizes with the approach already taken to date.

Management of the Removal of Spiny Lobster by Pots from Tranche 2 Marine Conservation Zones (MCZ)

Devon & Severn IFCA officers have undertaken assessments in order to document and determine whether management measures are required to achieve the conservation objectives of all the Marine Conservation Zones (MCZs) in its District. The IFCA's responsibilities in relation to management of MCZs are laid out in Sections 124 to 126, & 154 to 157 Marine and Coastal Access Act 2009.

The spiny lobster, also known as crawfish and *Palinurus elephas*, is a feature of two Tranche 1 and one Tranche 2 MCZs designated in the D&S IFCA District and at each of these sites, this species has a recover to favourable condition conservation objective. Favourable condition with respect to spiny lobster means that the quality and quantity of its habitat and

the composition of its population in terms of number, age and sex ratio are such as to ensure that the population is maintained in numbers, which enable it to thrive. Current permit conditions prohibit the removal of spiny lobster from within the Skerries Bank and Surrounds MCZ and also Lundy MCZ as set out in the catch restrictions of the diving permits.

For the Tranche 2 MCZ site, Bideford to Foreland Point MCZ, spiny lobster is a feature of conservation importance with a 'recover to favourable conservation' objective and therefore need protecting. The three-year review of permit conditions for the Diving Permit Byelaw provides the opportunity to bring in a prohibition on the removal of spiny lobsters in these sites by fishers using a range of fishing equipment or those that have a permit to dive for shellfish³. MCZ assessments for this site are currently being prepared and changes to the permit conditions to afford protection to the spiny lobster in the designated MCZ is being highlighted within the assessments, to show that the IFCA is able to introduce management to protect the feature, prevent deterioration of spiny lobster populations and ensure the conservation objective is furthered. It is the IFCA's statutory responsibility to seek to further the conservation objectives of the sites.

Officer Comments

The permit conditions of the Diving Permit Byelaw will need to be adapted to prohibit the removal of spiny lobster from this MCZ site. The format of the permit conditions would be amended and Annexes (Charts) can be created to clearly define the sites. The spatial permit conditions would link to these Annexes and therefore achieve the objective. This approach has already been taken in regard to consultation on the Mobile Fishing and Potting Permit Byelaw permit conditions.

The recommendation from Devon Wildlife Trust to prohibit the removal of spiny lobster in all areas of the District has not been applied to other D&S IFCA permit Byelaws and neither has a two-spiny lobster per day catch restriction been applied to commercial fishers in other sectors.

Protection of Spiny Lobsters that have Recently Cast their Shell

Each permit contains a list of catch restrictions. Due to the original wording used, the diving permits (catch restriction 1.1 iii) currently provides no protection for spiny lobsters that have recently cast their shell.

Officer Comments

It has already been concluded by members that this lack of protection to "soft shell" spiny lobster has arisen in error during the development of the original diving permit conditions.

This oversight has been addressed in the creation of the Netting Permit Byelaw, where the findings from the formal consultation period prompted members of the Byelaw and Permitting Sub-Committee to amend the original (consultation) netting permit conditions to include the wording "spiny lobster" to the list of protected species which also include edible crab and lobster.

³ Crab, lobster or scallop

Amended permit conditions for both Mobile Fishing and Potting have been subjected to consultation in an attempt to address this issue.

- *Adding this as a consultation item harmonises with the approach already taken to date for the other permitting byelaws.*

Lundy Island - No Take Zone

The restrictions in this legacy Byelaw can be partly incorporated into the diving permit conditions.

Officer Comments

It is important to recognise that the legacy measure applies to all persons. No person can remove any sea fish from within the defined area at Lundy Island. The diving permits are issued for divers who may then choose to take crab, lobsters and scallops but not divers who take fin fish.

- *The legacy Byelaw would not be revoked as part of a potential change to the diving permit conditions*

This addition to the Diving permit conditions would not add an additional restriction to fishers however; this addition would potentially simplify restrictions for divers who do have a permit as more of the regulation will be in one place (the permit). An Annex (chart) can be created and issued with the permit conditions.

Consultation on this amendment would harmonise with the approach taken in regard to the review of the potting permits.

Discussion by the B&PSC

PPO Townsend explained that several items have been identified (by officers) as potentially suitable for additional consultation as this would harmonize with the approach taken in the reviews of both mobile fishing activity and potting. The officer identified items included:

- **To use Permit Conditions to Replace a Reliance on the Deeming Clause**
- **Management of the Removal of Spiny Lobster from Tranche 2 Marine Conservation Zones**
- **Protection of Spiny Lobsters that have Recently Cast their Shell**
- **Lundy Island – No take Zone**

Members concluded that the officer identified items were suitable to be subjected to consultation with draft amended permit conditions created to accompany the proposed changes. A vote was taken:

That the officer identified items be subjected to consultation.

*Proposed: Stephen Gledhill Seconded: Andrew Knights
All in favour*

4. What Happens Now?

The responses from the final phase of the Three-Year Review of Diving Permit Conditions will be collated into another supplement report and presented to members of the B&PSC in May 2019. Members will examine the responses and then decide which of the amended Diving Permit Conditions will be implemented. New Diving Permits will be created and circulated at no charge to existing permit holders.

- All our contacts that have provided an email address will be directly notified via an email – “What’s Your View” Mail Chimp campaign.
- All permit holders that have not provided an email address will be notified by post.
- The D&S IFCA website consultation page will be used to display the relevant information.

5. How to engage in the consultation?

A dedicated email address has been provided – consultation@devonandsevernifca.gov.uk

Stakeholders can write to D&S IFCA.

Brixham Laboratory,

Freshwater Quarry,

Brixham, TQ5 8BA

Four separate surgery sessions have been planned enabling stakeholders to visit the D&S IFCA office and speak in person to an Officer.

- Thursday 21st March (16.00 to 18.00)
- Saturday 30th March (10.00 to 12.00)
- Wednesday 3rd April (16.00 to 18.00)
- Tuesday 9th April (16.00 to 18.00)

Your response must be submitted by 12th April 2019.

What do we do with your information – Privacy Policy

We protect any personal data that you may provide. Any personal data submitted in this information collecting process will not be shared with others. The content of responses will be summarised and anonymised where appropriate for documenting in reports that will be presented to the Byelaw & Permitting Sub-Committee and published on our website.

D&S IFCA has a privacy policy which can be found by visiting our website (home page) www.devonandsevernifca.gov.uk

- You can change your preferences at any time.
- We have a duty to consult with D&S IFCA Permit Holders.

You can manage your preferences by contacting D&S IFCA.