



Diving Permit Byelaw

The Three-Year Review of the Diving Permit Conditions



Final Report – Process, Decision Making and Changes to the Diving Permit Conditions

(13th November 2017 to 16th May 2019)

25th July 2019

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Version	Author	Comments
Final Version NJT 01 (25 th July 2019)	Neil Townsend	Prepared to accompany the circulation of amended Diving Permit Conditions in August 2019

1. Executive Summary

As specified in the Diving Permit Byelaw (in force date March 2015), the Authority must review the Diving Permit Conditions no less than once every three years. This report (25th July 2019) has been prepared to document the Three-Year Review of the Diving Permit Conditions. The report demonstrates the process followed and the decision making of the members of the Devon and Severn Inshore Fisheries and Conservation Authority's (D&S IFCA's) Byelaw and Permitting Sub-Committee (B&PSC) regarding multiple changes to the [Diving Permit Conditions \(Version Control 1st August 2018\)](#). The B&PSC are tasked with different aspects of D&S IFCA byelaw related working and have delegated powers to conduct this working on behalf of the Authority. More information about the work of the B&PSC and how permit conditions can be amended can be read in a separate [guide](#).

This review identified multiple proposed changes to the Diving Permit Conditions and included two separate phases of consultation. The process, conducted between the start date of 13th November 2017 and 16th May 2019, included multiple meetings of the B&PSC and the establishment and assistance of the Byelaw Technical Working Group (BTWG) who, during the process, were tasked with assisting the B&PSC with the re-drafting work to amend the Diving Permit Conditions.

The Outcome of the Process

On the 16th May 2019 the B&PSC agreed to the following changes to the Diving Permit Conditions:

- ***That the number of scallops that can be taken by a recreational diver (Category Two Permit) per calendar day be increased to 25.***
- ***That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of spiny lobster that has recently cast its shell.***
- ***That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of any parts of spiny lobster which is detached from the carapace***
- ***That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of spiny lobster from the Bideford to Foreland Point MCZ***
- ***That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of any edible crab, spider crab, lobster, spiny lobster or scallop from the Lundy No Take Zone.***
- ***That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the use of any container or any other device to store any edible crab, spider crab, lobster, spiny lobster or scallop from the Knoll Pins area at Lundy Island.***
- ***That the Diving Permit Conditions be amended as proposed in the consultation to replace a reliance on the deeming clause.***

Timetable of Action

The complete process lasted for approximately eighteen months as set out in the table below:

Date	Event	Action/Decision
13/11/17	B&PSC Meeting	An “open” consultation was actioned enabling all stakeholders to highlight any potential proposed changes to the Diving Permit Conditions
01/12/17	Consultation (Phase 1)	Phase 1 of the consultation was conducted between 1 st December 2017 and 12 th January 2018. Findings summarised into a supplement report.
12/04/18	B&PSC Meeting	Supplement (consultation) report presented to the B&PSC. Due to insufficient time for discussions, the agenda item was deferred until the next meeting which was held on 11 th October 2018.
11/10/18	B&PSC Meeting	The findings of the phase 1 consultation were discussed with several items highlighted for additional focussed consultation (phase 2). The BTWG was established to prepare any legal documentation that is relevant to support the functions of the B&PSC (including re-drafting of permit conditions when required).
20/11/18	B&PSC Meeting	Members were updated on the work that would potentially be needed to conduct the consultation and the work that would be required of the BTWG.
26/02/19	B&PSC	A progress report of the BTWG was presented to the B&PSC. It demonstrated how the Diving Permit Conditions could be amended to include all the identified items that would be subjected to consultation. Phase 2 of consultation was actioned by members.
08/03/19	Consultation (Phase 2)	Phase 2 of the consultation was conducted between 8 th March 2019 and 12 th April 2019. Findings summarised into a supplement report.
16/05/19	B&PSC Meeting	Supplement (phase 2 consultation) report was presented to and discussed by the B&PSC. Multiple changes to the Diving Permit Conditions were agreed.
July & August 2019	Re-drafting and communication	The Diving Permit Conditions are amended and prepared for implementation and circulation. Communications conducted to raise awareness

To accommodate the required changes to the Diving Permit Conditions, new Annexes (charts) have been prepared that accompany the Diving Permit Conditions. [New Diving Permit Conditions](#) (and Annexes [1](#), [2](#) & [3](#)) are due to be implemented and circulated in August 2019.

This report includes all the documented findings of the two separate consultations that were conducted during the process and extracts from the relevant B&PSC meetings held during the period. This is a relatively large document and it is recommended that readers use the contents page to explore the process or parts of it that are most interest to them. This document includes embedded information (hyperlinks) and is therefore best examined in its electronic format.

2. The Start of the Three-Year Review

B&PSC Meeting – 13th November 2017

Members discussed the requirements of the Three-Year Review of the Diving Permit Conditions and were presented with a [guide](#) to the review that had been created for use in the first phase of consultation. It was subjected to minor amendment and was re-published in December 2017.

The Phase 1 Consultation

The phase one consultation began in December 2017 with direct notification to all existing permit holders via email and a letter (for those with no email). It was clearly stated that the consultation was not a questionnaire, but it did provide all stakeholders with the opportunity to examine the present Diving Permit Conditions and offer suggestions for potential amendment. A dedicated email address consultation@devonandsevernifca.gov.uk was made available for email response. The closing date for responses was 12th January 2018.

The Phase One Consultation Response (Transcript)

All responses from the phase one consultation were documented into a supplement report (March 2018) which has been embedded (hyperlinked) [here](#).

The supplement report was divided into key sections including the responses from organisations and individual stakeholders. It also highlighted other identified items which officers had concluded may be suitable for additional consultation. A transcript of the responses (which included officer comments to add clarity on different subjects) and the other identified items is set out below:

Who Responded?

Although open to all stakeholders, very few responses were received in this “open” phase. A total of 15 responses were received as follows:

Response group and format	Total number
Email (individuals)	5
Email (organisations)	3
On-line surveys (individuals)	7
On-Line surveys (organisations)	0
All other response formats	0

The content of the responses was mixed. The National Coast Watch Institution (NCI) requested that they be removed from the mailing list. The Exe Estuary Management Partnership contacted D&S IFCA with a desire to publicise the consultation on their own website. The response from the Devon Wildlife Trust contained more detail and has been summarised. The responses received from individuals were also mixed in terms of their content, detail and objective. Six responses from individual stakeholders had no comment to make at this time but did wish to be contacted once again in any addition consultation periods. The majority of responses received via the on-line survey forms were not current commercial or recreational diving permit holders. Responses that contained at least some form of usable information have been summarised.

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.

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.

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 duty¹ 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.

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

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.

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, Bidford 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 shellfish². 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

² Crab, lobster or scallop

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.

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.

B&PSC Meeting 11th October 2018

Discussions relating to the Three-Year Review of the Diving Permit Conditions were deferred at the B&PSC meeting held on 12th April 2018 until the B&PSC meeting held on 11th October 2018. Minutes are taken of all B&PSC meetings and posted in Section B of the D&S IFCA website Resource Library. The following is an extract from the minutes taken on 11th October 2018:

Agenda Item

- 4 To consider the findings of the “open phase” consultation relating to the Three-Year Review of the Diving Permit Conditions and identify items for the second phase of consultation as documented in the supplementary report (March 2018)**

The Chair asked PPO Townsend to introduce this agenda item. PPO Townsend provided a brief recap of the supplementary report and confirmed that the second phase of consultation (including potentially amended permit conditions) could begin when focussed items had been selected. As per item 4 (a) of the agenda, the Chair then asked members to provide their comments regarding the themes identified by stakeholders on pages four to nine of the supplement.

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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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 (Possible amendments to management via consultation)

PPO Townsend introduced the item and highlighted page seven of the members supplement. Conversation focussed on the recreational bag limits for scallops. Whilst Stephen Gledhill commented that he recalled the difficulties experienced 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 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. PPO Townsend then presented section five of the report – Other Identified Items. 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

3. The Second Phase of the Review

A second phase of consultation on the items selected in phase one was planned by officers. The second phase of consultation would not only highlight the proposed changes but would also need to demonstrate how the Diving Permit Conditions could be amended to accommodate the potential changes. The B&PSC established the Byelaw Technical Working Group (BTWG) in October 2018 to prepare any legal documentation that is relevant to support the functions of the B&PSC (including re-drafting of permit conditions when required). An [update of the Diving Permit Condition Review](#) (agenda item 8) was presented to members of the B&PSC on 20th November 2018. The update highlighted some information that had been received since the end of the phase one consultation that had not been previously documented. An extract of the officer update is transcribed below:

Officer Update (Transcript)

Background

The first phase consultation was conducted between 1st December 2017 and 12th January 2018. This was an open phase of consultation and can effectively be considered and described as a scoping exercise or an invitation for information. All responses submitted during this period were summarised into a supplement report that was presented to members of the Byelaw & Permitting Sub-Committee on 11th October 2018.

Information not summarised

Responses submitted after 12th January 2018 were not summarised in the supplement report. One such verbally submitted response includes concerns raised by one stakeholder regarding the issue of Category One Diving Permits to divers that do not possess (in his view) adequate training or qualifications to conduct commercial diving.

Health and Safety considerations

The duties of D&S IFCA as specified in the Marine and Coastal Access Act 2009 do not extend to health and safety considerations; however, the concerns raised by this stakeholder may have been partially addressed by changes already applied to application forms needed to acquire a permit. The introduction of GDPR required that changes had to be made to the application forms and the privacy notice that appears on the application form. Whilst D&S IFCA could not consider modification of permit conditions to introduce requirements for Health and Safety, the amended privacy notice does now demonstrate that D&S IFCA can share information submitted as part of an application with other regulators such as the Health & Safety Executive.

B&PSC Meeting (26th February 2018)

On 26th February a [progress report of the BTWG](#) was presented to members of the B&PSC. The report demonstrated how the Diving Permit Conditions (Version Control – August 2018) could be amended to potentially incorporate the proposed consultation items which had already been agreed to be subjected to consultation.

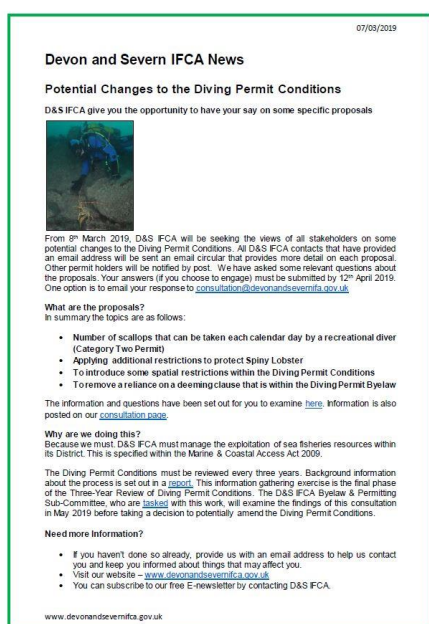
Engagement with Stakeholders (Phase Two Consultation)

An overarching Byelaw Development Report was created to accompany the phase two consultation and enable stakeholders to examine the process up to that point. The report documented how and why a selection of specific items had been selected for the phase two consultation.

- [Diving 3 Year Review – Phase 2 Consultation Report – March 2019](#)

Call for Information Campaign

Information about the proposals was widely circulated. A Call for Information campaign, including use of a Mail Chimp email circular, was conducted between 8th March and 12th April 2019. Over 1000 D&S IFCA stakeholders that had supplied an email address were directly notified of the proposals. Permit holders with no email address were notified by post. All stakeholders were invited to respond and not just those with a Diving Permit.



A news item was posted on the D&S IFCA website throughout the consultation period and four surgery sessions were advertised that provided stakeholders with the opportunity to visit the D&S IFCA Office and talk to an Officer. The [consultation page](#) on the website was used to provide information on the proposal and Facebook and twitter were also used to support the consultation. **653 of the Mail Chimp emails were opened by stakeholders**

- [Website news item](#)
- [Mail Chimp email Circular](#)

The Focussed Items (Phase 2)

The Call for Information Campaign highlighted several items with an explanation provided about each. In addition, the proposed amended permit conditions (including the use of Annexes where required) relating to each consultation item was clearly demonstrated.

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

Stakeholders were requested to submit their responses via the different options made available by the closing date of 12th April 2019 as follows:

1. Contact us via email – consultation@devonandsevernifca.gov.uk
2. Write to us
3. Telephone us or come along in person and speak to one of our officers during dedicated time slots which are as follows:

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

The address and telephone number of D&S IFCA was also included in the circular.

4. The Responses to the Phase Two Consultation

All responses from the phase two consultation were documented into a supplement report (23rd April 2019) which has been embedded (hyperlinked) [here](#). The supplement report was divided into key sections including the responses from organisations and individual stakeholders. A transcript of the responses (which included officer comments to add clarity on different subjects) is set out below:

The Phase Two Consultation Response (Transcript)

A total of 24 written responses were received during the consultation period (8th March to 12th April 2019) that related to the items as proposed. Most responses were from individual stakeholders but there were responses on behalf of the South Devon & Channel Shellfishermen Ltd and the British Spearfishing Association. No stakeholders took advantage of the four separate and dedicated surgery session time slots that were made available to them for an interview with an officer to provide some feedback.

Some of the submitted responses included content that went beyond the scope of the consultation and was not directly related to the specific consultation items. Although not relevant to this consultation, the additional information received from stakeholders has been summarised later in this report. The consultation item on the number of scallops that can be taken by a recreational diver (per calendar day) produced the most feedback and this has been separated from the other items, so it could be summarised in more detail with a mix of narrative and the use of a summary table.

Consultation Items (other than scallop numbers)

The consultation items (other than scallop numbers) were presented with an explanation of each one, and why D&S IFCA had the intention of introducing them. The proposed permit condition wording was demonstrated along with a question for each formulated around the following wording:

- **Are there any reasons why D&S IFCA shouldn't make changes as proposed?**

There was general support for the proposals (separated from the number of scallops that can be taken by a recreational diver) as shown in the table below:

Table 1 – Overview of Responses (other than the number of scallops)

Item	Supportive	No Comment	Not Sure	Against
Protection of Spiny Lobsters Recently Cast Shell	15	7	2	0
Prohibition on Removal of Parts of Spiny Lobster	15	7	2	0
Prohibition – Removal of Spiny Lobster from Tranche 2 MCZs	14	7	2	1
Adding the Lundy No Take Zone as a Diving Permit Condition	13	9	2	
Knoll Pins (Lundy) Restriction	13	9	2	0
To Use Permit Conditions to Remove Reliance on the Deeming Clause	13	9	1	1

Lundy Island

The permit changes relating to the Lundy Island No Take Zone and the Knoll pins were confusing to two stakeholders who could not see why the permits would need to be amended to accommodate these restrictions.

Spiny Lobster

One stakeholder could not see the relevance of the prohibition on the removal of parts of spiny lobster. In his view parts should be able to be taken, if not deliberately removed, providing they counted towards the overall bag limit for that day. He felt this would promote more careful handling of the species.

Another stakeholder, who is a member of the Ilfracombe and North Devon Sub Aqua Club, did not support the proposal to prohibit the removal of spiny lobster from the Bideford to Foreland Point Marine Conservation Zone (MCZ). The response stated that he and other divers do not typically remove them. He commented that diving effort along this part of the coastline is minimal with only two diving clubs (the other being at Appledore) and very few visiting boats. He acknowledged that there were other divers not within those dive clubs and a small number of free divers that may visit the area, but not in large enough numbers to pose a threat to the species recovery. If stocks do improve then he can't see a reason why the removal of the occasional specimen would cause any problems and a prohibition is therefore not required.

A response was received from the Executive Officer of the South Devon and Channel Shellfishermen Ltd. This response was completely focussed on the protection of spiny lobster and did not comment on the other proposals. This organisation is supportive of amendments that protect spiny lobster. They favour the introduction of a permit condition to prohibit the removal of parts of spiny lobster and measures which will protect those that have recently cast their shell. This organisation reported that its members have seen an increase of juvenile spiny lobster in recent years and are keen to ensure that any local stock is subject to management that will secure and enhance its levels for the future.

Deeming Clause

The proposal relating to the deeming clause was confusing to one stakeholder that, although not against the proposed change, would prefer a better explanation of what it means. The stakeholder that was against the proposal relating to the deeming clause had the view that the permit fee should enable him to remove scallop when diving within the District, regardless of any catch on board taken from another region.

Officer Comments

There is an opportunity for a further explanation and clarity to be given to permit holders about the use of permit conditions to replace a reliance on the deeming clause. This type of approach has been taken with policy and guidance for other aspects of permit conditions, for example mobile fishing and what permit holders must do if an Inshore Vessel Monitoring System fails to function correctly. If members action this requirement to clarify the meaning of the permit conditions to replace a reliance on a

deeming clause, this can be achieved via a separate policy/guidance document or the use of news items created by officers.

Number of scallops that can be taken by a recreational diver

This proposal generated most interest with the stakeholders that engaged. The present Category Two Diving Permit Conditions allow for a recreational diver to take up to 15 scallops per calendar day. 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. Members of the B&PSC actioned officers to consult regarding the numbers of scallops that could be taken but not to specify an amount. The following questions were used:

Questions Asked and the Response:

- 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?**

Nearly all stakeholders that submitted a response regarding the specific consultation items made suggestions concerning the number of scallops that, in their view, is appropriate for a recreational bag limit. No stakeholders raised an objection to having a bag limit imposed via the permit. The British Spearfishing Association suggested a level of 50 scallops per day.

Numbers suggested per calendar day ranged from 6 per day to a larger daily amount of 50. One response questioned the D&S IFCA's evidence base and decision making when setting an original bag limit of 15 scallops per day for human consumption. The rationale provided for an increased bag limit was mixed with the following key observations often cited:

- **Recreational Diving Activity is not conducted as often as other forms of recreational activity**
- **Scallops and not crab or lobster is the favoured as a species to be taken by divers**
- **Not all recreational dives result in the taking of scallops**
- **Natural restrictions such as weather, tides and visibility limit the opportunity to take scallops**
- **The limitations of the equipment used (such as air and the handling of a collection bag) limit the opportunity to take scallops**
- **The bag limit should be enough to feed a family of four**
- **The bag limit should be enough for a main meal and not a starter**
- **It would be beneficial for the daily bag limit of scallops to provide enough to freeze so they can be eaten and enjoyed on another occasion**

Some responses indicated that some divers feel that the permit fee of £20 has resulted in more recreational divers taking scallops on more of their dives to provide additional value from the investment. Some stakeholders felt that a higher bag limit for scallops would be suitable considering that there is no bag limit in other IFCA Districts. There was concern raised in the responses that recreational overfishing is being observed taking place in Dorset.

Table 2 – Summary of Responses (number of scallops)

Response Number	Suggested Number	Rationale/Comments
1	24	His diving activity is limited to 30 dives per season. Not all dives target scallops. Bag limits are important as have witnessed illegal sale of excessive scallops in Dorset
2	18 to 20	Possibly allow more for freediving which is more difficult and self-regulating.
3	50	Recreational diving limited to once or twice per month, increase would produce minimal impact compared to commercial fishing. Divers limited by their equipment to remain safe and only has a single mesh bag to collect catch
4	24	6 scallops per person for a meal is reasonable. 2 lobsters, 3 crab and 15 scallops not normally found at same site
5	50	Reasonable amount for a meal and allows a few to be frozen for another time. Recreational diving is not conducted every day, more likely to be weekly
6	30	Only dives sites about twice per year. Current level is too low. Cornwall has no restriction
7	20 to 25	A good balance between commercial and non-commercial takers
8	24	24 is a better number for a meal for 4 people. 24 is a safe level for divers to collect in a bag and handle
9	40	Only goes diving about once a week at most. Suggests that many recreational divers go even less
10	25	Recreational diving only takes place about 7 months of the year. Dives likely to be only once per week during those months. Increase would have minimal impact.
12	6	This is enough for one meal. D&S IFCA should also restrict the number of days which should ideally be for commercial fishing only. Has witnessed recreational overfishing in Dorset.
13	15	Current level is adequate. For shore diving it is hard to find scallop areas. Has only landed about 40 scallops from about 25 separate dives within Devon during 2018
14	15 to 40	Can only dive about 12 times per year. Would prefer a monthly limit.
15	50	Not seen any science to establish the initial numbers. Recreational fishers have minimal impact on stock as compared to commercial fishermen. Recreational fishers have less opportunity to fish with 2 scallop dives completed in 2018. A 50-scallop limit would discourage illegal sale but provide a good quantity for 2 or 3 meals for a family of 4 people
16	15	Very few recreational divers catch crab or lobster. More divers take photographs rather than take shellfish. Current levels are more than generous.
17	15 to 30	30 for shore dives, 15 when a vessel is used. Recreational divers don't "target" scallops but like the opportunity to collect if they find them
18	25	Only dives 3 or 4 times per year. A trip takes a lot of organising. Freediving sites are small in area so has concerns about overfishing these sites and therefore a lower bag limit may be appropriate. A higher limit is more appropriate for more accessible sites that are off limits to scallop dredgers and are therefore more popular for divers

Response Number	Suggested Number	Rationale/Comments
19	10 to 20	Consider 2 separate limits (local divers and visiting divers). Locals will dive more often, visitors more likely to dive twice per month
20	15+	Time to dive recreationally (conduct the hobby) is limited. 15 scallops are only just enough for a meal and a lower number than this would become a starter rather than a main meal
21	40 to 50	Only dived once per week last summer as did most of my colleagues. Only on a few of those occasions were some scallops found. Would prefer a surplus to freeze for additional meals throughout the year.
22	15	15 scallops is sufficient for a meal for a family. This level is unlikely to have an impact on stocks
23	30 to 50	15 is ok, but a fee for permit has effect of divers taking a catch home more often as they feel they have pre-paid for them. Recreational diving is limited with time to conduct the activity, wind, tide and visibility.
24	15	The current bag limit should not be reduced. Diving in the UK is in decline as stated in surveys and the BSAC. Many Divers prefer warmer conditions and better visibility abroad. Many recreational divers only dive once or twice per week, mainly weekends. Not all divers take scallops. Recreational divers often don't use the same technology as commercial operators such as GPS to locate beds of scallops.

Additional Information and suggestions submitted by stakeholders

Within the responses submitted by stakeholders there were some comments and suggestions that went beyond the scope of the focussed consultation. Some of these suggestions would be more suited to a review of the Diving Permit Byelaw, rather than the Diving Permit Conditions or, in the case of a ban on scallop dredging, a review of the separate Mobile Fishing Permit Conditions. The suggestions included the following:

- **Setting a different level of scallop bag limits for local divers and visiting divers**
- **Setting a monthly bag limit rather than a daily bag limit (100 per month)**
- **Reduce the allowance of crab and lobster but increase the number of scallops**
- **All divers must be made to attend an environmental awareness course**
- **Allow the take of 1 spiny lobster per year**
- **Prohibit commercial divers from taking spiny lobster**
- **Control the number of dive boats and how many days at sea they can operate**
- **All dive boats should have tracking devices fitted**
- **Ban scallop dredging**
- **Amending the closed season for commercial diving for scallops**

The Closed Season

The current scallop closed season that is a permit condition within all commercial diving permits (and the Category One Mobile Fishing Permits) prompted a written response from a commercial diver. It also provided the basis for an in-depth telephone conversation with a different commercial diver expressing his own views and those of several other commercial divers with D&S IFCA permits.

These responses highlighted that the relatively low numbers of commercial diving ventures (approximately 25 Category One Diving Permits) within the District are impacted by the current closed season (July, August & September). This period of the year has typically the calmest weather conditions to operate a commercial diving vessel. The responses highlighted that diving vessels don't always have the alternative option of fishing beyond the six-mile limit (as compared to a scallop dredger) due to factors such as depth of water and the safety issues associated with diving in deeper water. The closure has reportedly had the effect of making it difficult to maintain a stable crew to operate the vessels as the three-month closure removes income for the crew. One response requested that D&S IFCA recognise the fishing activity of diving as a more environmentally friendly activity and should be considered in a different light (with more appropriate permit conditions) to those conducting scallop dredging. The written response suggested that in return for a removal of the closed season restriction, an increased minimum conservation reference (MCRS) of 110mm could be introduced and coupled with a total daily catch limit and a restriction on the total number of days that could be used for fishing.

Officer Comments

Whilst the D&S IFCA consultations are constructed and circulated to encourage feedback, a decision-making process must be followed. D&S IFCA Officers do not take decisions, this is the task for the B&PSC.

The Three-Year Review of the Diving Permit Conditions has been conducted with two separate phases. The first phase was an open invitation for concerns and observations to be made regarding all aspects of the Diving Permit Conditions. The suggestions regarding topics such as the closed season were highlighted in the phase one response and more information submitted at that time may have influenced B&PSC in determining which items were selected for the second and focussed phase of consultation. Consulting on a change to the closed season for scallops was not selected as a consultation item (for phase two) when it was discussed in October 2018.

The [Guide to the Work of the Byelaw & Permitting Sub-Committee](#) (November 2018) focusses on how a fisher/stakeholder can trigger a review of permit conditions. It is not impossible for the B&PSC to action further consultation on additional items, however members have agreed principles for conducting a review of Byelaws (and Permit Conditions). Members have also set out their expectations regarding the timing of suggestions for permit condition changes. All permit conditions are reviewed at least every three years and the overarching Diving Permit Byelaw must be reviewed after five years which is due in 2020. A request for permit condition changes outside of these periods is not impossible; however, the Authority must consider its resources and the time taken to conduct consultation work. Any potential changes to permit conditions would (as best practice) require a six-week period of consultation which would include notifying all existing permit holders. There is also work required by the Byelaw Technical Working Group to formulate permit conditions that could be used to potentially incorporate any changes to management. Stakeholders (including fishers/permit holders) should be aware that their proposals for permit condition change should not be a repeat of an item or topic recently highlighted and subjected to a consultation unless significant new evidence has been provided to justify the work needed

5. Decision Making - B&PSC Meeting (16th May 2019)

On 16th May 2019, the B&PSC discussed the findings of the completed consultation work. Minutes are taken of all B&PSC meetings and posted in Section B of the D&S IFCA website Resource Library. The following is an extract from the minutes taken on 16th May 2019.

Agenda Item 4 To consider the findings of the diving consultation as documented in the supplementary report (23rd April 2019) and the implementation of the proposed diving permit conditions

PPO Townsend introduced this item by highlighting the content of the supplementary report that had been prepared. PPO Townsend explained that the report detailed how the consultation had been undertaken on a series of focussed items that had been selected by the B&PSC. James Marsden commented that in his view, the use of Mail Chimp to notify stakeholders, set out the rationale for potential changes and circulate the consultation items was superb. PPO Townsend informed members that the summary of response within the supplement report had been separated into different sections to reflect the responses received from those stakeholders who engaged in the process. The proposal to amend the number of scallops that can be taken each calendar day by a recreational diver generated the largest response, and PPO Townsend explained that tables had been used within the report to help summarise the observations and comments of stakeholders. The Chair suggested that, due to the relatively large response associated with the scallop bag limit, it was advantageous to begin the discussions on this item (Agenda Item 4g) before returning to the other consultation items. Members agreed and ACO Mander continued with the presentation of the findings. ACO Mander highlighted the summary table on pages 7 and 8, which demonstrated a desire by many to see the daily bag limit increased from 15 scallops per day to a limit of around 25 scallops per day.

Stephen Gledhill urged members to consider the impact of scallop removal with the aim of achieving the correct balance. Whilst recognising the potential increase in pressure on scallop stocks associated with an increased bag limit, Andrew Knights reminded members that the original limits had the aim to provide enough scallops for a scallop meal for a family. When balancing conservation drivers and the needs of the user, Andrew Knights concluded that a relatively small increase in the bag limit was not an unreasonable position to take. DCO Clark added that Cefas are conducting scallop stock assessment work on a national level which may better inform the Authority in the future. James Marsden commented that the MPA network assists with stock sustainability, by removing mobile fishing activity (scallop dredgers) from those sites and therefore these areas will often be favoured by recreational divers that may choose to take scallops from these areas.

Andrew Knights confirmed that scallops are not a feature of the MPA sites, rather it is the seabed (sand) and any slight increase in scallop take by recreational divers that would not adversely impact on the sediment. David Cuthbert continued the debate by highlighting that balance is also needed between recreational divers as compared to commercial divers and questioned if any increase for a recreational bag limit would be viewed negatively by this sector. ACO Mander commented that the consultation had been open to all stakeholders, including commercial divers, and the findings of the consultation did not suggest large opposition to an increase. James Marsden raised some concern that an increased level of scallops for the bag limit may have an unintended consequence and result in more divers potentially exceeding their daily bag limit with a view to sell the excess. ACO Mander responded by explaining that an increased bag limit, for personal consumption only) was still enforceable and as D&S IFCA enforcement work is intelligence led, was confident that breaches would be reported to officers that can then be addressed if required via enforcement planning and targeted work. The Chair summarised the conversations and a proposal formulated as follows:

Scallop Bag Limit

That the number of scallops that can be taken by a recreational diver (Category Two Permit) per calendar day be increased to 25.

***Proposed: Cllr Hellyer Seconded: David Cuthbert
All in favour***

The Chair now prompted members to continue discussion on the remaining diving consultation items set out on the agenda (4a to 4f). ACO Mander guided the members through the relevant sections of the supplement report. David Morgan commented that the wording used for each agenda item was not exactly the same as the wording that would appear within any amended Diving Permit Conditions. This was evident with the proposal regarding the proposed prohibition on the removal of spiny lobster from Tranche 2 Marine Protected Zones. PPO Townsend confirmed that this was the case, however the Call for Information (Mail Chimp) campaign had included not only the rationale for the proposed changes, but also the proposed wording that would feature in the permits if they were amended as had been proposed. PPO Townsend explained that the proposal (4 (c) on the agenda) had been set out in the consultation with reference to the Bideford to Foreland Point MCZ. Members asked that the proposals be noted in slightly more detail to closer reflect the proposals as set out in the consultation, rather than as described on the agenda. PPO Townsend noted this request. Having studied the responses received to the remaining consultation items the members voted on each of them in turn as follows:

Protection of Spiny Lobster

That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of spiny lobster that has recently cast its shell.

***Proposed: Jon Dornom Seconded: David Morgan
All in favour***

That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of any parts of spiny lobster which is detached from the carapace

***Proposed: Jon Dornom Seconded: Stephen Gledhill
All in favour***

That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of spiny lobster from the Bideford to Foreland Point MCZ

***Proposed: Cllr Hellyer Seconded: Andrew Knights
All in favour***

Spatial Restrictions

That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the removal of any edible crab, spider crab, lobster, spiny lobster or scallop from the Lundy No Take Zone.

***Proposed: Cllr Hellyer Seconded: David Morgan
All in favour***

That the Diving Permit Conditions be amended as proposed in the consultation to prohibit the use of any container or any other device to store any edible crab, spider crab, lobster, spiny lobster or scallop from the Knoll Pins area at Lundy Island.

Proposed: Cllr Hellyer **Seconded:** Rachel Irish
All in favour

Other Conditions

That the Diving Permit Conditions be amended as proposed in the consultation to replace a reliance on the deeming clause.

Proposed: Rachel Irish **Seconded:** Stephen Gledhill
All in favour

6. Further Information & Hyperlinks

All additional information embedded in this report is freely accessible within different sections of the [D&S IFCA Website Resource Library](#).

- [The Diving Permit Conditions \(Version Control 1st August 2018\)](#)
- [Guide to the Three-Year Review of Diving Permit Conditions](#)
- [Guide to the Work of the B&PSC](#)
- [Supplement Report \(March 2018\) – \(Includes Responses from the Phase 1 Consultation\)](#)
- [Update on the Diving Permit Condition Review \(Officer Paper - November 2018\)](#)
- [Byelaw Technical Working Group Progress Report \(February 2019\)](#)
- [Diving Three Year Review Consultation Report – March 2019](#)
- [D&S IFCA Website News Item \(March 2019\)](#)
- [Call for Information email circular \(March 2019\)](#)
- [Supplement Report \(23rd April 2019\) – \(Includes Responses from the Phase 2 Consultation\)](#)
- [B&PSC Minutes \(11th October 2018\)](#)
- [B&PSC Minutes \(26th February 2019\)](#)
- [B&PSC Minutes \(16th May 2019\)](#)
- [The Diving Permit Conditions \(Version Control 1st August 2019\)](#)
- [Diving Annex 1 August 2019 \(Lundy No Take Zone\)](#)
- [Diving Annex 2 August 2019 \(MCZ Areas\)](#)
- [Diving Annex 3 August 2019 \(Knoll Pins\)](#)

End of Report.