



Mobile Fishing Permit Byelaw

The Five -Year Review of the Byelaw

Overview & Planning Report for the Byelaw & Permitting Sub-Committee

30th July 2019

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Version Control

Version	Date	Author/s	Comments
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Part 1

Introduction

The Mobile Fishing Permit Byelaw came into force on 1st January 2014. The Byelaw must be reviewed after five years. Although it is the Byelaw that is being reviewed, it is a suitable opportunity to consider aspects of the present permit conditions during the same exercise.

Although the present Mobile Fishing Permit Byelaw (and permit conditions) act as strong starting points, the review is effectively a re-make of the Mobile Fishing Permit Byelaw and the process followed will be the same as that adopted for the creation of a new byelaw.

Officers do not anticipate that there will be a need to change the approach taken to manage this fishing activity via a permit-based approach, however it is envisaged that members of the Byelaw and Permitting Sub Committee (B&PSC) will review key elements of the overarching Byelaw and the permit conditions that set out the management measures.

Using this Report

This report is directly linked to the agenda for the B&PSC meeting scheduled for the 15th August 2019. The **bold blue text** within this report highlights discussion items, questions, recommendations and some officer comments that provide additional information and add clarity around some of the content and topics highlighted.

Contribution of Members

Although discussion items and potential changes are highlighted in this report, members of the B&PSC can discuss and highlight any elements of the Byelaw (or permit conditions) that they feel is appropriate to discuss and potentially review. Hyperlinks have been inserted within this report to give members additional information if they require it.

The Byelaw Technical Working Group (BTWG)

This working group was formed by the B&PSC and the Terms of Reference were agreed in February 2019. Any member of the B&PSC can join the BTWG. The role of the BTWG is to prepare suitable legal documentation on behalf of the B&PSC. The BTWG have already begun the task of scrutinising the current Byelaw and the Permit Conditions. Working documents were prepared for a meeting of the BTWG which was held on the 16th July 2019. The BTWG have no delegated decision-making powers but have been able to identify parts of the current Byelaw and the associated Permit Conditions that can be considered for potential amendment.

BTWG Reporting

The work of the BTWG must be reported to members of the B&PSC. This report meets the reporting requirement of some of the initial work and sets out discussion items and some recommendations for the B&PSC members to consider. It is envisaged that following initial discussions and potential approval of recommendations set out in this report, the BTWG can be utilised by the B&PSC to prepare more complete drafts of both the new Mobile Fishing Permit Byelaw and the associated Permit Conditions to reflect the decisions of the B&PSC.

Timetable for the Work

The timetable set out below is for guidance only. The decision-making element of this process involves key stages such as consultation and voting by members. The timetable for the review and remake of the Mobile Fishing Permit Byelaw is longer than initial estimations set out in the D&S IFCA Annual Plan 2019-20, however it can be viewed as realistic. The confirmation of the Byelaw by Defra and the time this will take is beyond the control of D&S IFCA.

To progress the review in a timely manner, it is anticipated that additional meetings of the B&PSC will be needed to move the process forward. It is hoped that any additional small agenda meetings could be arranged for the same dates as the Full Authority Meetings.

Date	Event	Action
9 th July 2019	Officer work	2 working documents prepared for the BTWG
16 th July 2019	BTWG Meeting	Initial re-drafting work highlighting discussion items and recommendations for the B&PSC
15 th August 2019	B&PSC Meeting Start of Review	Report presented & discussed by the B&PSC. The BTWG can be tasked with enacting the decisions taken by the B&PSC into a re-draft of Byelaw & Permit Conditions
TBC	BTWG Meeting/s	Re-draft of Byelaw and Permit Conditions
September 2019	Officer Work	Creation of a consultation Impact Assessment
30 th September 2019	Notification	2 weeks' notice that the Byelaw will be "made" by the Authority given to Defra
14 th November 2019	B&PSC Meeting	Amended Draft Byelaw & Permit Conditions created by the BTWG to be presented to B&PSC and potentially "made" and subjected to a formal consultation period.
1 st December 2019	Advertising & Consultation (42 days)	Notice placed in newspapers about the intention to make the Byelaw. A Call for Information exercise circulated (direct notification using email and post) with information/news also posted on the website and Face Book.
11 th February 2020	B&PSC Meeting	Findings of the consultation discussed. Objections to be managed.
12 th March 2020	Full Authority & B&PSC Meeting	Vote to submit the amended Mobile Fishing Permit Byelaw for confirmation.
Late March 2019	Officer work	Final Impact Assessment created to accompany final draft of Byelaw
April 2020	Officer work	D&S IFCA sends Byelaw to Defra and awaits potential confirmation of the Byelaw

Documenting the Process and the use of Impact Assessments

A consultation Impact Assessment and a final Impact Assessment must and will be created and used during this re-make of the Mobile Fishing Permit Byelaw process. Consultation must be conducted, and the new Mobile Fishing Permit Byelaw must be advertised in due course. As with all D&S IFCA byelaw related working, the complete process will be documented. In the interests of safeguarding the reputation of the Authority, and providing full transparency to stakeholders, D&S IFCA publications go beyond the typical use of Impact Assessments and will be used to support the mandatory requirements.

Part 2:

The Mobile Fishing Permit Byelaw

Overview of the Existing Structure for Managing Mobile Fishing Activity

The existing structure consists of the overarching Byelaw, Permit Conditions for both at sea and estuary activity and the use of Annexes (charts) to simplify spatial restrictions. The content of the Byelaw, and its replacement, are fixtures and will not alter during its life cycle of up to five years. It is only the permit conditions for each category of permit that offer flexibility subject to a review process set out in the overarching Byelaw.

In summary the Byelaw provides the framework for the following:

- Sets out interpretations (Definitions)
- Provides a separation between at sea and estuary mobile fishing activity
- Enables the two different categories of permits to be issued.
- Establishes who the permits can be issued to (their requirements)
- Documents what categories of management can be introduced in the permit conditions (Catch, Gear, Spatial & Time)
- Describes the application process and its requirements
- Documents requirements associated with being the holder of a permit
- Sets out the cost of a permit
- Sets out the review procedure for a change in permit conditions

Structure and Interpretations

The interpretations underpin many of the restrictions that are in the permit conditions. This aspect of the review is relatively complex, and risks associated with potential amendments (cause and effect) have been recognised.

The BTWG have examined the current interpretations with some amended for better use of wording, rather than impacting on fishers and the fishing activity. The BTWG recommend that some additional interpretations are inserted such as “co-ordinate” and “sand eel”. Some elements of potential re-drafting that are relevant to the interpretations and structure sections of the Byelaw would change the dynamics and are explained so they can be considered by members.

Recreational Activity and Relevant Fishing Vessels

It is possible for commercial and recreational vessels below 7 metres in length to conduct trawling activity for sand eels using a specific net mesh size without a permit as this activity is not included as a prohibition in the Byelaw. The Impact Assessment to accompany the introduction of the Mobile Fishing Permit Byelaw did not highlight a need for other types of recreational mobile fishing activity to be authorised. During development of the Mobile Fishing Permit Byelaw, the view was taken that the different forms of mobile fishing activity are not consistent with what a recreational fishing activity should be. If as part of this review the same rationale is applied, then there will not be an additional monetised or non-monetised cost to recreational users as most forms of recreational mobile fishing activity is already prohibited.

All types of mobile fishing permits issued by D&S IFCA are issued to the owner/s of a vessel as defined by being the majority shareholder on the Certificate of Registry. Although there is no evidence to suggest any demand for any recreational use of mobile gear, this is not possible in the D&S IFCA District as the Byelaw currently does not cater for this. There has been some interest in sailing trawlers over 7 metres in length to be used, and it is possible that the new Exemptions Byelaw will be able to accommodate festivals or limited activity of this kind. The advice from the BTWG is that the Exemptions Byelaw should not be viewed as a way to manage on-going activity that potentially could be managed in other byelaws.

Relevant Fishing Vessels

This is a term used within the Potting, Netting and Diving Permit Byelaws as an interpretation (definition). This term is linked to the issuing of a permit and to what type of vessel (or person). This phrasing can be used to better define the types of vessel (owners) that can qualify for existing Mobile Fishing Permits and can add the requirement for the commercial vessels to be both registered (have port letters and number) and have a valid fishing licence. Although the phrasing “Relevant Fishing Vessel” can be used within the Byelaw and add the requirement for there to be a valid fishing licence allowing the vessel owner to be issued with a Category One or Two Permit, it does not detail further requirements of the vessel licence. There are many different types of valid fishing licences which relate to species that can be taken by different mobile fishing vessels.

For other activities such as potting and netting, D&S IFCA has recognised the need for recreational activity to be authorised. This is achieved as the vessel (or person) is not a “relevant fishing vessel”. As Mobile fishing already has two separate categories (Cat 1 & 2) which are both for commercial activity, in theory a third category (Category 3) could be established for non-relevant vessels. Drafting work of the BTWG to date has not catered for any additional use of mobile fishing gear by recreational users but it would be a relatively simple exercise if the B&PSC require it.

B&PSC Discussion Questions:

- 1.1 Other than commercial and recreational vessels below 7 metres in length trawling for sand eels, should the Byelaw continue to only permit commercial activity?**
- 1.2 Should the term “relevant fishing vessel” be used to strengthen the requirements for commercial operators (both at sea and within estuaries) to have a registered vessel and a valid fishing licence?**

Estuaries Interpretation

The current byelaw lists multiple estuary closing lines on the face of the byelaw. This is to define the areas where it would be possible to issue a Category Two Permit (Estuary permit) with other areas, that are not defined, being the “at sea” areas that would require a Category One Permit. As it stands, several of the current estuary closing lines in the Mobile Fishing Permit Byelaw need examination for accuracy regardless of any change of approach; however, the BTWG recommend an alternative approach for consideration by members.

It is possible to insert a new interpretation for “estuaries” within the Mobile Fishing Permit Byelaw which would link to a separate schedule, in a similar way to a Statutory Instrument referring to a schedule. The schedule will list the closing lines for all estuaries and form part of the Byelaw.

1.3 BTWG Recommendation

That “estuaries” is added to the interpretations and a schedule is created to list the estuary closing lines

Fishing and Using Interpretations

The current Byelaw has interpretations for “using” and “fishing”.

The current “using” interpretation states:

“using” in the context of mobile fishing gear shall for the purposes of this byelaw mean moving, towing, pushing or dragging it on the seabed and or above the seabed and or on the surface of the sea and or anchoring and leaving it on the seabed with or without the intention to take Sea Fisheries Resources and “use” and “used” shall be construed accordingly.

Officers and the D&S IFCA prosecuting solicitor have identified a legal weakness with the “using” interpretation regarding mobile fishing gear being hauled and establishing if and when during a hauling operation this can be categorised as “using” when compared to the relevant sections of written permit conditions.

This weakness is intensified with the use of scallop gear which is typically quicker to haul than an otter trawl. The separate “fishing” interpretation reads as follows:

- ***“fishing” includes searching for sea fisheries resources, shooting, setting, towing, hauling of a fishing gear, and taking sea fisheries resources on board;***

This “fishing” interpretation is considered to be stronger by the BTWG and would also link to a prohibition within the Byelaw that relates to the carriage of mobile fishing gear. It is possible for multiple permit conditions to be re-worded with emphasis placed on “fishing” rather than “using”.

Officer Comments

It is important to recognise the possibility that some fishers, particularly those that operate vessels using otter trawls, will raise objection to this approach. Vessels operating otter trawls are typically more difficult to manoeuvre in some relatively small and defined at sea access areas as compared to a vessel scallop dredging. Although “gear in, gear out” technology is being developed, it is not ready for implementation at this time.

B&PSC Discussion Question:

1.4 Should the interpretation for “fishing”, rather than “using” form the basis for permit condition wording?

Mid-Section of the Byelaw

Deeming Clause

The current Byelaw contains a deeming clause. The advice from Defra is that it should be removed. The measures taken to prepare for this removal from the Byelaw have been well documented. A review of the Category One Permit Conditions, involving consultation, has already resulted in changes to catch restrictions within these permit conditions that effectively remove a reliance on the deeming cause. The enforcement capability of D&S IFCA is not impacted by the removal of the deeming clause and neither is the Byelaw any weaker as a result.

1.5 BTWG Recommendation

That the deeming clause is removed from the Byelaw.

Certificate Discs

The current byelaw states that a certificate disc will be issued to a permit holder. This “disc” was originally envisaged to be a sticker for permit holders to place on their vessels. Over time the waterproof sticker that was originally issued has become a replica of a sticker on the paperwork rather than a separate item. Neither a separate sticker or a replica of one serves any purpose. An electronic data base of permit holders’ details has been established and the use of modern technology such as smart phones and tablets enables enforcement officers to establish who and who doesn’t have a valid permit. The Netting Permit Byelaw does not include this provision.

1.6 BTWG Recommendation

That the provision to issue a certificate disc be removed from the Byelaw.

Fees

The present cost of a permit for both Category One and Category Two Permits is £20 for a two-year period.

Comments:

Part 3 of this report contains information that may assist members discussions regarding changes to this provision.

Review Procedure Section of the Byelaw

Officers initially identified some text within this section that could potentially be misleading to stakeholders. It relates to the procedure of amending permit conditions and the requirement for D&S IFCA to produce an Impact Assessment (IA) as part of the review of permit conditions.

When a new Byelaw is being made, or in this case remade, template IA’s are used for both the production of consultation and final stage IA’s. When reviewing permit conditions D&S IFCA has approached the required use of an Impact Assessment (IA) in a different way. Byelaw development reports have been created to set out the rationale for potential change, the potential impacts for stakeholders and the findings of the required consultations. These reports often compiled over time and presented in stages in the form of supplement reports for members have assisted decision making and the minutes have recorded the outcomes. The final reports are amalgamations of previously presented and documented information,

minutes of relevant meetings and when complete they represent the Final Impact Assessment for changes to permit conditions. In the interests of safeguarding the reputation of the Authority, and providing full transparency to stakeholders, these D&S IFCA publications often go beyond the typical use of IA's. The BTWG have concluded that although the wording "Impact Assessment" is used in this section of the Byelaw, this is not misleading enough to require change unless the B&PSC feel it is required.

1.7 BTWG Recommendation

That the wording "Impact Assessment" in the permit review section of the Mobile Fishing Permit Byelaw remains as written.

Other changes

Members can highlight other potential changes to the overarching Byelaw not already highlighted so far in this report. If the potential changes require technical drafting work, the BTWG can attempt the task and report back with their findings.

1.8 B&PSC Discussion Question:

Other than fees, which is a separate agenda item, are there any other aspects of the Byelaw that members wish to highlight for discussion and potential amendment?

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Part 3: Fees for a Permit

Background

The current fee for both category One and Category Two Mobile Fishing Permits is £20 for a period of up to two years. This has been a fixed provision since the implementation of the Mobile Fishing Permit Byelaw. The fee was originally introduced to offset costs associated with administration, however as this was the first Permit Byelaw to be introduced, the real cost administration burden to D&S IFCA was impossible to accurately estimate. It was not originally considered to be an attempt to recover other costs associated with managing this fishing activity.

The following information has been prepared to demonstrate some examples of fees charged by other IFCA's in their permit-based byelaws (or proposed byelaws). Following this D&S IFCA's administration costs and other related discussion information has been set out

Eastern IFCA

Wash Restricted Area Byelaw 2019

This proposed Byelaw is to replace an Emergency Byelaw. It is to regulate fishing for bivalve molluscs in an area of the wash (Norfolk) which is not covered by the Wash Fishery Order 1992. The Byelaw will require a permit to fish and includes flexible management measures. The number of permits that will be issued is restricted by Eligibility Criteria with an estimation that up to 62 fishers may be eligible for a permit. The cost of a permit valid for one year is based on stationary, postage, a returns book, and officer time to prepare and issue the permit.

- The cost per permit, per year is £43.75

Eastern IFCA

Whelk Permit Byelaw 2016

This Byelaw is applicable to both commercial and recreational fishers with different categories of permit issued that are valid from the date of issue until the following 1st of April. Tags are issued with the permit.

The fee for a Category One Permit (commercial fisher) is £50 and does allow 100 pots or fewer to be used. £0.50 is charged for each additional pot up to a maximum of 500 pots.

- **The cost to a commercial potter using 500 pots would be £250 for 12 months fishing or less.**
- **The fee for a recreational user is £5 per pot with a maximum of 5 pots authorised and a total potential cost of £25 for 12 months fishing or less.**

Southern IFCA

Poole Harbour Dredge Permit

Permits are issued for commercial fishers that typically target Manilla Clams, Native Clams, Cockles and American Hard-shelled Clams using a dredge within Poole Harbour. Each permit can be valid up to one year.

- **The cost of each permit can be no more than £1000.**
- **The fee for a permit in 2019-20 is £600.**

- It is expected that a maximum of 40 to 45 permits will be issued in year 1, subject to Habitats Regulations Assessment.

North West IFCA

Cockles and Mussel Fishing Permit Byelaw 2019

The current Byelaw is in the process of being replaced. The following is an extract from the Impact Assessment in its development stage.

“The Byelaw is to protect stock, control fishing effort and maintain a harvesting regime which is fair to all wanting to fish”.

“When open, cockle and mussel stocks tend to be overexploited. Illegal fishing (e.g. without permits, in closed areas or using prohibited equipment) is a constant concern of the NWIFCA. Fisheries require a high level of enforcement and there are currently no options for remote monitoring of fishing activity. Enforcement must be based on evidence gathered by IFCOs on site”.

*“The current byelaw has achieved the objective of establishing firm control of fishing effort linked to stock levels determined by regular survey. Over exploitation has been virtually eliminated under a permit scheme including **a charge of £500 per permit per year**. This permit scheme together with a requirement to provide catch return data has reduced numbers of fishers from over 500 to a manageable level of approximately 100. Illegal financial activity and exploitation of labour has been minimised by working in collaboration with other regulators”.*

Cornwall IFCA

Live Wrasse Fishing (Limited Permit) Byelaw 2018

The following is a summarised extract from the Final Impact Assessment that accompanied the Byelaw for confirmation.

“This byelaw establishes a permit system allowing fishing opportunities for up to five vessels to target and retain four species of live wrasse using fish traps within the Cornwall IFC District. Permit holders must submit monthly effort and landings data. It also sets out a series of technical measures including minimum sizes for wrasse species, prohibited species, closed areas, closed seasons and gear specifications. It is anticipated that any further restrictions would be implemented using flexible permit conditions if deemed necessary for management of the fishery”.

“In order to limit the effort directed at this fishery for live wrasse, the byelaw establishes a limited permit scheme with five permits available annually, as this was determined to be an appropriate level of fishing activity”.

- **The permits will cost £135 each, per annum to cover the administrative charges associated with issuing the permit and processing the landings data.**
- The permits expire each year on 31st December.

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D&S IFCA Permit Statistics & Administration Costs

The current cost of every permit issued by D&S IFCA is £20. The Bank of England calculator estimates that a £20 expense in 2014 would in 2018 equate to £22. The inflation rate in 2019 is 1.9%. The following data was assembled between the 12th and 30th July 2019.

Fishing Sector	Category	Number of valid permits
Mobile Fishing	Cat 1 (At Sea)	140
	Cat 2 (Estuary)	12
Potting	Cat 1 (Commercial)	176
	Cat 2 (Recreational)	337
Diving	Cat 1 (Commercial)	27
	Cat 2 (Recreational)	194
Netting	Cat 1 (Commercial)	137
	Cat 2 (Recreational)	48
Total		1071

Permit Differences

Although a £20 administration fee has become the standard charge inserted in all D&S IFCA Permit Byelaws introduced since 2014, there are some differences in how permits can be used by fishers that pay for and receive them and what additional information and items they receive for the application fee as part of their permit.

For example, no tags are issued to commercial fishers using pots, but a recreational potter can operate a maximum of five pots and can request up to five tags as part of the application. Mobile fishing activity “at sea” is more complicated to manage than some other activity and this is reflected in the number on Annexes (colour charts) that accompany the permit conditions. Although information is required from every applicant in the application process, the commercial permits for each activity require more information to be submitted and therefore more cross checking of the information by the Permitting Officer.

- Trawling activity at sea (Cat 1 Mobile Fishing Permit) is authorised year round
- Scallop dredging at sea (Cat 1 Mobile Fishing Permit) is authorised for nine months of the year
- Scallop dredging in the Salcombe Estuary (Cat 2 Mobile Permit Permit) is authorised for three months only
- Mussel dredging in the Dart (Cat 2 Permit) is authorised for three months only.
- Different permits require more printing for the associated annexes (Charts)
- Commercial Potting and Netting permits can be utilised all year round
- Commercial scallop diving is authorised for nine months
- Recreational permits are issued for potting, netting and diving
- Electronic tags are issued with recreational netting and potting permits.
- Some permit applications require different levels of cross checking for accuracy of the submitted information

Administration Costs

There are many costs associated with administration. Costs include sending hard copy information to applicants if they request it prior to them obtaining a permit. Although a significant amount of consultation is done by email, some stakeholders must be notified by post as no email address has been provided. No estimation has been made of the associated

costs incurred by D&S IFCA enforcing the permit conditions or conducting any research work that is relevant to the management of the different fishing activities.

Item	Estimated Annual Cost
Permit Officer (part time basis) Salary Band ¹ (currently £933.75 per month) - £18,426 to £19,171 for a full time post.	£11205 to £11658
Permit Officer On-Costs (currently £219.80 per month)	£2637.60
Average postage costs per month £45.87.	£550.44
Average cost of paper & printing per month £23.85	£286.20
Cost of Tags (2-month period = £57). 1000 tags costs £1620 plus Vat.	£342
Mail Chimp subscription cost (D&S IFCA communications) (\$30 per month) / £25 per month	£300
Website on-line facility costs (Cloudberry Digital) - for basic daily backup/hosting, upgrades and telephone support	£720
USB ² Data sticks (Development cost) 200 purchased March 2016	£644.50
Total	£16,685.74 - £17138.74

- **Based solely on the above current administration costs, an annual permit fee would be closer to £20 per year rather than two years to offset these costs**

Future costs

A cost set by the B&PSC for a permit would be highlighted in an Impact Assessment and it is possible for an estimated projection of future costs be presented to stakeholders. It is difficult to predict fluctuations in the numbers of permits issued, however it is more likely that overall numbers of permits will increase if and when other fishing activities are managed via a permit-based model.

Since 2014, D&S IFCA has developed an on-line permit shop supported by the D&S IFCA website to provide fishers with a relatively quick option to apply for and receive a permit for their chosen activity. Although it would appear that an on-line facility would significantly reduce the complications and burden for D&S IFCA issuing permits, this is not actually the case in every circumstance.

Mandatory fields have been created for information to be submitted but D&S IFCA is unable to control what information is submitted by applicants applying on-line. The on-line automated system has until this point be able to generate a permit number and in effect issue a permit, even if incorrect information has been provided or insufficient information has been provided in the application. Several applicants have then had to be contacted to retrospectively provide the correct information. At time of writing, a new on-line permit application and payment facility is being planned. This will still provide fishers with the option to apply and pay for a permit, but it will not automatically issue a permit number for the applicant. The Permitting Officer will have full control over permit numbering and will only issue a permit if all of the required information has been submitted and also time has been spent cross checked the information for accuracy. The costs for this development have not been established at this time.

Officer Comments

Over time it has become apparent that the task of processing and issuing of permits could not be absorbed into the job descriptions of other officers. The job description

¹ NJC pay scale 2019-20

² Not ready to issue at time of writing

for a Permit Officer reflects the need for this task to be conducted by a separate employee rather than combined with the tasks undertaken by other officers. The majority of the Permit Officer's time is devoted to the processing and issue of permits, along with answering queries related to the different permits.

It should be recognised that at this time the Permit Officer is employed on a part time basis. If over time there is an increase in the number of permits issued, there may be a requirement for more hours of work to be directed to the task. Although less likely, there is also some scope for potential reduction of administration costs based on differing factors.

Developing and Amending Principles

Full Authority

In December 2016 the Authority discussed the fees associated with the issuing of Netting Permits. An extract transcript from the minutes taken at that Full Authority meeting is set out below:

“a proper review of costing of a permit would be made when the completion of all byelaws to be introduced was attained was made. Increase of cost being not less than the rate of inflation or at full cost recovery will be tapered at that time of review”.

Byelaw & Permitting Sub Committee

Principles have been developed overtime for byelaw review work and these were examined and reviewed in 2018. Principles have been documented and used in other D&S IFCA publications including the [Guide to the Work of the Byelaw and Permitting Sub-Committee \(November 2018\)](#). In February 2019 members of the B&PSC concluded that a review of principles (or one of the principles) could be conducted again at any time depending on a need to do so.

Existing Principle

- **The cost of a permit will be £20 (for administration)**

The permits that are currently issued via D&S IFCA Permit Byelaws are £20 for a two-year period. This fee covers administration costs only and is not an attempt at full cost recovery. The Authority has suggested that once the complete suite of activity-based byelaws is active, then the financial burden placed on the Authority and the £20 permit fee can be reviewed.

Officer Comments & Additional Information

It has taken longer than expected to introduce a complete suite of Permit Based Byelaws, and this is not likely to be complete until at least 2021. Members can review existing principles including the level of fees that could be charged. This will be documented, and publications can be updated if required.

If the cost of a Mobile Fishing Permit was to increase as a result of this process, it would be set at a different level to those engaged in netting, potting and diving (for specified

shellfish). The fees for those methods cannot be adjusted until those Byelaws are reviewed as the fee is documented on the face of those Byelaws.

1.9 B&PSC Discussion Item

The B&PSC can develop a new principle for the charging of fees which will be documented and used in other D&S IFCA publications.

Fees in the Mobile Fishing Byelaw

At present an exact fee for a permit (£20) is set out on the face of the Byelaw.

2.0 BTWG Recommendation

The BTWG have concluded that the cost of a permit would not be required to go on to the face of the Byelaw. An alternative (if the fee is for administration) would be to amend the current provision to state something like the following:

- **A fee to recover the administration cost of issuing a permit will be determined from time to time by the Authority and will be charged for each permit which will be payable on application.**

(Intentionally blank)

Part 4

Changes to the Permit Conditions – Category Two

The review of the Byelaw Mobile Fishing Permit Byelaw provides an opportunity to examine the current Category One and Category Two Permit Conditions. The Byelaw and the associated permit conditions would be advertised at the same time in the formal consultation period. The BTWG have examined all the Category Two Permit Conditions and have begun the task of experimenting with different approaches to style and formatting.

BTWG Comments:

At this time input is needed by the B&PSC regarding some of the management measures that fall beneath the Category Two Permits that are currently issued and will be issued in the future.

The Category Two (Estuary) Permits

The current Category Two (Estuary) Mobile Fishing Permit Conditions are intended to provide D&S IFCA with management of mobile fishing activity in:

- The River Exe
- The River Teign
- The Salcombe Estuary
- The River Dart

No mobile fishing activity is authorised in the other estuaries. The permits are accompanied with Annexes (Charts) to simplify aspects of the restrictions. The current structure and layout (including Annexes) do not resemble the other types of permits issued by D&S IFCA.

Expected Key Changes

A list of interpretations would be added to the permit to add clarity regarding the content and wording. In addition, and due to the Council Regulation (EC) 850/98 being revoked, a catch restriction provision relating to the size of a marine organism would be amended from past wording used in Category One Permits and potentially referred to as an additional annex or schedule.

Dependent on discussions of the B&PSC and attempts of the BTWG to enact those decisions it is possible that a catch restriction section of the Category Two Permit could be established which also replaces the need for the reliance on a deeming clause that is to be removed from the Byelaw.

Other sections of the permit can also be developed, and these will either be separated or potentially they may have to be combined. There is also the possibility that the greater use of tables within the permit can be explored by the BTWG to provide the permit holder with more clarity.

Whatever approach is taken the results will be presented to all members of the B&PSC in due course and will be based on the management measures the permit needs to deliver.

BTWG Comments:

In any eventuality the revised Category Two Permit Conditions will be an improvement on the existing permits issued. Different options exist for re-drafting and although different options will be examined and tested by the BTWG in due course, members of the B&PSC can come forward with suggestions regarding preferred layout if they wish.

The Teign

The Teign has no designations from an environmental perspective. No activity in the Teign Estuary is authorised via the current Category Two Permit Conditions. Activity can only take place in the area defined by The River Teign Mussel Fishery Order 1966 as varied by The Mussel Fishery (Variation) Oysters Order 1996. The BTWG recognised that D&S IFCA have no management of this area which would result in conditions being placed in a permit.

2.1 BTWG Recommendation

That the specific reference (and accompanying Annex) to the mobile fishing restriction in the Teign Estuary is removed from the Category Two Permits and the Teign Estuary area becomes one of the estuaries where no permits will be issued by D&S IFCA.

Dart Estuary Mussel Dredging

The limited use of one mussel dredge by a vessel below seven metres overall length is currently authorised in the Dart Estuary. There are no permits issued at this time and, as far as officers can recall, none have been issued since 2014. There are no defined areas where the activity is not authorised and no Annex (chart) is issued. In addition, there are restrictions regarding the time period that fishing can take place.

- **No fishing is authorised on bank holidays**
- **No fishing is authorised on weekends**
- **Fishing is only authorised between 0800 hrs and 1800 hrs local time**
- **Fishing is authorised between 1st October and 31st March inclusive**

The above restrictions originated from stand-alone byelaws inherited from Devon Sea Fisheries (DSF). There was no requirement for an Impact Assessment to create the original Byelaws and some elements of management are therefore more difficult to explain. The restrictions were transferred into the Mobile Fishing Permit Byelaw (permit conditions) and the legacy measures were revoked.

Officer Comment:

It is possible that the original time restrictions were in part to reduce the burden for DSF undertaking enforcement work to ensure compliance during un-social periods. D&S IFCA also has limited resources, but officers do work un-social hours as part of an intelligence led approach to enforcement work.

It should be noted that the 10-hour fishing opportunity is greater than that imposed to scallop fishers working within the Salcombe Estuary.

B&PSC Discussion:

2.2 The B&PSC can consider the removal of this fishing opportunity to allow assessment work to be conducted to establish if there would be an adverse impact caused by the activity.

2.3 If the potential to conduct this activity is to remain, should the current time restrictions for mussel dredging in the Dart Estuary remain the same in the amended Category Two Estuary Permits?

Salcombe Scallop Fishery

The limited use of two toothless scallop dredges by vessels below seven metres in overall length is currently authorised in the Salcombe Estuary. There are approximately 10 permits

issued each season. There are defined areas where the activity is not authorised to protect sea grass and an Annex (chart) is issued to clearly demonstrate where dredging can and can't be conducted. In addition, there are restrictions regarding the time period that fishing can take place.

- **No fishing is authorised on bank holidays**
- **No fishing is authorised on weekends**
- **Fishing is only authorised between 0900 hrs and 1600 hrs local time**
- **Fishing is authorised between 15th December and 15st March inclusive**

Officer Comment:

As with the access for mussel dredging within the Dart Estuary, the above restrictions originated from stand-alone byelaws inherited from Devon Sea Fisheries (DSF). The same consideration can be applied to the time restrictions above.

B&PSC Discussion:

2.4 Should the current time restrictions for scallop dredging in the Salcombe Estuary remain the same in the amended Category Two Estuary Permits?

Changes to the Permit Conditions – Category One

The current Category One (At Sea) Mobile Fishing Permit Conditions provides D&S IFCA with management of mobile fishing activity in areas other than estuaries.

The permit conditions have been subjected to several changes since 2014. D&S IFCA has already conducted a Three-Year Review of the Permit Conditions which focussed more on the Cat 1 (at sea) conditions rather than the estuary permits. In addition, further changes have been made which introduced IVMS. Due to this attention, Category One Permits are better structured and worded as compared to the Category Two Estuary Permits.

The BTWG have examined the present Category One Permit Conditions. Without pre-judging the decision making of the B&PSC, attempts have already been made to amend some wording to reflect the relative strength that the “fishing” interpretation offers as opposed to a “using” definition. Due to the Council Regulation (EC) 850/98 being revoked, the catch restriction provision relating to the size of a marine organism would be amended and potentially referred to as another annex or schedule. Other than this, the drafting work conducted to date presents no significant impact to fishers.

The Category One Permits are currently accompanied with eight separate annexes that are issued to simplify and clarify different provisions. The construction of the permits, using a combination of catch, gear, spatial and time restrictions does allow for additional areas to be defined and managed with a view to restricting or allowing access. It is a relatively simple task for the BTWG to create new annexes if required. This is of relevance as the B&PSC consider the environmental information set out in the final section of this report (**Part 5**).

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Part 5

Environmental Considerations and Spatial Access

Mobile Fishing HRAs and Outcomes

Hartland Point to Tintagel MCZ

Dredges vs Rock and Sediment

An MCZ assessment was carried to assess the impact of scallop dredges on the rock and sediment features of the site. The rock and coarse sediment are found interspersed across the site. Dredging can have a significant impact on the benthic systems and species, impact community structure and alter the physical structure of the seabed. Whilst the current level of dredging activity in the site is none, the MCZ assessment concluded that if the activity was to commence it could significantly impact the features and hinder the conservation objectives of the site being met.

[Link to MCZ Assessment](#) [Link to NE Formal Advice](#)

Officer Comment:

D&S IFCA has previously made the decision to remove dredging partly or wholly from other MPAs in the District where rock/reef and coarse sediment are features, through its Mobile Fishing Permit conditions.

B&PSC Discussion:

2.5 To consider prohibiting use of dredges over rocky reef and coarse sediment within the Hartland to Tintagel MCZ.

Bideford to Foreland Point MCZ

Demersal Gear and Dredges vs Rock

An MCZ assessment was carried to assess the impact of dredges and towed demersal gear on the rock features of the site. The level of effort of towed (demersal) gear and dredges, in the area of the MCZ dominated by the rock features, is currently thought to be none. There are no records of this activity taking place on or close to the rock features. At the current levels of effort, i.e. no activity occurring, it can be concluded that there will be no likely significant impact from towed (demersal) gear and dredges on the MCZ features. However, if the activities were to occur on the features, the evidence suggests there could be a significant impact. This impact could lead to the conservation objectives for the site not being met nor furthered. The interaction of demersal gear and dredges is considered 'red-risk' i.e. likely to cause significant damage to designated features.

[Link to MCZ Assessment](#) [Link to NE Formal Advice](#)

Officer Comment:

D&S IFCA has previously brought in management to prohibit the interaction of sensitive rock features from bottomed towed gear and dredges through its Mobile Fishing Permit Byelaw.

B&PSC Discussion:

2.6 To consider prohibiting demersal towed mobile gear on rock features within the Bideford to Foreland Point MCZ.

Demersal Gear and Dredges vs Course and Mixed Sediments and Sand

A single MCZ assessment was carried out for these gear types on the features of the MCZ. However, within that the gear types were considered separately. Towed demersal gear is happening within the southern section of the site at a fairly low level. Three known vessels operate close to and partly within the site. Two out of three of these vessels only fish in the area during winter when the weather limits their fishing operations out to sea. This part of the site is subject to environmental influences and moderate to high energy. The area is west facing and exposed to the prevailing wind and wave direction, including storm waves generated in the Atlantic, has a large tidal range and depths of 10m chart datum. Evidence suggest that less stable mobile sediments in shallow waters are more resilient to the effects of trawling than more stable sediments. The conclusion of the assessment was that towed demersal gear is unlikely to have a significant impact on the sediment features of the site. The Northern part of the site runs much closer to the shore and consist of a range of habitats mostly consisting of rock with coarse sediment and sand interspersed. This area does not have any demersal towed gear or dredges operating in it.

[Link to MCZ Assessment](#)

[Link to NE Formal Advice](#)

Officer Comments:

D&S IFCA has previously made the decision to allow access to demersal trawling in parts of MPAs where the assessment indicates a significant impact is unlikely, through its Mobile Fishing Permit conditions. The Authority has also closed areas to demersal trawling and dredging where there is a risk to more sensitive habitat, such as rock.

Dredges vs Course and mixed Sediments and Sand

Dredging can have a significant impact on the benthic systems and species, impact community structure and alter the physical structure of the seabed. Currently there are no dredging vessels operating in the site is none. The MCZ assessment concluded that if the activity was to commence it could significantly impact the features and hinder the conservation objectives of the site being met.

[Link to MCZ Assessment](#)

[Link to NE Formal Advice](#)

Officer Comments:

D&S IFCA has previously made the decision to remove dredging partly or wholly from other MPAs in the District where rock/reef and coarse sediment are features, through its Mobile Fishing Permit conditions.

B&PSC Discussion:

- 2.7 To consider allowing access for demersal towed mobile gear to be used on other protected features within the Bideford to Foreland Point MCZ.**

Start Point to Plymouth Sound and Eddystone SAC

Start Point to Plymouth Sound and Eddystone (SPPSE) SAC is a site with extensive designated reef features. The reef feature of the SPPSE SAC was deemed to be red risk.

D&S IFCA carried out a Habitat Regulation Assessment (HRA) which concluded that towed demersal gear and dredges would have a significant impact on the reef features of the site. The spatial restrictions which were originally in place were extended under the Mobile Fishing Permit Byelaw to ensure the full extent of the reef feature was protected (Figure 1).

Owing to the extensive reef areas and some smaller areas around the periphery, D&S IFCA was precautionary in its approach to management. This was applied to certain parts of the site due to the potential for adverse impact of bottomed towed gear operating close to reef. Most of the SAC was closed to demersal and dredge gear. One area closed was northern part of Zone 2 of the Inshore Potting Agreement (IPA) Area (Figure 7). This zone was traditionally open to demersal towed gear from 1st January to 31st May inclusive.

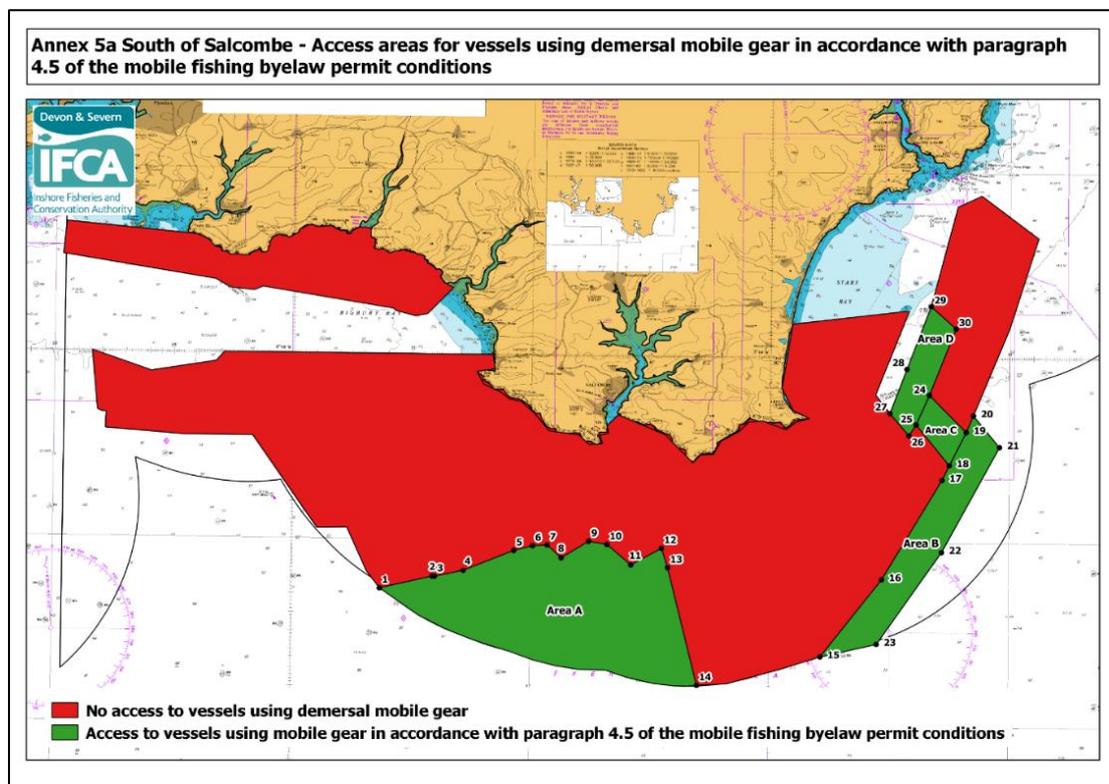


Figure 1 Annex 5a of closure and access area under D&S IFCA Mobile Fishing Permit Byelaw

Much of this area does not include the reef feature (Figure 2), however due to the narrow access to the site between the reef and no means of monitoring the site other than during enforcement patrols, it was decided by the Authority to close the whole area. This is covered by the Mobile Fishing Permit conditions (as well as the IPA Licence conditions). There was agreement that this closure would be reviewed if an appropriate vessel monitoring system was developed and applied to the mobile fleet so that fishing vessels could be monitored using vessel systems (iVMS and VMS).

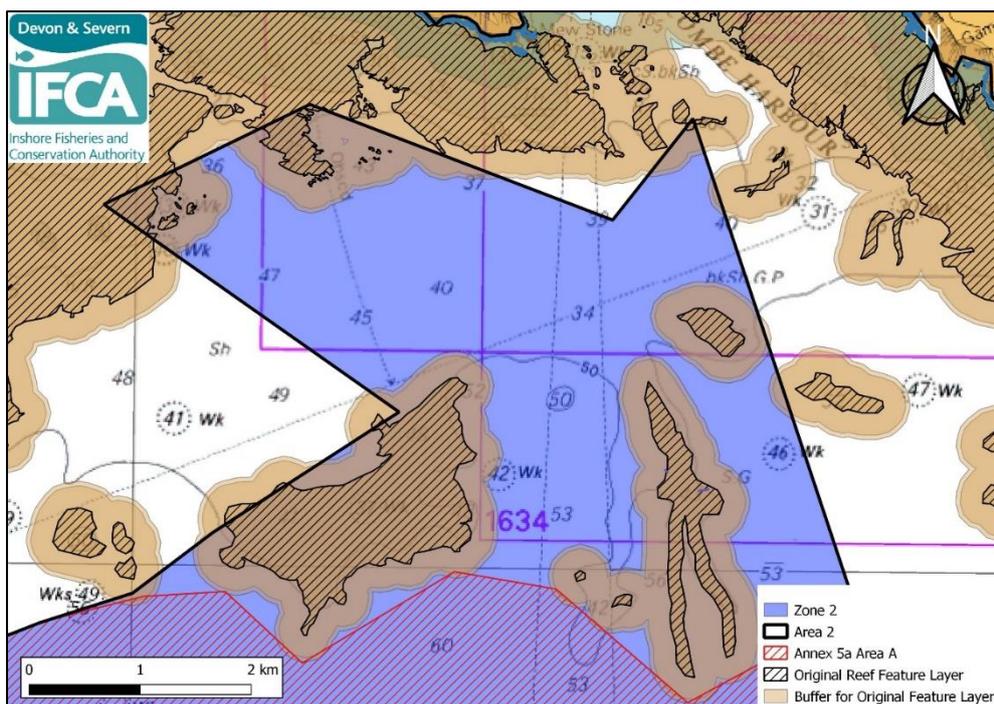


Figure 2 Zone 2 of IPA, and Reef Feature

D&S IFCA now has a means of monitoring demersal towed fishing remotely using iVMS and VMS via the Mobile Fishing Permit Byelaw. As of August 2018, this was operational on all mobile gear vessels greater than 6.99m which operate within the district. D&S IFCA can track vessels in real time and go back over a period of time for each vessel.

Due to the possibility of reviewing the access area, and due to uncertainties put forward by the fishing industry suggesting that some of the area was sand banks rather than rock, D&S IFCA undertook additional survey work on the Prongs and the surrounding areas of the SPPSE SAC to verify the existing and extent of the reef feature. The reef habitat was originally mapped using acoustic data by Cefas, and parts of the site were surveyed by University of Plymouth using underwater video techniques. However, no video transects were carried out in the area in question.

D&S IFCA carried out the verifying work using the Flying Array Camera system, which was originally developed by Dr Emma Sheehan and her team at the University of Plymouth. The video footage collected was analysed by Ocean Ecology Ltd. Analysis was undertaken in line with guidelines provided in the 'Cefas Video and Stills Processing Protocol' and Ocean Ecology's in house 'Seabed Imagery Processing, Analysis & QA SOP'. Ocean Ecology produced a report for this assignment and provided the IFCA with the GIS layers of the tow data.

The survey confirmed that much of the Prongs area was made up of coarse sediment rather than rock, with only a small amount of rock being observed (Figure 3).

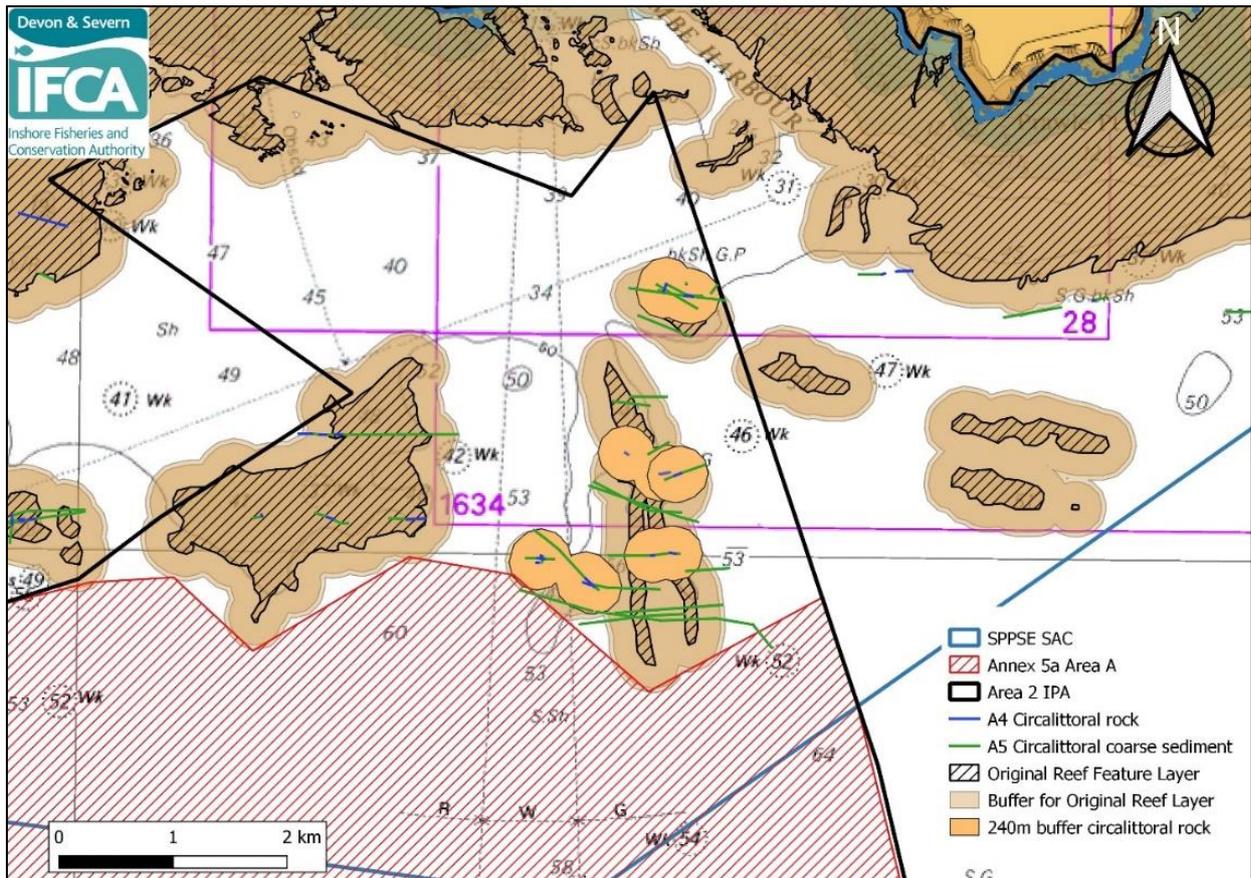


Figure 3 Results of D&S IFCA Towed Camera Survey in the Prongs Area

Within the Prongs area, a total of 63 video segments were analysed covering 13.62 km. With a field view from the camera of 50cm, this equates to 0.00681 km². Of this, 93.65% was classified as circalittoral coarse sediment (A5.14), and 4.61% was various circalittoral rock features falling under EUNIS classification A4.1 or A4.2.

Circalittoral coarse sediment is not a feature of the SPPSE SAC, and therefore does not fall under the Habitats Regulations as a feature for which an HRA would need to be carried out. An assessment was produced in 2013 for the reef features.

Three maps have been produced, two using the original data for the site and one using the data collected by the IFCA, demonstrating potential access areas to demersal towed gear, which would not significantly affect the conservation objectives of the site. Figure 4 represents the possible access area based on the original reef layers provided by Natural England. This option would open access areas from both side of the Prongs. Due to the narrowest gap between the two reef buffers on the north east section of the Prongs being approximately 150m wide, a second option has been mapped which would only allow access to the west (Figure 5).

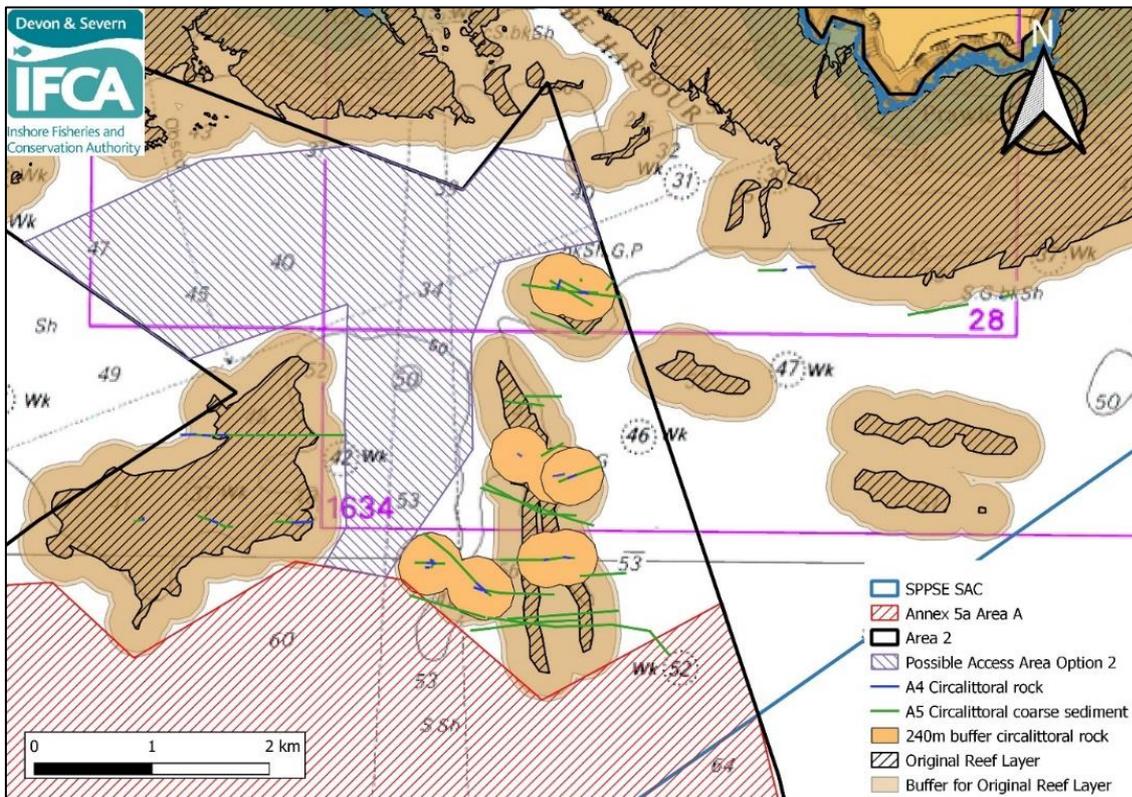
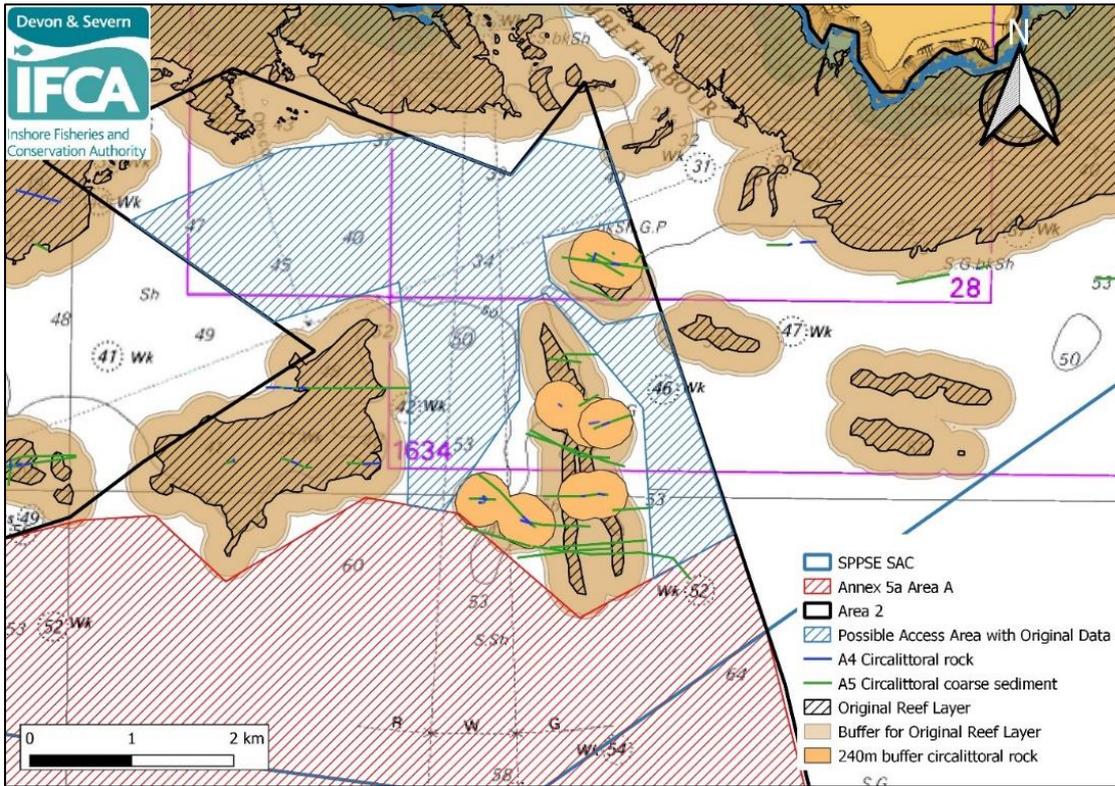


Figure 6 represents a larger access area based on the results of the towed camera work carried out by D&S IFCA, which indicated the access area based on the fact that much of the Prongs area is sediment. The research undertaken by D&S IFCA has shown that there are parts of the site within Zone 2 that were designated reef but appear through ground truthing evidence to be sand banks and coarse sediment. In order to potentially open up access into the northern part of Zone 2 after five years closure and allow access to mobile gear over habitats that were once thought to be reef, D&S IFCA is undertaking an HRA to show the evidence gathered from ground truthing indicates this area is not reef. This will be sent to Natural England on completion for formal advice. This response should be received within one month of submission and before the B&PSC meeting in November.

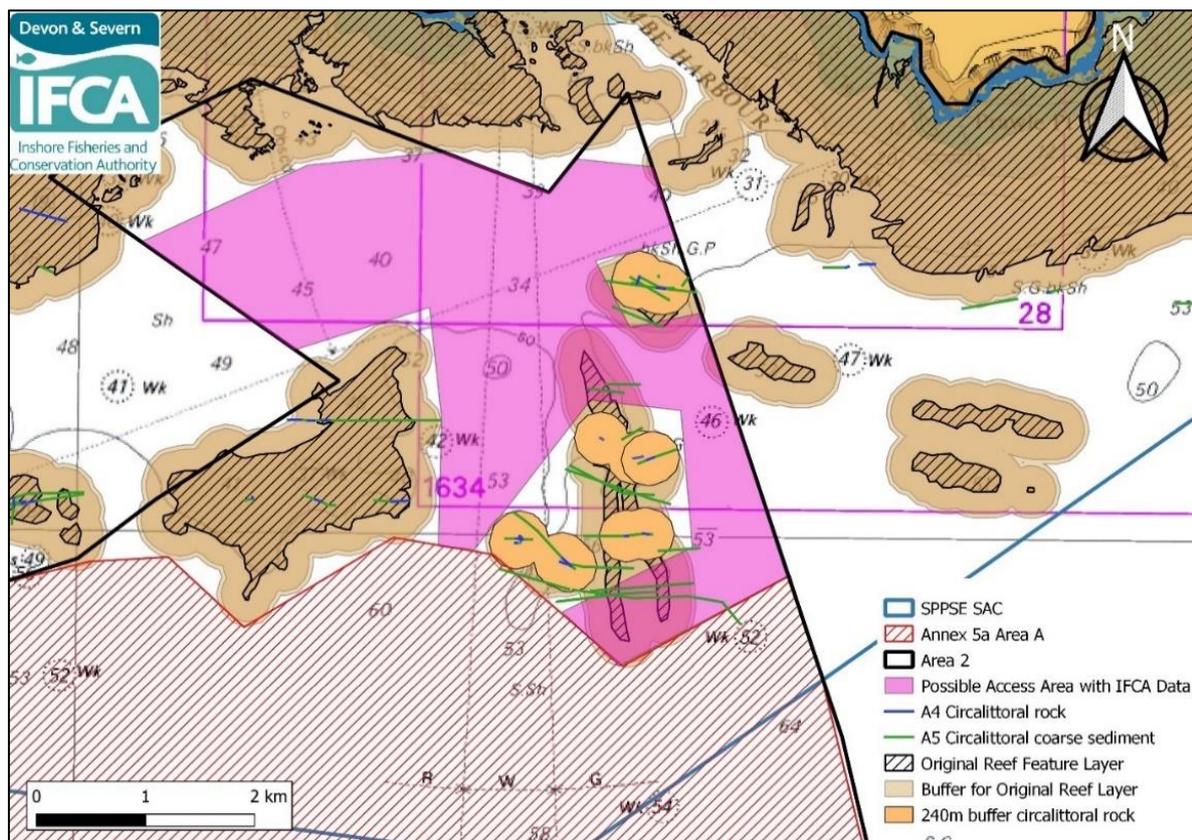


Figure 6 Possible Access Area Based on D&S IFCA Survey Results

Officer Comments:

D&S IFCA has previously made the decision to allow access to demersal towed gear in parts of MPA where the assessment indicates a significant impact to a designated feature is unlikely, through its Mobile Fishing Permit conditions. The HRA and NE’s formal advice will help inform the decision making.

B&PSC Discussion:

2.8 To consider options for access to demersal mobile fishing gear within the Start Point to Plymouth Sound and Eddystone SAC.

survey sites have been taken and examined for the presence of rock in the areas predicted by the modelling. Within Zone 3, only one still out of 10 stills taken on one of the 18 tows found a boulder, the rest of the Zone was coarse sediment.

Coarse sediment, through survey work, has been found to cover a larger area of the site than previously thought particularly in the zones where there is restricted access to demersal fishing gear. This has a maintain conservation objective and the suggested management is managed access (NE MCZ Prioritisation Tool, 2014) which is currently achieved through the IPA.

The trawled areas, to which access is limited and managed under the IPA, are of considerable social and economic importance to the fishing communities in Devon. At the time of designation, no socio-economic data were considered because no change in management of the site was proposed and therefore no economic impact to the industry was assessed. It is very clear from the Finding Sanctuary process that the recommendation for the site as an MCZ was conditional on the current management under the IPA is maintained. Also the Finding Sanctuary Impact Assessment that no changes in management would be considered for the site because the strict management regime currently in place through the IPA has protected the rock features, and because the demersal gear access has temporal restrictions (1 month open access in the Corridor and 3 month open access in Zone 3 IPA restrictions) that this should allow for a GMA of maintain in favourable condition. The D&S IFCA Mobile Fishing Permit condition also reflects the same temporal restrictions – see Figure 1 Annex 5 (Areas C and B respectively).

D&S IFCA officers had numerous discussions with the MMO, Defra and NE regarding this site. D&S IFCA raised the issue that additional precautionary management for the habitats in the areas discussed will affect the integrity of the IPA and undermine the stakeholder led MPA considerations, leading to significant reputational damage to all those agencies involved in the MCZ process.

Officer Comments:

D&S IFCA officers are currently undertaking an MCZ assessment. Evidence has been gathered and the likely outcome of the assessment will be that maintenance of the management measures currently existing as part of the Inshore Potting Agreement will allow for the conservation objectives of the site to be met. The assessment will be sent to NE and their formal advice will be received prior to the B&PSC meeting in November.

B&PSC Discussion:

2.9 To consider continued access for demersal mobile fishing gear within the site.

End of report.