



# Development of the Diving Permit Byelaw Permit Conditions

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## Formal Consultation Report

**A Summary of Responses from the Formal Consultation on Changes  
to Category One Diving Permit Conditions**

**(21<sup>st</sup> March 2022 to 18<sup>th</sup> April 2022)**

**13th May 2022**

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## Version Control

Version & Date	Comments
Version 0.1 – 12 <sup>th</sup> May 2022	1 <sup>st</sup> draft prepared for D&S IFCA's Byelaw & Permitting Sub-Committee for use at their meeting on 9 <sup>th</sup> June 2022 – Internal review.
Version 1.0 – 13 <sup>th</sup> May 2022	Report finalised for presentation to the Byelaw & Permitting Sub-Committee for use at their meeting on 9 <sup>th</sup> June 2022.

## **1. Aim of Report & Process**

This report (13<sup>th</sup> May 2022) has been prepared for members of the Devon and Severn Inshore Fisheries and Conservation Authority's (D&S IFCA's) Byelaw and Permitting Sub-Committee (B&PSC) and for all stakeholders to examine via its publication on the D&S IFCA website.

The report demonstrates how the formal consultation (Diving Permit Conditions – Formal Consultation - Amendments to the Permit Conditions to provide access to scallop stocks in July, August, and September) was conducted and summarises the responses received that relate to each topic as set out within the formal consultation (questionnaire).

This report includes embedded information (Hyperlinks) that give readers access to additional information. All additional information embedded in this report is freely accessible within different sections of [D&S IFCA's Website Resource Library](#).

This report provides information that will inform the B&PSC regarding potential changes to the Category One (commercial) Diving Permit Conditions. If the B&PSC agree to the changes as proposed in the formal consultation (or amendments to those proposals), the Category One Diving Permit Conditions will be amended and issued before 1<sup>st</sup> July 2022.

## **2. Executive Summary of the Consultation and its Findings**

In February 2022, the B&PSC determined that formal consultation should be undertaken on a series of changes to Category One Diving Permit Conditions. The formal consultation began on 21<sup>st</sup> March 2022 and ended on 18<sup>th</sup> April 2022. All stakeholders (1545) on D&S IFCA's contact data base were directly informed about the Formal Consultation and were invited to respond. This included all fishers with a Category One (commercial) Diving Permit and all other permit holders regardless of their own fishing activity (permit type) and geographical location.

The Formal Consultation set out five potential changes (a package of management measures) to the existing Category One Diving Permit Conditions, with all of them relating to the removal of scallop during the months of July, August, and September. These were:

- a) An increase in the Minimum Conservation Reference Size (MCRS) for scallop to 110mm that will apply to divers with a Category One Permit in July, August, and September.
- b) The introduction of a catch limit of 2400 scallop per vessel, per calendar day, that will apply to divers with a Category One Permit during July, August, and September.
- c) The fitting of a Remotely Accessed Electronic Monitoring Device (IVMS), that transmits the required information, to every vessel operating under a Category One Diving Permit with additional requirements if a device fails to transmit the required information.
- d) In July, August and September commercial diving for scallop will be restricted to those Marine Protected Areas where the use of scallop dredges is prohibited
- e) In July, August and September a Category One permit holder is not authorised to remove scallop from a fishery unless all scallop removed from a fishery, on that fishing trip, is from within the District.

A total of 12 responses were received which included responses by commercial divers and conservation groups - Devon Wildlife Trust (DWT), Wembury Advisory Group (WAG) and the Blue Marine Foundation. One stakeholder responded twice with the later response containing

the detail used in this summary report. There were mixed views on each of the topics by different interest groups and from within those interest groups.

Both DWT and WAG were opposed to change and considered that providing greater access to commercial divers to remove scallops from within Marine Protected Areas (MPAs) to be completely unacceptable. DWT does not support access being provided in MPAs for the removal of scallop in the summer months by commercial divers, and therefore they were unable to support (other than in principle) most of the proposals that make up the package of management measures. DWT and WAG both support the introduction of IVMS to enable effective monitoring. WAG is strongly opposed to relaxing any of the requirements for a closed season, especially in MPA areas, however they recognise that diving is a much lower impact fishing method (in terms of potential damage to the seabed) than dredging and urge D&S IFCA to consider ways of significantly shifting the overall scallop fishery away from dredging towards diving, but without opening Marine Protected Areas in the closed period.

The Blue Marine Foundation expressed support for commercial diving as it is less damaging as compared to scallop dredging. From their perspective it is unclear why the summer restriction was put on divers in the first place, and their view is that restrictions simply need removing. The Blue Marine Foundation offered some suggestions on some potential alternatives to the proposals; however, suggestions such as a limitation on the number of permits being issued to fishers do not harmonise with agreed principles for D&S IFCA's byelaw work.

Views differed amongst commercial divers regarding the proposed catch limit of 2400 scallops per vessel, per calendar day – some felt this amount was too high, whilst others felt it was not sufficient to make it commercially viable. There was strong support for an increase in the Minimum Conservation Reference Size (MCRS) to 110mm and one of the commercial divers stated that this is already a self-imposed size limit for their removal.

Fishers were not opposed to the proposal to introduce IVMS; however, it should be recognised that this will be a national requirement later in 2022. Regarding the implementation of IVMS (as a permit condition), concern was raised about potential failure of devices and what this would mean to fishers operating under a permit with a view to losing fishing time in the District as a result of needing to repair their device.

A theme within the responses is that some of the proposals (that would provide tailored management for commercial diving activity) are viewed as an impact on commercial divers, rather than providing the fishers with additional opportunity. This is evident in the response from the Blue Marine Foundation who commented that extra layers of regulation, beyond the lifting of the ban for divers (the closed season) seem to be extraordinarily complicated and limiting a fishery that should be promoted as best practice.

Regarding the fitting of an IVMS device, three of the commercial divers that responded are opposed to ceasing fishing within the District for scallops (within July, August, and September) if their device fails. This point was also highlighted by the Blue Marine Foundation. The collective view in these responses is that this permit condition would impact fishers' income because of the lost days at sea in the summer months that may result from a non-functioning device. Officers have a different view as regardless of having a unit fitted or if it is functioning correctly, currently no fishing for scallops can take place within the District during July, August, and September and therefore no income is currently generated from fishing for scallops within the District within July, August, and September.

### 3. Background Information

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

#### 2020 – 2021

The Scallop Closed Season was discussed at the B&PSC meeting in February 2021. At this meeting a [summary report](#)<sup>1</sup> of responses from a previous pre-consultation (2020) on the “Scallop Closed Season and Additional Information” was provided to all B&PSC members. The purpose of the 2020 report was to provide information to inform the development of the Permit Conditions for both the Mobile Fishing Permit Byelaw and the Diving Permit Byelaw. The report highlighted the potential for changes to Category One Diving Permit Conditions based on the consultation responses from the Scallop Closed Season ‘Have Your Say’ 4-week consultation, research and scientific information on scallop spawning periods and comparative landings from dive and dredge vessels.

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

#### 2022

On 24<sup>th</sup> February 2022, the B&PSC were presented with the findings of the further pre-consultation (19<sup>th</sup> November to 17<sup>th</sup> December 2021) that was documented in a [report](#)<sup>2</sup>. The B&PSC were also presented with an [Officers’ paper](#) that recommended formal consultation be undertaken on a series of changes to Category One (commercial) Diving Permit Conditions and set out rationale for those changes. The B&PSC agreed to the recommendation and information was prepared for the formal consultation.

### 4. How the Formal Consultation was Conducted

The formal consultation began on 21<sup>st</sup> March 2022 and ended on 18<sup>th</sup> April 2022.

The information circulated included the following key elements:

- A general explanation about the formal consultation
- An explanation on how the Permit Conditions could be changed (process)
- A list of the proposed changes (Topics) to the Category One Diving Permit Conditions
- The rationale for the proposed changes (Topics)
- 14 questions divided into topics (A to E) with a final section for any other comments
- Examples of how the Permit Conditions would be worded to accommodate the proposed changes including the use of Annexes (charts)
- Supporting Information (links to charts of all the spatial areas being proposed for additional access)

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

<sup>2</sup> A Summary of Responses from the – Have Your Say (A Review of the Diving Permit Conditions) Pre-Consultation – 28<sup>th</sup> January 2022

A Mail Chimp platform was used for the direct circulation and information was also posted on the Website and Facebook. The information circulated (in full as a pdf version) for the formal consultation can be viewed [here](#).

## Topics

- **Minimum Conservation Reference Size (MCRS) for Scallop**
- **A Catch Limit of 2400 Scallops (per vessel, per calendar day in July, August & September)**
- **Introduction of Remotely Accessed Electronic Monitoring Device (IVMS/VMS)**
- **Access Areas – Removal of Scallop in July, August, and September**
- **Additional Spatial Restriction – Removal of Scallop**

Each topic was set out in turn with two questions for each.

- ***Are you supportive of this proposed Permit Condition?***
- ***Please explain you reason for your answer.***

A final question was included to enable the collection of any other comments.

. Options were provided for engagement as follows:

1. Contact us via email – [consultation@devonandsevernifca.gov.uk](mailto:consultation@devonandsevernifca.gov.uk)
2. Write to us

## 5. Topics and Responses

The Mailchimp circular reached 1545 stakeholders and was opened by 986 stakeholders. A total of 12 responses were received by the closing date of 18<sup>th</sup> April 2022. One stakeholder provided two responses, with greater detail in the second response used in the summary.

Response	Interest Group	Other information
01	Commercial Diver	Owner of vessel with a Permit
02	Commercial Diver	Owner of a vessel with a Permit
03	Commercial Diver	Owner of a vessel with a permit
04	Commercial Diver	Owner of a vessel with a permit
05	Commercial Diver	Joint response to include a named representative on a separate vessel
06	Ex Commercial Diver	Used to have a Permit
07	Fish/Shellfish Merchant	
08	Recreational Diver	Fisher has an interest in diving commercial in the future. Provided 2 responses with detail in second response used in the summary.
09	Devon Wildlife Trust (DWT)	
10	Wembury Advisory Group (WAG)	Response submitted by secretary
11	Blue Marine Foundation (Blue)	

## 5.1 Rationale for Changes

The B&PSC discussed the proposals for formal consultation in February 2022 and the rationale for the proposed changes. The formal consultation included information explaining that the Permit Conditions enable tailored management measures to balance the needs of different fishers. The proposed changes reflect a package of management measures that supports the further development of a low impact commercial dive fishery for scallops; whilst maintaining the conservation status of the Marine Protected Areas. The proposed amendments reflect different drivers for change including D&S IFCA's own vision:

*We believe in shared responsibility for the health and benefits of the marine environment and uphold our duties, now and in the future. We will be proactive in our management to restore and recover marine ecosystems, habitats and species. We envisage that the waters, under our authority, will support sustainable fishing practices serving local, national and international communities. We will innovate, and champion the use of technology, the delivery of low impact fisheries and the UK Government's 'Net Zero' by 2050 carbon target. We embrace co-management and will drive change in inshore recreational and commercial fisheries, recognising their social and economic benefits, and securing a future for sustainable fishing in the coastal belt.*

The formal consultation listed factors that have been considered in the development of the proposals which include:

1. The level of commercial scallop diving in D&S IFCA's District is low, as supported by the MMO landings data and D&S IFCA's Diving Permit list.
2. Diving is a low impact fishery with respect to its interaction with designated features of Marine Protected Areas, as supported by Natural England's formal advice on MPA assessments submitted by D&S IFCA.
3. Marine Protected Areas being proposed for access to commercial divers removing scallops in July, August, and September are not "No Take Zones".
4. The Marine Protected Areas being proposed for the removal of scallop by commercial divers in July, August, and September are areas that are prohibited to scallop dredging all year.
5. D&S IFCA can monitor the level and location of commercial diving activity through the uptake of Diving Permits, and through IVMS.
6. D&S IFCA can monitor the level of scallop catches through boarding of vessels and data from the recorded catches
7. D&S IFCA's permitting system allows for adaptive management should further evidence come to light, including research and the monitoring of fishing effort.
8. D&S IFCA believes that the use of an [adaptive precautionary approach](#) is appropriate when considering management measures for the commercial dive fishery.
9. D&S IFCA is working with the University of Plymouth to investigate the spawning season of scallops in its District to inform any future recommendations for further changes in management measures.

## 5.2 Responses to the Formal Consultation - Topic by Topic

Responses have been summarised topic by topic and include quotations transcribed from the responses as shown in purple font. "Officer Clarification" paragraphs have been included (in dark blue font) to provide information where required.

### 5.2.1 Topic A:

#### Minimum Conservation Reference Size (MCRS) for Scallop

The formal consultation set out the following information:

*The proposal is that the MCRS for scallop will increase to 110mm; however, this will only apply during July, August, and September when commercial divers will be given access to scallop in Marine Protected Areas within the District. At other times of the year the MCRS, (District wide) for scallops will remain at 100mm.*

*Previous engagement work highlighted support from commercial divers for an increase in the MCRS for scallops. Divers can be selective regarding the size of scallops that can be removed from a fishery and dive caught scallops (over 100mm) are a premium product. A change to Permit Conditions is a stronger form of management as compared to voluntary measures and is simple to enforce. This Permit Condition will help limit exploitation to only some of the breeding population.*

The formal consultation set out the anticipated permit condition wording (relevant section).

#### **The Response**

Both DWT and WAG were supportive of this proposal in principle, but do not support a change as it would result in scallops being removed during the summer months. The responses from both organisations were almost identical.

#### **Quote from WAG:**

*"We support, in principle, any increase in Minimum Conservation Reference Size but we note this only applies in the currently closed period of July, August and September, and we are opposed to the taking of scallops during that period".*

Concern was raised by the Blue Marine Foundation that this Permit Condition would only be applicable for commercial divers operating in July, August, and September. Blue commented that decisions should be evidence based and recommended the IFCA collect more data to add to D&S IFCA's evidence base.

#### **Quote from the response by the Blue Marine Foundation:**

*"Decisions should be evidence-based, and the consultation does not offer any evidence of the need for this rise in MLS. We understand that the new flexible permit conditions would allow the IFCA to raise the MLS for scallops if it felt the stock was at risk, if this happens, then it has powers to adjust MLS on all methods of capture, not just dived scallops. Our divers stand ready to help the IFCA with better data collection, to help add to your evidence base. Consideration should be given to commissioning divers to collect full samples (not just those over the MLS) from the areas they dive in to get a better understanding of year class recruitment and perhaps identify when there are weaker recruitment years and manage accordingly.*

The responses from commercial divers indicated strong support for an increase to 110mm as it will help to protect/improve stocks. Several responses suggested that the increased size should apply all year round, and although the consultation was focussed on commercial diving only, some suggested that the increased size should apply to all fishing methods and to recreational divers with a Category Two Permit.

## Selected Quotations from Divers

- 1) *"My self-imposed minimum landing size is already 110mm. It also makes sense for there to be some benefit to the fishery to compensate for the extension of the season".*
- 2) *"...we have found that the market wants scallops of considerable sizes larger than 110mm.*
- 3) *"I agree fully with the increase in minimum size, but also think this should be made permanent throughout the year".*

## Officer Clarification

The MCRS for scallop within the District is 100mm and this is relevant to fishers that target scallops – fishers that operate under a Category One Mobile Fishing Permit (scallop dredges) and fishers that operate under both categories of a Diving Permit. Scallops of any size cannot be taken from MPAs by fishers using scallop dredges at sea, as this fishing method is prohibited from taking place within MPAs. In addition, fishers using scallop dredges cannot remove scallops from anywhere within the District during July, August, and September. The proposed increase in the MCRS for scallop (to 110mm) within July, August, and September is seen as a precautionary measure relevant to the three months. Previous feedback from commercial divers that have suggested an increase in the MCRS.

This formal consultation and the decision making of the B&PSC is focussed only on Category One (commercial) Diving Permits; however, an amended MCRS could be applied in the future (if required) in other fishing permits (Mobile Fishing Permits and a Category Two (recreational) Diving Permit) via a review of those permit conditions.

### 5.2.2 Topic B:

#### **A Catch Limit of 2400 Scallops (per vessel, per calendar day in July, August & September)**

The formal consultation set out the following information:

*The B&PSC has considered the pre-consultation response and the landing data from 2018 and 2019. The B&PSC has agreed a proposed catch limit of **2400 scallops - per vessel - per calendar day – to apply in July, August, and September**. The catch limit is based on 20 bags each containing 10 dozen scallops.*

*The proposed permit condition recognises that a catch restriction per calendar per day is enforceable by D&S IFCA's Enforcement Officers; whereas catch restrictions over different time periods would be challenging or impossible to enforce.*

*A catch limit (removal from a fishery) per vessel, per calendar day to apply in the months of July, August, and September is not intended to and does not prevent commercial divers storing their catch in store pots/storage containers. A catch restriction in the months of July, August and September is not a "landing" restriction. Store pots that may contain more than 2400 scallops, can be emptied to supply markets whenever required.*

*It is envisaged that this proposed Permit Condition will balance the needs of the fishers to maximise landings through the summer months when there is highest demand, but also restrict fishing effort.*

The formal consultation set out the anticipated permit condition wording.

### **The Response**

Both DWT and WAG commented that the proposed catch limit appears to be very high and recognised the catch limit would only apply during the months of July, August, and September – the months where they are opposed to the removal of any scallop.

The Blue Marine Foundation (Blue) commented that catch limits do not currently exist and a limit should only be applied if there is evidence to support it and if so, a catch limit should apply to dredged scallops. If a catch limit is to be applied, Blue would prefer a limit to apply per diver, rather than per vessel as in their view an individual diver's take will vary greatly from 1000 - 1600 scallops per day, and many factors determine these numbers from weather conditions to dive experience and depth of the dive.

#### **Quote from the response by the Blue Marine Foundation:**

*“Again, it is difficult to understand the rationale for this temporary restriction that will only affect divers. The IFCA should be encouraging an active and lucrative dive scallop fishery and perhaps over time, this will erode the dredge fishery as the market turns to this more sustainable fishery and fishermen realise, they can hang up their dredges, retrain and make a good living from the more sustainable way of collection. We do not think a daily catch limit should be put on dived scallops, at this time, but if it is, it should be per diver and not per vessel, and it should be more than 1500 per day. If the IFCA has evidence the stock is at risk, all scalloping should be affected, not just divers”.*

#### **Other Views**

Although all other respondents were supportive of a catch limit, the views of the other stakeholders were mixed regarding the amounts that could be removed on a calendar day and if the catch restriction should apply per vessel or per person.

	Comments
01	20 bags (2400 scallops) per vessel is the minimum needed to make a trip commercially viable. Would prefer 25-30 bags per vessel ( <b>3000</b> to <b>3600</b> scallops per vessel)
02	A catch limit is good to avoid overfishing
03	It should not be more than 2400 scallops per day from these relatively small areas during the calm, easy to access summer months.
04	This is a fair amount
05	We are all for a scallop limit if necessary but believe that the numbers given are too low to function. (See further information below – suggestion of <b>3600</b> scallops per vessel)
06	A daily limit of 1200 would be more suitable
07	2400 is a very reasonable catch limit, but maybe it should be 8 bags per day and 2 divers per boat.
08	500 would be plenty and I would be happy with 250.

#### **Selected Quotations from Divers**

*“I understand the number stated is modelled on past landing records but given that these landings were when dives cost £17 in air now £26 per dive, inflation and diesel costs it's harder more (than) ever to stay competitive with dredged scallop and there is little to no room to increase prices, even though dived scallop is a better product we've found businesses prioritise lower cost goods (and) to keep afloat our markets (things) have gotten tighter so we are having (to) make sure what markets we have stay afloat.*

*2400 scallop is a good (amount) but is not enough to run a boat (as) our running costs were £50,000 for our vessel in 2021 and we expect it to be significantly more this year, the number needs to be 300 dozen per vessel (as) this number gives enough allowances to compensate for our current and future economic environment - this is not to say the number of scallop should change with economic strife (this is the model capacity a vessel could catch) it's just that the number will give us room catch enough to survive.*

*I have heard concerns that this may seem (too) much or (lead) to over fishing by varying parties but I have seen the amount of scallop inside the M.P.A and don't feel that we have the capacity to have any effect on the stocks, if there is concern of an influx of scallop divers/vessels maybe there should be a diving vessel limit put into action this would give leeway to give scallop diving vessels what they need to operate while preventing over fishing and abuse of the systems put in place".*

*"A daily limit of perhaps 1200 would be more suitable, allowing current divers to make a reasonable living, but not take so much as to damage the health of the beds. There is currently only one regular boat fishing in start bay. If the summer season is opened and 2-3 more boats appeared and got an average of 4 days fishing a week (very possible for that time of year), that could mean the removal of an extra 460,000 scallops during this time. The beds would be decimated in the first season and the fishery would become unviable for years".*

### **5.2.3 Topic C:**

#### **Introduction of Remotely Accessed Electronic Monitoring Device (IVMS/VMS)**

The formal consultation set out the following information:

*The expected introduction of a Statutory Instrument later in 2022 will require all registered fishing vessels operating in English waters to have fitted a fully operational IVMS device. The requirement for this technology to be fitted to vessels will therefore remain, even if it did not become a condition in a Category One Permit.*

*The proposal is that the Permit Conditions will require any vessel used to commercially dive for scallop to have a fully functioning IVMS device fitted to operate in the District. Furthermore, the Permit Conditions set out required actions if an IVMS device fails to function correctly. Annex (5) (that can be [viewed here](#) with other supporting information) will list co-ordinates of ports and harbour areas where the device is not required to transmit information and where a unit may be repaired if it fails to function. If this change to the Permit Conditions is agreed, vessels used in the commercial dive scallop fishery may be required to have IVMS devices fitted earlier in the national roll out timetable to comply with the Permit Conditions.*

The formal consultation set out the anticipated permit condition wording.

#### ***The Response***

The introduction of IVMS was supported in the responses and it was recognised that it will be a national requirement; however, the action that must be taken if a unit fails to operate (be fully functioning) raised some concern in four of the responses. Responses highlighted that (as proposed), if a unit fails, they will not be able to fish within the District which will negatively impact their income.

### **Selected Quotations:**

*".....to give no grace period for issues with unit outside of a fisherman's control feels a bit of an extreme approach to IVMS integration - We can't afford to miss 1-2 weeks of these crucial 3 months of work because the unit has had defects. We rely on a steady flow of scallop to our customers (and) if we can't continue that flow during their most important trading months because our unit has a software error, the service providers are down, the unit breaks because of an engineering error or there is a bottle necks on repairmen and we can't go out for one to two weeks in the M.P.A, the strain on the supply chain means significant loses in sales for our customers and ourselves - these loses are not something we can afford this year or the next given current circumstances".*

*"I do not agree with not being able to fish if the tracker malfunctions. This is because to lose a dive day due to an electronic malfunction that is out of our hands seems unfair and would be a great loss to our income".*

The Blue Marine Foundation raised similar concerns in their response and have an expectation that D&S IFCA's requirements regarding failure of devices should not exceed the national requirements.

*"We wait to see what the Government's SI will bring forward by way of regulation and expect to see some flexibility for vessels to go to sea when the kit is broken. At a national level, it is understood that keeping a small boat in the harbour for a broken kit, may make them lose the only opportunity to fish and earn in that week or month as it happens during good weather when the weather has or will be poor. Scallop divers are already very weather dependent and so if the IFCA is not prepared to wait and see the national outcome, we would suggest that a flexibility mechanism is found to allow divers to go to sea, and report via telephone or some other method rather than be tied up because a kit approved by someone else, has broken and there is not a rapid requirement in those contracts to offer quick repairs. Dive fishermen should not be penalised for this by being forced to stay in the harbour".*

Both DWT and WAG are supportive of the introduction of iVMS. In their responses, both organisations welcome the introduction of IVMS to enable effective monitoring and enforcement of nature conservation byelaws.

### **Officer Clarification**

The Permit Condition (as proposed) relating to action that must be taken if an IVMS device fails would not prevent a commercial diver fishing within the months of July, August, and September. Dive fishermen will not have to stay in port. Failure of the device (until repaired and fully functioning) would prevent the commercial diver fishing for scallops within the District (during July, August, and September within the potential new access areas), but not prevent the commercial diver continuing to fish for crab and lobster. The Permit Condition would also not prevent the commercial diver fishing outside of the District, as the Permit Conditions are only applicable to D&S IFCA's District.

The requirement to have a fully functioning unit to fish within the District for scallops in July, August, and September is not considered by Officers to be an economic impact on fishers. Regardless of having a unit fitted or if it is functioning correctly, currently no fishing for scallops can take place within the District during July, August, and September and therefore no income is currently generated from fishing for scallops within the District within those months.

## 5.2.4 Topic D:

### Access Areas – Removal of Scallop in July, August, and September

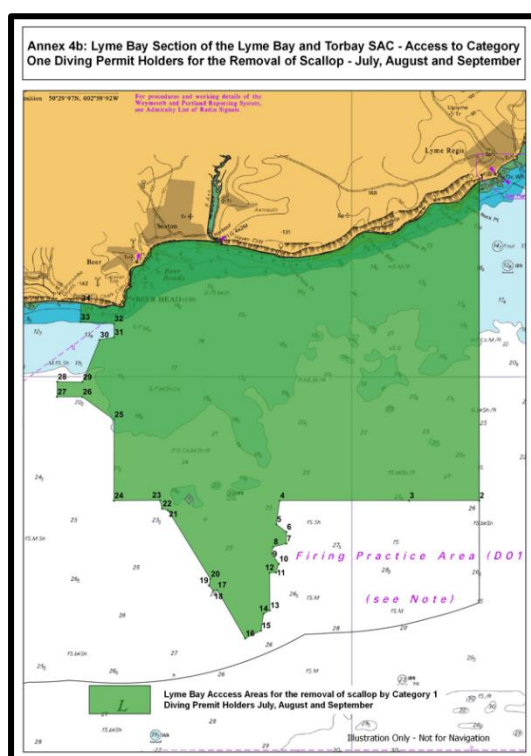
The formal consultation set out the following information:

*The scallop closed season that applies in July, August, and September will remain in place (in part); however, it will not apply District wide for commercial divers. The proposal is that commercial divers will have the opportunity to remove scallops during July, August and September, providing the removal of scallops is from Marine Protected Areas within the District that are closed to scallop dredging.*

*Increased access for commercial divers to remove scallops from defined areas within Marine Protected Areas during July, August and September recognises that diving is a low impact fishery with respect to its interaction with designated features of Marine Protected Areas, as supported by Natural England's formal advice on the MPA assessments submitted by D&S IFCA.*

*The proposed areas are never accessible to fishers operating scallop dredges. In July, August and September Commercial Divers will only be able to remove scallops from the proposed areas or fish outside D&S IFCA's District.*

*To accompany the Permit Conditions multiple Annexes will be issued that set out the access areas.*



*During July, August, and September, only the areas shaded green on the charts will be accessible for commercial divers to remove scallop. Commercial divers cannot remove scallop from other areas in the District during July, August and September.*

*The image shows the access area (Permit Annex) for Lyme Bay. Images of all proposed access areas can be requested from D&S IFCA or can be viewed [here](#).*

*The other proposed access areas are as follows:*

- parts of Lundy Island SAC & MCZ
- Torbay Section of the Lyme Bay & Torbay SAC
- parts of the Start Point to Plymouth Sound and Eddystone SAC
- parts of the Skerries Bank & Surrounds MCZ
- parts of Plymouth Sound & Estuaries EMS
- Severn Estuary SAC.

The formal consultation set out the anticipated permit condition wording.

### The Response

The proposal to provide commercial divers with greater access to remove scallops in July, August, and September (based on existing MPA areas) was not clearly understood by all stakeholders that responded. One stakeholder from North Devon commented that although parts of Lundy Island would potentially become accessible to commercial divers removing

scallops in the summer months, they were confused why no other areas of the North Devon Coast are included in the proposals. For other commercial divers, the opportunity to have access in the summer months to MPA areas to remove scallops was considered a positive change and would provide an opportunity that many have wanted for a long time. Several divers commented that they only work within MPA areas (October to June) as opposed to other areas of the District.

### **Selected Quotations from Divers**

*"I have dived all through Winter in one of these areas. Diving is the lowest impact most sustainable way of harvesting scallops. Being able to access the grounds through the more benign summer months just allows this non-destructive sector to have a fairer opportunity to gather scallops during a season where lost days through impossible weather conditions are reduced".*

*This proposal ... "will not interfere with scallop dredgers".*

*This proposal is... "what we've been asking for".*

DWT and WAG were completely opposed to this proposal and offered similar responses.

### **Quote from the response by DWT**

*"Devon Wildlife Trust is completely opposed to this proposed permit condition. Closed seasons for commercially targeted species are a cornerstone of their conservation and therefore their sustainability. We supported the establishment of a closed season for scallops in 2020 for this purpose. We also flagged our concerns around the impacts on the potentially sustainable scallop diving industry, making clear that any measures to support this fishery must not be additional to the impact of the wider fishery (our previous response is included below). This proposed permit condition is clearly additional, and beyond that, opens up the fishery in the very places that should be most protected – MPAs. This creates a perverse and counterproductive situation whereby our most valuable, protected sites are the only areas to be fished during an otherwise closed season – a situation that is clearly unacceptable".*

*Devon Wildlife Trust urges a change in approach, whereby areas currently available to dredgers (an unsustainable technique) is significantly reduced and replaced with diving (more sustainable but only if tightly controlled) – while retaining much-needed closed seasons, especially within MPAs".*

### **Quote from the response by WAG**

*"We are strongly opposed to relaxing any of the requirements for a closed period, especially in areas which should have a better level of protection – this would be an entirely counterproductive step. A closed season is a common-sense measure to protect breeding scallops and respite from fishing activity is always a good management action while coinciding this with the breeding season allows the larvae to be released and potentially settle without disturbance and so maintain stock numbers. Concentrating fishing activity in Marine Protected Areas (AND during a currently closed season) is perverse. Of course, we recognise that diving is a much lower impact fishing method than dredging and would urge the IFCA to consider ways of significantly shifting the overall scallop fishery away from destructive dredging towards diving, but without opening Marine Protected Areas in the closed period!"*

### **Quote from the Blue Marine Foundation**

*"It is difficult to understand the rationale to limit scallop diving to MPAs during the summer period and while these are not NTZ focussing the catch effort on them, seems odd. These areas will of course be*

*at their busiest with static gear during these times and this puts divers in conflict with areas of high activity and could increase risks to their operations. We would recommend that there is no limit to the areas scallop divers can work in the summer months, or ever unless there is evidence the stock health is at risk. The IFCA as discussed should be looking to demonstrate this dive fishery as an example of good practice for scallop catching and helping to provide the market with a consistent supply that can continue to grow and help consumers have sustainable choices in buying scallops”.*

### **Officer Clarification**

The closed season for scallops was not established in 2020 as stated in the response from DWT. The closed season for scallops was derived from a legacy Byelaw introduced by Devon Sea Fisheries Committee although its area of application was extended to the whole District when incorporated into the separate Permit Byelaws (permit conditions). Past pre-consultation in 2020 was undertaken to inform the development of the Permit Conditions for the Mobile Fishing Permit Byelaw and the Diving Permit Byelaw. Since early 2021, consultation with a view to potential changes to the closed season has been concentrated on commercial diving only.

DWT state that the proposals “open up” MPA’s and WAG commented that fishing activity will be concentrated in MPAs – the sites that should be the most protected. MPAs are already closed to mobile fishing vessels (scallop dredgers) via the permit conditions for that method.

MPAs are not No Take Zones and are not closed to diving for scallops because they are MPAs. Diving for scallops is already concentrated within MPAs, because of their number, size, locations, and the fact that they are free from Mobile Fishing Vessels (scallop dredgers) all year round. The only time that divers cannot operate in MPAs is within the months of July, August, and September when the whole district is closed to the removal of scallop by mobile fishing vessels (scallop dredgers) and commercial divers. MPAs are protected from potential damage resulting from fishing activity (gear type), and not because they contain stocks of scallops which are not a “feature” of the sites.

Access for commercial divers to MPA sites (in July, August, and September), rather than access to the whole District, will ensure that scallops accessible to scallop dredgers (October to June) will not be removed at a time when the mobile fleet cannot access those stocks – balancing the needs of fisher’s forms part of the rationale for this proposal.

### **5.2.5 Topic E:**

#### **Additional Spatial Restriction – Removal of Scallop**

*The formal consultation set out the following information:*

*Divers responding to the pre-consultation supported this proposal management measure which will assist enforcement – it supports the implementation of a catch limit per vessel, per calendar day.*

*Commercial divers will have a choice of where to remove scallops on any given day in July, August and September. If commercial divers choose to remove scallop from the access areas (a fishery) within the District, they must limit their fishing activity to the access areas within the District for the entire fishing trip.*

The formal consultation set out the anticipated permit condition wording.

#### ***The Response***

The proposal was not supported by DWT or WAG, as both organisations are opposed to the removal of scallop in July to September. Very little detail was provided in the other responses

regarding this proposal other than to say it seemed “ok” and may close potential loopholes associated with enforcing a catch limit.

### 5.2.6

#### Any Other Comments

Several stakeholders used the “any other comments” section of the questionnaire to support change to existing regulations, in particular from a marketing perspective.

#### Selected Quotations

*“For small operators in the D&S catchment these proposed changes would have a significant positive impact. As the South West fills with tourists through the Summer months, many are looking for the seasonal fresh seafood that makes this area so famous. Historically the only scallops that they have had access to during this period were either frozen, or, if fresh, were brought in from other regions, while we had to sit on our thumbs and grit our teeth, and wait to work around the October storm cycles”.*

*“Demand is very high in these 3 months and would take the pressure off us from having to shuck and freeze about 40/45000 scallops over a relatively short period before the fishery closes as well as still supplying our customers leading up to the end of June. The other issue is that the customers that will not take frozen then go elsewhere, i.e., Scotland, then when the fishery re-opens in October it is very hard to get them back”.*

*“I think it’s a good idea both for the divers and merchants as the fall of the year and winter months can be very difficult to earn a living diving and really only giving them May and June with the prospect of any settled weather”.*

*“I am very happy that this has finally been looked into. If we are able to continue making a living through the summer period where the weather is at its best and the market is busiest it will make a huge difference to myself and the crew/processors that my business employs. It will also give the public the opportunity to purchase ethically caught scallops year-round”.*

## 6. Background Information (Hyper- Links to Information)

Reports and Officers’ papers of most significance to this review of Category One Diving Permit Conditions (Scallop Closed Season) are as follows:

- [Report - A Summary of Responses from the Pre-Consultation \(10<sup>th</sup> September 2020 to 9<sup>th</sup> Oct 2020\) on the Scallop Closed Season and Additional Information - 10<sup>th</sup> February 2021](#)
- [Agenda Item 7 – Scallop Closed Season – Officers’ paper presented to the B&PSC in October 2021](#)
- [Agenda Item 6 – Scallop Closed Season – Category One Diving Permit Conditions – Officers’ paper presented to the B&PSC in February 2022](#)
- [Report - A Summary of Responses from the - Have Your Say \(A Review of the Diving Permit Conditions\) Pre-Consultation \(19<sup>th</sup> November 2021 to 17<sup>th</sup> December 2021\) - 28<sup>th</sup> January 2022.](#)
- [The Formal Consultation \(March 2022\)](#)

Further detail about the B&PSC, including principles for byelaw review work can be found in a [guide](#) that is posted on the D&S IFCA website or available upon request.

End.