



Byelaw & Permitting Sub- Committee Meeting

Final Minutes from 23rd
January 2020

Version Control and Drafting

Date	Comments
27 th January 2020	1 st Draft of minutes completed for circulation to officer's present at the meeting for potential internal amendment and or additions.
3 rd February 2020	Minor amendments identified by officers
17 th February 2020	Minor amendments to reflect comments of B&PSC members. Minutes finalised for publication.

Minutes of the Byelaw and Permitting Sub Committee Meeting
Held on 23rd January 2020 at Exeter Racecourse

Present:

Professor Mike Williams (Chair)		
James Marsden	Rachel Irish	David Morgan
Dave Saunders	Richard White	David Cuthbert
Sangeeta McNair	Stephen Gledhill	Cllr Hellyer
Jon Dornom		

Present (officers): ACO Mander, DCO Clark, PPO Townsend, Olga Pepper

Apologies: Cllr Hawkins, Jim Portus, Simon Toms

Introduction, announcements and apologies

The Chair welcomed members to the meeting and thanked them for their attendance. It was noted that Olga Pepper was attending her first Byelaw and Permitting Sub-Committee (B&PSC) meeting and was introduced to all the members.

Agenda Item 1 To consider and approve minutes of the Byelaw and Permitting Sub-Committee meeting held on 14th November 2019. (Circulated by email)

The Chair invited those who were present at the last meeting to raise any issues associated with the accuracy of the draft minutes. The minutes were examined page by page. Minor grammatical errors were noted on pages 9 and 10. The Chair also clarified that the timing of a presentation referred to in Any Other Business, had now changed. Members recognised that those not present at the last meeting would abstain from the vote that followed.

That the minutes (as amended) provide a true and accurate record.

Proposed: James Marsden **Seconded:** Cllr Hellyer

In favour: 9

Abstain: 2

Agenda Item 2 Business Arising

There was no business arising from the minutes; however, Stephen Gledhill and James Marsden praised PPO Townsend for the presentation and detail of the minutes. James Marsden commented that although the B&PSC minutes, and other Authority minutes differ regarding the level of detail within them, the publication of both on the D&S IFCA website are good for both transparency with information and accountability.

Agenda Item 3 To receive a verbal update on the officer actions resulting/continuing from the last meeting.

The Chair invited DCO Clark to provide an update on the single action item listed on the officers' paper.

1	DCO Clark	To continue correspondence with the Teignmouth Harbour Master to discuss the works within the Teign and the Marine Licences issued.
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DCO Clark explained that she had written to Commander David Vaughan, Teignmouth Harbour Master in November 2019 and the follow up email correspondence had clarified several points as listed in the officer report. DCO Clark expanded on the written information, clarified the exact legislation being referred to, and reported that no licence is required to conduct the levelling works on the areas which would support stocks of mussel if they did recover.

DCO Clark reminded members that D&S IFCA had applied a temporary closure to public mussel beds and although this legacy byelaw applies to any person, there is conflict with the authorisation granted via the Harbour Order. David Morgan asked for some additional clarity on the legal differences and the Chair informed members that the Harbour Order would take legal precedent over the Byelaw. The Chair also offered to send the legislation in question to DCO Clark.

Sangeeta McNair commented that the lack of a conservation designation on the Teign also had a bearing; however, regarding the disposal of sediment, there is still a requirement for notification that the sediment is not contaminated. Rachel Irish added to the discussions and explained that she had been in contact with the MMO Marine Licencing Department, and although it is not confirmed, there is the possibility that Harbour Orders will be reviewed in the future. James Marsden commented that although D&S IFCA has a duty to try and maintain the public beds, at this time and without more support from other organisations, options were limited. James Marsden suggested that D&S IFCA should continue to monitor events but must now rely on the Marine Management Organisation to make approaches at a higher level (DEFRA) with a view to seeking a consistent policy approach. Members welcomed Rachel Irish's suggestion that she would gain some clarification on the current national situation with regard to Harbour Orders and keep members informed of any developments.

Agenda Item 4 Development of a Hand Working Permit Byelaw

4.1 To consider the information set out in section 3 of the report – *The development of a Hand Working Permit Byelaw – Structure & Bag Limits (January 2020)* and consider the officers' advice on page 4 to determine the structure of the Hand Working Permit Byelaw.

ACO Mander introduced this agenda item and members referred to the relevant section of the officers' report. ACO Mander explained that officers had examined the mechanics of permitting all users (commercial & recreational) of crab tiles and had concluded that this would not be workable in an all-encompassing Hand Working Permit Byelaw. For the reasons set out in Section 3 of the report, ACO Mander explained that on balance it is the advice of officers to apply bag limits to all recreational fishers, but not to permit their particular hand working fishing method. The Chair invited questions and comments from members. Jon Dornom acknowledged that he had not been able to attend the previous meeting when options for management for managing hand working fishing activities were discussed, but now wanted to raise his concerns regarding D&S IFCA's resources to ensure enforceability of new restrictions if they are implemented. ACO Mander responded by stating that a decision had been taken by members to develop a Hand Working Permit Byelaw, based on many factors and highlighted that crab tiling is a large fishery within the District. ACO Mander also commented that officers were confident that a threshold (bag limit) approach would be an appropriate and simpler form of legislation to apply for the management of hand working fishing activities. Stephen Gledhill also raised some concern that without permits for recreational users of crab tiles, the ability to collect information such as number of tiles and landing data would be lost. PPO Townsend confirmed that this was a compromise but clarified that permits for commercial users of tiles would still be developed. ACO Mander reminded members that other options still exist to gather data on effort levels. James Marsden supported the officer advice and highlighted the other monitoring and data collection opportunities that exist including drone technology. DCO Clark reported that more survey work is being planned for 2020 that will add to the evidence base. Jon Dornom added that if a threshold (bag limit) approach is taken across the board to include crab tiles, it will be critical to establish the qualifying criteria to gain a commercial permit for all hand working activities (bait digging, the use of crab tiles and other defined hand gathering activity). ACO Mander

responded by citing Cornwall IFCA's Live Wrasse Fishing (Limited Permit) Byelaw 2018 as an example of setting qualifying criteria and added that as this was a relatively early stage of developing the D&S IFCA Hand Working Permit Byelaw it was only an opportunity at this stage to consider and establish the basic structure of the Byelaw that is yet to be drafted. Members were satisfied that there would be further discussions and decisions needed during 2020 to develop drafting. The Chair asked members to consider the officers' advice in the report which was set out as follows:

Officer advice:

- a) That only commercial fishers using crab tiles, conducting bait digging and conducting the other identified hand gathering fishing activities are regulated by the issuing of permits.
- b) All recreational fishers removing named sea fisheries resources will be limited to the agreed bag limits.
- c) All fishers would be bound by fixed provisions.

The Chair suggested that the officers' advice (a, b and c) be combined into a single recommendation. Members approved with this approach and Cllr Hellyer formed a proposal for a vote as follows:

That the advice of D&S IFCA officers (a, b and c) as set out in the report - The development of a Hand Working Permit Byelaw – Structure & Bag Limits (January 2020) is accepted to form the basis of the Hand Working Permit Byelaw.

Proposed: Cllr Hellyer
In favour: All

Seconded: James Marsden

4.2 To consider the information set out in section 4 of the report – The development of a Hand Working Permit Byelaw – Structure & Bag Limits (January 2020) and set a series of bag limits that will be used in a consultation.

ACO Mander introduced this discussion item. ACO Mander explained that the report included a series of proposed bag limits separated into groups. The proposed bag limits, as set out, had taken account of some feedback from members prior to the meeting and members were now encouraged to provide some additional feedback.

Officer derived bag limits for discussion – Group 1

The Chair asked members to firstly focus on the first group of species as set out within the report as follows:

Species/Resource	Level (per calendar day)
Brown & Spider Crab	1
Lobster & Spiny Lobster	1
Scallops	15

Richard White commented that the reduced level of scallops as proposed (15 per calendar day) was obviously a lower level than the amount permitted via a Category 2 Diving Permit and his view this may be difficult for stakeholders to understand. ACO Mander recognised these concerns but highlighted the attempt made by officers to qualify this level as set out in the rationale within the report. James Marsden explained that he generally supported the levels as set out, and whilst recognising why the different level had been proposed for scallops, also felt that it may be slightly low to meet the needs of recreational hand gatherers. David Morgan commented that the bag limits are per person, so in theory a group of hand collectors could remove a larger quantity of each species which could then be amalgamated for the purposes of creating a meal. The

Chair highlighted that the lower limits for the shellfish species as compared to those that could be taken by a recreational diver reflects that hand gathering is potentially less weather dependent and the frequency of removal may therefore be higher. Richard White acknowledged that the levels being proposed would be for consultation and on that basis would be supportive of the “group 1” bag limits for the shellfish species. Members acknowledged that the findings of the consultation may inform future discussions in due course. Richard White formulated a recommendation for a vote as follows:

To use the bag limits for brown crab, spider crab, lobster, spiny lobster and scallops as set out in the report for a consultation.

Proposed: **Richard White**

Seconded: Rachel Irish

In favour: **All**

Officer derived bag limits for discussion – Group 2

The Chair asked members to consider the proposed “Group 2” bag limits as set out on page 6 of the report and provide any comments and or suggestions.

Species/Resource	Level (per calendar day)	Initial Rationale
Cockles	1kg	Considered to be enough for personal consumption
Mussels	1kg	Considered to be enough for personal consumption
Winkles	1kg	Considered to be enough for personal consumption
Limpets	1kg	Considered to be enough for personal consumption
Oysters	1kg	Considered to be enough for personal consumption
Razor Clam	15	Considered to be enough for personal use
Other Clam Species	1kg	Combined amount suitable for personal consumption
Whelk	1kg	Considered to be enough for personal consumption and expected levels available from hand working activity

Sangeeta McNair commented that the levels for several species set out in the report would be consistent with those applied in the Sussex IFCA Beach Head West Byelaw which has introduced a series of bag limits, for specified species, including molluscs, within the Marine Conservation Zone. Jon Dornom and David Morgan were generally supportive of the recreational bag limits as set out, other than the 1kg restriction for whelk. In some questions and answers that followed, it was explained to members that the meat content of whelk, compared to weight including the shell, can be in the region of 20 to 25% and for this reason members could consider a larger bag limit for whelk. Members concluded that for the purposes of consultation a higher level of 5kg of whelk would be more suitable. Members then discussed the proposed bag limit for oysters. DCO Clark explained that there was different rationale for setting a level of 1kg, including trying to avoid excessive levels of oysters from un-classified waters potentially reaching the food chain illegally. David Morgan and James Marsden referred back to the meat content verses total weight observation and felt it would be more appropriate to set a number for the oyster bag limit rather than a weight. James Marsden suggested that six oysters per day would be an appropriate level for recreational hand gatherers to remove for the purposes of creating a meal. Members acknowledged that a revised table of bag limits could be used in a consultation, with the findings of potential value to further inform decision making. The revised table as follows was put to the vote:

Revised table for consultation

Species/Resource	Level (per calendar day)
Cockles	1kg
Mussels	1kg
Winkles	1kg
Limpets	1kg
Oysters	6
Razor Clam	15
Other Clam Species	1kg
Whelk	5kg

To use the revised table of bag limits for cockles, mussels, winkles, limpets, oysters, razor clams, other clam species and whelk for a consultation.

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

Officer derived bag limits for discussion – Group 3

The Chair asked members to consider the proposed bag limits for the next collection of species as set out on page 6 of the report and to reflect on the comments already received from members as set out on page 7. Members referred to the table set out as follows:

Species/Resource	Level (per calendar day)	Rationale
Prawn/Shrimp	1kg	Considered to be enough for personal consumption.
Shore Crab	40	A number rather than a weight for ease of compliance. Considered to be a suitable level for personal use.
Worms (any species)	100	Considered suitable by officers for personal use as bait. Amount questioned in feedback by one member
Seaweed	1kg (except for detached and found on the strandline.	The limit for detached seaweed was questioned in feedback from members. No limit on removal of detached seaweed from the strandline as many beaches are cleaned for tourism purposes.

Rachel Irish suggested that potentially a weight of worms rather than a number be used. Sangeeta McNair commented that the Sussex IFCA Beach Head West Byelaw specifies 1kg of marine worms rather than a number. David Saunders explained that because of the many varieties of worm that are taken and their differences in size, a number would be a better and more simplistic form of regulation for recreational bait diggers. ACO Mander explained that although Simon Toms could not be present at this meeting, he had previously suggested that in his view a level of 200 worms would be an appropriate level for a daily bag limit. The Chair suggested that in the consultation, the question could be asked if stakeholders would prefer a number or a weight used. David Saunders accepted that this question if asked in a consultation may provide some additional information; however, his preference would most likely remain the use of a number restriction for the reasons he had already explained. Members were satisfied that the amount 100 worms per calendar day be used for a consultation.

Members were satisfied with the levels suggested for prawns/shrimp and shore crab and then began discussions on seaweed. Sangeeta McNair explained that Natural England had seen an increase in

applications for seaweed harvesting and, in addition, highlighted a national code of conduct that had been developed. Stephen Gledhill commented that managing the harvesting of seaweed for both recreational and commercial fishers was new territory for D&S IFCA, but the byelaw approach would see the introduction of a mechanism to manage the activity in an appropriate way. Several members raised some concern regarding enforceability of the restrictions and potential misunderstanding regarding the wording “strandline”. ACO Mander highlighted that the setting of a 1kg limit, other than collection from the strandline, was in part to reflect beach clean exercises. Although it would be possible in theory (with a new exemptions byelaw in place) to provide exemptions if a strandline restriction was also added to the byelaw, this alternative type of relaxation incorporated within the byelaw framework was felt to be a simpler and proportionate approach. The Chair summarised the discussions that had produced no amendments to the officer derived bag limit levels that would be used for consultation and David Saunders put forward a proposal for a vote.

To use the table of bag limits for prawns/shrimp, shore crab, worms and seaweed for a consultation.

Proposed:	David Saunders	Seconded: Cllr Hellyer
In favour:	All	

4.3 To highlight any discussion points arising from parts 5 and 6 of the report that relate to additional drafting work and the estimated delivery timetable of some byelaw related working.

ACO Mander explained that sections 5 and 6 of the report were included more for information rather than discussion items. The Chair asked members if they had any questions or comments and, with none arising, moved on with the agenda.

Agenda Item 5 To receive a verbal update on the status of the Exemptions Byelaw 2019

ACO Mander explained that the Exemptions Byelaw 2019 had been submitted to MMO for final Quality Assurance assessment, in October 2019, the penultimate step before submission to Defra for consideration by the Secretary of State. In November 2019 MMO notified D&S IFCA that it could not support the submission of the Exemptions Byelaw in its current state. ACO Mander reported that the MMO had taken the view that D&S IFCA does not have the powers to implement the Exemptions Byelaw 2019 as it was written. The byelaw states that an exemption can be given for any activity relating to the discharge of the Authority’s duties under sections 153 and 154 of the Marine and Coastal Access Act 2009 (MaCAA). These two sections constitute the entire remit of an IFCA and as such the MMO believe that the scope of this byelaw is too wide to be enforceable or legally robust.

ACO Mander explained that D&S IFCA officers had reviewed the MMO’s comments and referred the matter back to D&S IFCA’s legal adviser. D&S IFCA’s legal position has not changed and it is the Officers’ opinion that the MaCAA was drafted intentionally to enable such a byelaw to be made.

It was then explained to members that on 19th December 2019, on request from D&S IFCA, the MMO submitted the byelaw to Defra. The MMO’s submission included a covering letter confirming its position that the byelaw was outside of the scope of the MaCAA.

D&S IFCA has requested that Defra set out a timeline for its consideration of the byelaw. The Emergency Application Byelaw ceased on 9th November 2019 and D&S IFCA can no longer consider exempting any activity from the requirements set out in any of its permit byelaws. This has resulted in seven scientific survey applications already being refused or withdrawn.

The Chair added to the verbal update by explaining that it was not uncommon for differences in legal opinion to exist but having personally contributed to the development of the Exemptions Byelaw 2019 was confused

by the position taken by the MMO. Several members raised concern regarding D&S IFCA's current inability to issue exemptions and the potential reputational damage this may cause the Authority.

David Morgan asked if other options were suggested by the MMO. ACO Mander explained that one suggested option from the MMO was to add an exemptions clause to every byelaw that the Authority develops. ACO Mander explained that the work involved to modify existing byelaws to include such a clause would be time consuming and in his view was not an approach he favoured.

In recognition of any potential reputation damage to the Authority, the Chair felt it was appropriate to be clear with those seeking exemptions why the present difficulties exist. Sangeeta McNair inquired if she could have a contact address for Defra that she could circulate to some interested parties trying to gain an exemption. ACO Mander confirmed that he had a contact address which he could provide to Sangeeta McNair after the meeting.

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Agenda Item 6 Any Other Business

The Chair asked all members and officers to come forward with any other business. ACO Mander took the opportunity to provide a quick update on the status of the sand eel trawling consultation that ended on 17th January 2020. PPO Townsend informed members that approximately 20 responses had been received and he was in the process of creating a consultation report that would be presented to members in February 2020. David Morgan raised some concern that some commercial operators may not have responded and if the opportunity exists for D&S IFCA to personally contact known fishers once again. PPO Townsend reassured David Morgan that having scan read the responses there were a mixture of interests represented. PPO Townsend advised members that all stakeholders (which includes commercial fishers) had been informed about the consultation by email or written notification and it was the view of PPO Townsend that to seek out individual fishers at this stage for additional comments would not be the best approach. PPO Townsend informed members that the outcome of the sand eel consultation would be discussed at length in February 2020 and drafting (of permit conditions) work that will follow this year will also be scrutinised by B&PSC members and eventually be subjected to formal public consultation. Members thanked officers for the update and advice. There were no other any other business.

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Agenda Item 7 Date of next meeting

It was explained that the next Byelaw and Permitting Sub-Committee meeting was scheduled for Tuesday 11th February 2020 at Larkbeare House Exeter. Some members commented that they would not be able to attend on that date and asked if there was the possibility of an alternative date. PPO Townsend informed members that he would seek an alternative date and circulate it via email to members.

Subsequent to the meeting it was confirmed that the date of the next B&PSC meeting would remain as Tuesday 11th February 2020.

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End.