



Mobile Fishing Permit Byelaw

Development report for additional changes to
permit conditions



1st edition

26th July 2017

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Introduction and overview

1. Aim of the development report & timetable of events

The aim of this report is to fully document the process and progress of Devon and Severn Inshore Fisheries and Conservation Authority's (D&S IFCA) further development of permit conditions for the Mobile Fishing Permit Byelaw.

This report will inform all members of D&S IFCA along with all stakeholders. With the approval of members of the Byelaw and Permitting Sub-Committee, the report will be displayed on the D&S IFCA website throughout the process with different editions created and published in due course.

This report will be developed at key stages and document all relevant evidence and information that will be used for deliberations by the D&S IFCA Byelaw & Permitting Sub-Committee and where appropriate the Full Authority. This report will document all actions, deliberations and decisions taken during the process.

In the event that permit conditions are amended as a result of this process, this report will act as the overarching reference document and be used in conjunction with other stand-alone documents.

An initial time table of events has been established (as a guide) which will be amended with more detail during the process:

Table 1 – Initial timetable of events

Date	Action/event	Comments
<i>July 2017</i>	<i>Creation of draft Development Report (1st edition)</i>	
<i>Aug 2017</i>	<i>Meeting of B&P Sub-Committee</i>	<i>Discussions of foundation report & decisions taken how to proceed. Officers to seek approval to publish the 1st edition on the D&S IFCA website</i>
<i>Aug/Sept/Oct 2017 (Possible future action)</i>	<i>Officers conduct work actioned by B&P Sub-Committee</i>	<i>Development report updated (2nd edition) if required ready for discussion at meetings and publication</i>
<i>Sept 2017</i>	<i>Meeting of Full Authority</i>	<i>Update provided to members</i>
<i>Nov 2017</i>	<i>Meeting of B&P Sub-Committee</i>	

Due to the potential large volumes of other documentation that may be used throughout the process, annexes (some with hyperlinks) will be used to link all editions of this report to any relevant additional material.

2. Why change the Mobile Fishing Permits again?

The management of Mobile Fishing within the D&S IFCA District is achieved via the Mobile Fishing Permit Byelaw. The permitting model was introduced in 2014 to provide a more

flexible mechanism to manage the fishing activity with a robust review process created to allow for changes when required.

In an ever changing situation, the flexible permit mechanism provides D&S IFCA with the ability to adapt management of the fishing activity when required. Without this mechanism, revocation of newly made traditional style byelaws, the implementation of emergency byelaws would have been a reality as timely changes would have been required. Alteration of permit conditions when required represents a far more structured and organised management system whilst also providing a more cost effective option as opposed to the revocation and re-making of newly made (within five years) byelaws.

Since the implementation of the Mobile Fishing Permit Byelaw the value of a flexible mechanism (with a clear and robust review process) has been demonstrated, in particular with the mandatory three year review of permit conditions. The three year review of permit conditions, which included mandatory consultation with permit holders, produced required changes to the permits in order to improve management of the activity. The three year permit condition review demonstrated the value of permit holders (in this case commercial fishermen) engaging in the process with access in the Torbay Marine Conservation Zone (MCZ) areas for demersal towed gear becoming the dominant theme in the consultation responses received. Consultation findings can influence decision making and in this case the Mobile fishing permits have now been amended to provide seasonal access for trawling for cuttlefish in the Torbay MCZ areas.

Why consider more changes at this time and not in the recent three year review?

To make permit changes, D&S IFCA must follow the process outlined in the Mobile Fishing Permit Byelaw. To make changes D&S IFCA firstly outlines elements of management that is potentially appropriate to amend. The rationale for change needs to be identified. Situations change, legal advice changes, technology improves, environmental concerns and other factors present themselves at different times. Well managed and focussed consultations allow suitable time for each issue to be addressed in detail. D&S IFCA uses the best available evidence and must be prepared to take a precautionary approach when evidence is lacking. A formal definition of a pre-cautionary approach has been added as an annex in this report.

3. The introduction of Inshore Vessel Monitoring Systems (I-VMS)

With all vessels, issued with a mobile fishing permit, required to have an operational I-VMS unit fitted, it will mean that all vessels operating within the district will be monitored remotely for the first time. Currently all fishing vessels with an overall length of 12 metres or more and less than 15 metres are required to have a functioning VMS+ unit fitted on board. Fishing vessels with an overall length of 15 metres or more are required to operate with a functioning VMS unit and Automatic Identification System (AIS) unit on board.

Development of IVMS – Brief History

D&S IFCA has been supporting the development of the Inshore Vessel Monitoring System (I-VMS) since 2011. Although significantly delayed, the introduction of an I-VMS has always been seen by D&S IFCA as an important development in the management of the mobile fishing sector. During the winter of 2015, D&S IFCA and Common Seas worked together with 30 vessel owners to implement I-VMS in the District. The project in 2015 was initially designed to include all vessels permitted to use mobile fishing gear. The project was

stopped to enable the Marine Management Organisation (MMO) time to complete a Type Approval process. The Type Approval process created industry standards to ensure the hardware and software being fitted on vessels is fit for purpose. The development of standards enables new suppliers to enter the market with a product that works effectively alongside existing equipment.

How can D&S IFCA introduce a new restriction for IVMS?

The Mobile Fishing Permit Byelaw provides D&S IFCA with the legislative means to introduce the requirement to have a functioning I-VMS unit on board all mobile gear vessels operating in the District. The implementation of I-VMS should not present a surprise to any permit holder with the potential requirement clearly specified in section 17 and 18 of the Mobile Fishing Permit Byelaw. In addition, as part of the development of this byelaw an impact assessment was developed and publicised in preparation for the formal objection phase. The rationale and policy objectives of introducing the byelaw and elements of it including the use of I-VMS was clearly set out in the impact assessment and key monetised costs were recognised.

What are the positives of having IVMS fitted?

There are significant benefits with the introduction of a reliable I-VMS system. There are large areas of the district that are closed to all types of demersal mobile fishing. The effective monitoring of all mobile fishing vessels will add protection to Marine Protection Zones (MPA) sites that are closed to protect habitat and features. Conversely, I-VMS provides greater potential for mobile fishing vessels to gain greater access to less sensitive areas that are closer to prohibited areas.

What is the current situation?

- Three suppliers of I-VMS have now been approved – Succorfish, Eco Marine and AST.

Common Seas will continue to act as the project manager and administrator. The project (if agreed) will offer vessel owners the opportunity to select their preferred supplier. The choice of units (comparison chart) will be publicised and contact numbers of Common Seas made available. There will be a qualifying period for units to be installed and activated at no cost to the vessel owner.

What is the next step?

The Byelaw and Permitting Sub-Committee will discuss resuming the introduction of I-VMS units for vessels between 7 metres and 12 metres in length, which are permitted to use mobile fishing gear in the District. Permit conditions would need to be amended and compliance criteria established including action required if units fail to operate. D&S IFCA are leading the development of national policy around the use of I-VMS.

D&S IFCA needs to commence the formal consultation on the introduction of I-VMS at this time as officers are confident that the submitted bid to the European Fisheries Fund to purchase and install up to 89 I-VMS units will be successful in the near future.

The Byelaw and Permitting Sub-Committee will need to action a consultation period on the required permit conditions that are needed to successfully implement I-VMS via the Mobile Fishing Permits.

4. To use permit conditions to replace a reliance on the deeming clause

The Mobile Fishing Permit Byelaw was the first “activity” based permit byelaw to be introduced by D&S IFCA. The implementation of this permit byelaw was a significant change from the more traditional byelaw model. As with many new initiatives, development was challenging and produced mixed legal opinion with elements of the framework, content and review of conditions process.

Why was a deeming clause introduced?

A deeming clause was introduced to support the effective enforcement of some of the management measures that were introduced in the Byelaw and permit conditions. Byelaws only apply within the district, normally six nautical miles from the coast or in places on the north coast of the D&S IFCA district, the median line with Wales. Proving where vessels have been fishing and what was caught where is an inherent and significant weakness of byelaws, especially without the implementation of I-VMS. Measures that apply within the byelaws such as minimum conservation reference sizes can be different (more restrictive) than domestic or EU legislation. The absence of a deeming clause can reduce the ability to enforce the legislation and consequently the effectiveness of the management measures.

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

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

The Mobile Fishing Permit Byelaw is due for a complete review in 2019. However, in the shorter term, the permit conditions can be amended to produce a similar effect as a deeming clause which is legally acceptable. This has already been demonstrated in the development of the Netting Permit Byelaw¹ where permit conditions (catch restrictions) have been created as follows:

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

The fisher has the option to apply for a permit and be bound by the restrictions or not apply for a permit and not fish within the district. Although a similar result is achieved, this presents a different legal situation that is more acceptable.

The Byelaw and Permitting Sub-Committee would need to action consultation to amend the existing Mobile Fishing Permits.

¹ In its confirmation stage but not confirmed at time of writing

Although the Mobile Fishing Permit Byelaw was introduced in 2014 and removed reliance on several legacy measures, others were not revoked at this time. The reason is that the legacy measures apply to any person due to the wording used “No person shall”. The measures contained in several legacy byelaws are relevant for multiple fishing methods and until a complete suite of activity based permitting byelaws are in place, revocation will be delayed.

The specified size is also a duplication of domestic legislation. The advantage of maintaining a local restriction is that the measure is directly enforceable by D&S IFCA officers and establishes the principle that the Authority may increase the size if necessary.

The Byelaw and Permitting Sub-Committee would need to action consultation to amend the existing Mobile Fishing Permits.

What is the IPA?

**SOUTH DEVON
INSHORE POTTING AGREEMENT
TRAWLING AND CRABGING CHART
2017**

DASIFCA Byelaw
No trawling Area
(not part of IFA)

AREA 1
AREA 2
AREA 3
ZONE 1
ZONE 2
CORRIDOR
ZONE 3

6 MILE LIMIT

NOT TO BE USED FOR NAVIGATION

Zones 1 and 3 - Demersal towed gear- 1st Jan to 31st March inclusive
Zone 2 - Demersal towed gear - 1st Jan to 31st May inclusive
Zone 3 - Demersal towed gear - 1st Jan to 31st March inclusive
Zone 4 - Demersal towed gear - 1st Feb to 31st August inclusive
Zone 5 - Demersal towed gear all year
Corridor - Demersal towed gear - 1st March to 31st March inclusive
Areas 1, 2 and 3 - POTS ALL YEAR

Demersal trawls are permitted in Area 3 provided such vessels have no more than 100 KW and vessels using scallop dredges are permitted provided such vessels have no more than 100 KW, use no more than two tow bars, that any tow bar does not exceed 2.6 metres in total length and there are no more than 3 dredges attached to each tow bar

FURTHER ACCESS RESTRICTIONS IN ZONE 1, ZONE 2 AND AREA 3 (-----LINES ON CHART) FOR DEMERSAL TOWED GEAR.

PLEASE REFER TO DEVON AND SEVERN IFCA MOBILE GEAR PERMIT BYELAW ANNEXES 3 AND 5

This area is divided into zones which reduce gear conflict between vessels conducting static gear operations and those using mobile fishing methods. Commercial fishers from both categories are very aware of the areas and time restrictions that apply to shared areas of fishing grounds. The charts of these areas are very familiar to commercial fishers and possibly far more so than D&S IFCA charts that are issued such as the Start Point to Plymouth Sound and Eddystone Site of Community Importance (SCI) Annex 5² chart that sits beneath the IPA chart. The IPA began in the 1980's as a voluntary agreement; however over time breaches of the agreement produced recorded cases of significant damage to static fishing gear. Devon Sea Fisheries (predecessor to D&S IFCA) did consider the implementation of a byelaw; however the IPA areas are now regulated via a licence condition issued by the Marine Management Organisation (MMO). The licence conditions can and sometimes do change. Currently D&S IFCA and the MMO jointly host an annual meeting with representatives from both the potting and mobile gear commercial sectors.

The management is completely industry led and only where the two sectors can agree on changes to the management is this then reflected in the next year's licence condition. It is recognised that both commercial sectors would be strongly in support of maintaining the identity of the management as the IPA, the composition of the charts used and the decision making process.

Who has enforced the legislation and who is now?

This large area has often demanded the use of floating assets to monitor and police the complicated restrictions and numerous divisions of fishing grounds that exist. Due to the assets operated by D&S IFCA (and formally Devon Sea Fisheries Committee) the majority of the enforcement work has been conducted by these organisations on behalf or in conjunction with the MMO. It is often a perception by many commercial fishermen that the enforcement of this legislation is the priority of D&S IFCA, even though it is not managed via a byelaw. Failure to direct significant effort into investigating reported non-compliance in these areas has potential to cause reputational damage.

With the likely introduction of I-VMS on all mobile fishing vessels in the district, the D&S IFCA remains the lead enforcement body for this important management system.

Can it be managed differently?

The area can generally be managed via the permit conditions issued under the Mobile Fishing Permit Byelaw; however a small section of the existing IPA chart does fall outside of the Authority's district and therefore can't be managed by D&S IFCA. An additional permit annex can be produced for fishers and issued to permit holders. D&S IFCA have discussed a change in management with the MMO and are awaiting a formal response.

The Byelaw and Permitting Sub-Committee would need to action consultation to amend the existing Mobile Fishing Permits to introduce the IPA management system.

7. Managing access for ring netting activity within estuaries

Ring netting is a fishing activity that falls under the definition of mobile fishing. This activity can therefore be fully managed via the Mobile Fishing Permit Byelaw and the permits that

² Start Point to Plymouth Sound and Eddystone cSAC chart

are issued. The Mobile Fishing Byelaw includes the provision for permits to be issued for mobile fishing both “at sea” and within certain estuaries. Mobile fishing “estuary permits” are very restrictive, limited to certain forms of mobile fishing and are not issued for use in the Plymouth estuaries. Permits are not issued at all for vessels wishing to use ring nets within any of the estuaries.

Currently, legacy byelaw 19 prohibits any netting activity within the river Tamar (and its subsidiary estuaries), the river Plym and the river Yealm. This prohibition includes “any net” with a few exceptions. In order to prepare for future revocation of this byelaw, the restrictions imposed need to be incorporated into the permit conditions in other permit byelaws. The proposed Netting Permit Byelaw (when implemented) will prohibit all fixed and drift netting³ in all the estuaries within the district. The Mobile Fishing Permit Byelaw (permits) include a spatial element that restricts where mobile fishing activities can take place. Annexes (charts) are currently issued to clearly depict areas that are prohibited. Additional permit annexes can be created to provide clarity to fishers operating ring nets and continue the prohibition of ring netting within the estuaries.

The Byelaw and Permitting Sub-Committee would need to action consultation to amend the existing Mobile Fishing Permits.

8. Consultation considerations and communication

To date multiple communication initiatives have been utilized by D&S IFCA. The website remains the primary platform to inform all stakeholders of developing work; however other initiatives have been discussed with a public relations and communications consultancy - Grassroots Communications. Not only is the D&S IFCA website due for an overhaul, but also other social media communications outlets such as Facebook and Twitter will feature more in future communications planning. A communications plan will be developed shortly.

A brief summary of some communication used to date and other initiatives that can be considered and endorsed are as follows:

- To create, process and progress reports acting as source documents
- To maintain a more visually appealing website with increased visual imagery
- To issue press release statements
- To link press release statements to more detailed reports and information
- To produce flyers of relevant material
- To trial text alerting as an additional form of communication
- To encourage the use of e mail, rather than traditional hard copy communication
- To consider the use of telephone workshops relating to specific topics
- To consider the use of presentation events or mobile presentation events during any required pre-consultation or formal consultation periods
- To reduce risks associated with Freedom of Information Requests by providing easy access to information highlighted in the D&S IFCA Publications Policy
- To publicise an organisation communication list and encourage individuals to sign up to receive consultation material where not a relevant permit holder

³ Except for a 20 metre seine net used for the capture of sand eels

Annexes

- A list of consultees

Consultee Type	Examples
EA	
MMO	
Defra	
Cefas	
Natural England	
SW Wildlife Trusts/ The Wildlife Trust	
Welsh Government	
IFCAs	
Marine Conservation Society	
Estuary Fora / Associations	ASERA; TECF; AONB; Exe Estuary; Salcombe; Yealm; Avon; Teign
Coastal Fora	North Devon Biosphere; Dorset; Devon Maritime; Wembury
Harbour Masters	
MOD	
SAGB	
Angling Trust	
British Federation of Sea Anglers	
Wyvern Group/ local groups	
BSAC	
PADI	
Local Diving Groups	
Fishermen' associations	NDFA; SDCSA; East Devon; Plymouth
NFFO	
NUTFA	
SWPO	
Plymouth Trawler Agents	
Brixham Trawler Agents	
Coombe Fisheries	
Fal Fish	
Camel Fish	
Waterdance	
Blue Sea	
Dartmouth Crab Company	
Plymouth University	
Exeter University	
UWE	
Land owners	
RYA	
Bait Shops	
Stakeholders having registered an interest on line.	
Permit Holders	
Specific associated industries	e.g. Salmon Farms; Native Marine Centre

- Formal definition of a pre-cautionary approach

Other relevant reports will be inserted into this section in due course and will be accessible via [hyperlinks](#).