

Potting Permit Byelaw

A three year review of the permit conditions



Supplementary report – A summary of response from the phase 1 consultation

(11th September 2017 to October 23rd 2017)

October 24th 2017

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1. Aim of this supplementary report

This supplementary report has been prepared for members of the Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) Byelaw and Permitting Sub-Committee. This supplementary report details the findings from the phase one consultation on the permit conditions for the D&S IFCA Potting Permit Byelaw which was conducted between 11th September and 23rd October 2017. Following the meeting of the Byelaw and Permitting Sub Committee (13th November 2017), the detail documented in this supplementary report and the outcome of the meeting will be used to develop a progress and process report suitable for wider circulation and use in any focussed 2nd phase consultation. A new progress and process report will replace the existing Potting Permit Byelaw – A basic guide to explain the three year review of the potting conditions (August 2017).

In addition to summarising the responses from the phase one consultation, this supplementary report identifies several aspects of potting activity that can be considered and discussed by members of the Byelaw and Permitting Sub-Committee for further consultation prior to any potential alterations to permit conditions. This supplementary report details the evidence base for all items that can be considered for further consultation at this time.

At this time, it is recommended that this supplementary report should be read in conjunction with “Potting Permit Byelaw - A basic guide to explain the three year review of the permit conditions”.

2. Communication – How the consultation was conducted?

D&S IFCA is developed/developing a new communication strategy¹. A wide-ranging consultation was conducted and the newly developed consultee list utilized. Different communication methods were used including face book and twitter with the D&S IFCA website providing the main platform for the consultation presentation. All permit holders² (who had a permit on 11th September 2017) were directly notified by email or letter that two consultations were about to begin, but not the exact detail of their content. It was assumed that stakeholders would contact D&S IFCA or visit the website (as instructed) to engage in the process. The email contact addresses provided by permit holders were of significant benefit for consultation work; however 88 postal notification letters were required at a cost or around £50. During the consultation period text alerting was initiated to further notify D&S IFCA permit holders.

Permit holders directly notified:

- | | |
|--------------------------|-----|
| • Potting commercial | 192 |
| • Potting recreational | 313 |
| • Diving commercial | 18 |
| • Diving recreational | 189 |
| • Mobile Fishing Sea | 151 |
| • Mobile Fishing Estuary | 5 |

¹ Available upon request from D&S IFCA

² 868 permit holders were directly notified by email or letter.

Two separate consultations were conducted simultaneously, with the other being a six week focused consultation in regard to mobile fishing. A designated email (consultation@devonandsevernifca.gov.uk) was created to help collate all the responses, the volume of which was unpredictable. Both consultations were open for all stakeholders to submit a response, regardless of their own personal interest or sector

3. The consultation response

Although both of the recent D&S IFCA consultations were open to all stakeholders, very few responses were received for either. It is possible that officers will have to review how consultations are conducted to better explain who can respond and to what? Some feedback has been received which has suggested that better explanation is needed on the initial notification letter/email in relation to specific and non-specific consultation items. A total of nine responses were received that relate to the potting consultation. Three of these responses were submitted by Organisations which were the Environment Agency, the Royal Yachting Association and South Devon and Channel Shellfishermen Ltd.

Members may draw the conclusion that the limited response indicates that stakeholders have no strong views at this time on many of the current permit conditions. Only one response was received from a Category Two potting permit holder.

The detail and content of the responses was varied but key themes were identified as follows:

- Inshore Potting Agreement Area (IPA)
- Other gear conflict management
- Gear marking
- Issues associated with Category Two permit holders
- Otter mortalities within fixed traps in Devon

Members may conclude that some or all of the above themes, drawn from the limited response, can potentially be subjected to “focussed” consultation as the three year review of potting permit conditions enters its second phase.

The Inshore Potting Agreement Areas (IPA)

The potential for D&S IFCA to manage the IPA has been subjected to recent consultation and was one of five focussed items within the Mobile Fishing Permit Byelaw – Development report for additional changes to permit conditions. These areas and the management of them are of relevance to both the potting and mobile fishing sectors. IPA responses submitted in regard to the “focussed” mobile fishing consultation have been duplicated in this supplement, as there has not yet been any direct consultation with the Potting Permit holders on the potential for D&S IFCA to manage the IPA.

Three responses were received in regard to the IPA. Two responses were from individual stakeholders and one from South Devon and Channel Shellfishermen Ltd. The individual responses were from fishermen in the commercial potting sector.

The responses from the individual stakeholders do not objection in principle to D&S IFCA managing the IPA; however the importance of retaining protection for the area of the IPA

that is beyond the six mile limit was clearly stressed. These two stakeholders explained how this small area is populated with their pots, with one stakeholder reporting that he works 150 pots in this location. The failure of voluntary measures prior to the implementation of a licence condition in 2008 was also highlighted. The benefits that the IPA provides for conservation was highlighted with particular reference made to Marine Conservation Zones. The responses indicate that any loss of regulatory control (licence condition) for areas beyond six miles would be unacceptable to these stakeholders, significant numbers of other commercial potters and also their associations. Failure to maintain full regulatory controls would most likely raise objection to a change in this management.

Response from South Devon and Channel Shellfishermen Ltd

A response was submitted from this organisation to the mobile fishing consultation. The content of the submission also relates to potting activity and therefore the response is relevant for summary within this supplement.

The response was critical of the consultations as this particular item has only been a focussed item documented (at the time) within the Mobile Fishing consultation. In addition, it has been suggested that any potential changes to the IPA should firstly be discussed at the annual IPA Management Committee meeting on 23rd October 2017.

In regard to the response content, South Devon Shellfishermen Ltd provided background information on how the IPA was developed and how the annual discussions between different industry sectors are used to refine the IPA chart which is used as a fishing vessel licence schedule. The response also highlighted the importance of this management structure in regard to the Marine Protected Area (MPA) network³ which extends beyond the six mile limit.

South Devon and Channel Shellfishermen Ltd have stated that a response from the Marine Management Organisation is a vital addition to provide clarity for discussions on this issue. Objection would be raised at this time if any changes are considered that compromise the geography and risks associated with protection via different regulation of the IPA. Other key points from this response have been summarised as follows:

- The Management of the IPA is suggested to be outside the scope of the IFCA mobile fishing consultation
- Local management may not be as well known to visiting vessels and risks of non-compliance may increase as a result of any potential change
- The MMO should remain involved in future management of the IPA
- Cross warranting, asset sharing can be further explored so the IPA can continue to be managed in its entirety
- Further advice would be welcomed on how the management of the IPA and MCZ⁴ areas would interact
- The response (at this time) is compromised due to uncertainty in regard to the lack of a documented response by the MMO.

³ Skerries Bank and Surrounds Marine Conservation Zone

⁴ Skerries Bank and Surrounds Marine Conservation Zone

Officer comments

The consultation process has possibly not been fully understood. The mobile fishing response is in its second phase and has “focused” items; however the potting consultation is at an earlier “open” stage. Attempts have been made to explain process and provide an estimated time table for the process in both the mobile fishing and potting consultation presentations. Another focussed period of consultation will follow for potting. It is possible that officers may have to review how consultations are conducted to try and better explain who can respond and to what? All stakeholders and organisations are welcome to respond to any D&S IFCA consultation regardless of its content; however highlighting measures to be consulted on more broadly would be beneficial, making all sectors aware of potential changes in management. Any change in the IPA management would most certainly require input from the static gear sector and direct consultation with the IPA Committee.

The IPA evolved for gear conflict resolution rather than conservation initiatives; however as highlighted in the responses, the closure of spatial areas to mobile fishing has obviously provide conservation benefits. The existence of the IPA (both regulatory and voluntary) over many decades has meant that the rock and reef habitats have been protected from the impact of bottom towed gear in a majority of the area. This has led to most of the IPA being designed as Marine Protected Areas. The Skerries Bank and Surrounds MCZ co-locates with the eastern part from Salcombe to Start Bay and circalittoral rock is one of the main features of the site. The Start Point to Plymouth Sound and Eddystone SCI co-locates with western part of the IPA from Start Point to Plymouth Sound and the northern part of the IPA lies within the Torbay part of the Lyme Bay to Torbay SCI. Both these European Marine Sites are designated for reef habitats. The current management of the IPA (both inside the 6nm and outside) helps allow the conservation objectives of the Marine Protected Areas that co-locate with the IPA to be met or furthered. The IPA chart forms a regulatory layer above D&S IFCA Mobile Fishing Byelaw permit (annexes) which were introduced to support conservation and protect habitat and features. The complex IPA management arrangement does close areas of ground to Mobile fishing methods either all year or part of the year. Conversely, the IPA also provides access to Mobile fishing vessels for part of the year or in regard to Zone 5 (Start Bay area) – all year.

With regard to the IPA, D&S IFCA currently co-chairs the IPA committee. The committee, which is made up of mobile gear and potting sector representatives, meets annually to discuss any potential changes in management. A potential change in the management (via the introduction of permit conditions) of the IPA would retain industry participation.

Response from the Marine Management Organisation

Basic written clarity relating to the management of the IPA was received on 3rd November 2017. This response indicates that further consultation would not be to focus on “replacing the IPA with permit conditions”, rather using both a licence condition and permit conditions in tandem. D&S IFCA are able to utilize the catch, gear, spatial and time categories within each permitting byelaw to manage the IPA. Legal Counsel (to the MMO) have suggested that providing there is a clear differential between the two regulatory approaches then the risks of duplication are lowered; however they have suggested that it may be prudent to seek further legal Counsel if and when amended permit conditions are drafted.

Permit conditions for different sectors?

The flexibility needed to manage the IPA is not confined to the Mobile Fishing Permit Byelaw. The same scope in regard to gear, catch, spatial and time restrictions forms the basis of all D&S IFCA permit based Byelaws. If the Mobile Fishing Permit Byelaw was potentially used to manage the IPA, an additional permit annex would be produced for fishers and issued to permit holders. The wording on the current permits would be amended and these alterations would be subject to additional consultation. A similar approach could be taken in regard to the potting permits, with the placement of pots prohibited within areas open to mobile fishing methods. As the IPA also manages other static gear (nets) the same approach can be taken with the permits for the Netting Permit Byelaw⁵ in the future.

In due course, members may take the view that greater use of permit conditions for different sectors would demonstrate appropriate management of inshore fisheries in line with the main duties specified in section 153 of MaCAA; in particular seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

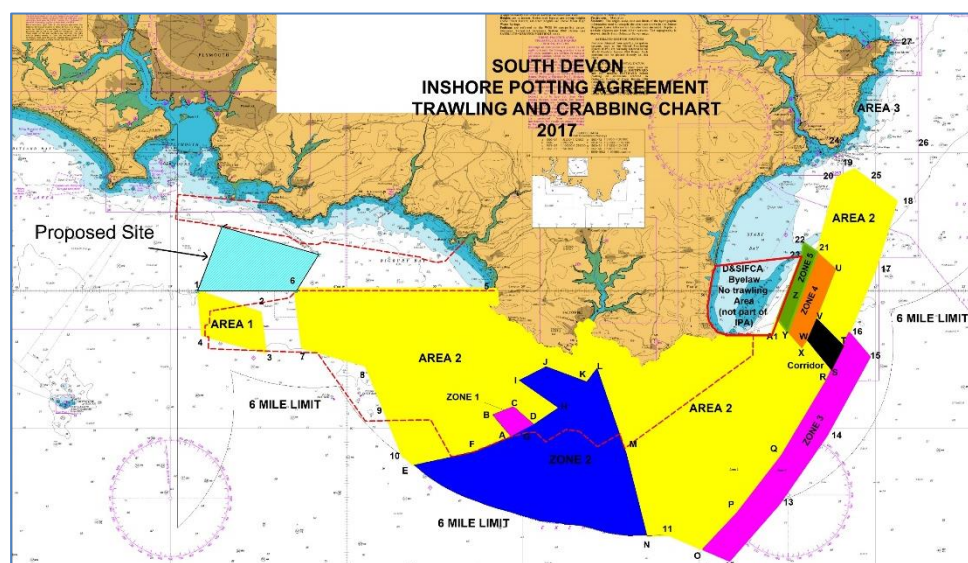
Other gear conflict management

A response was submitted for the consultation on mobile fishing; however the content also relates to potting and has therefore been duplicated and added to this supplement. The response was in regard to reducing gear conflict in coastal areas near Plymouth. This response was submitted by a stakeholder from the commercial potting sector. An area to the North of IPA area 1 has been suggested as an additional zone for shared access with mobile vessels having no access between 1st June and 31st December each year.

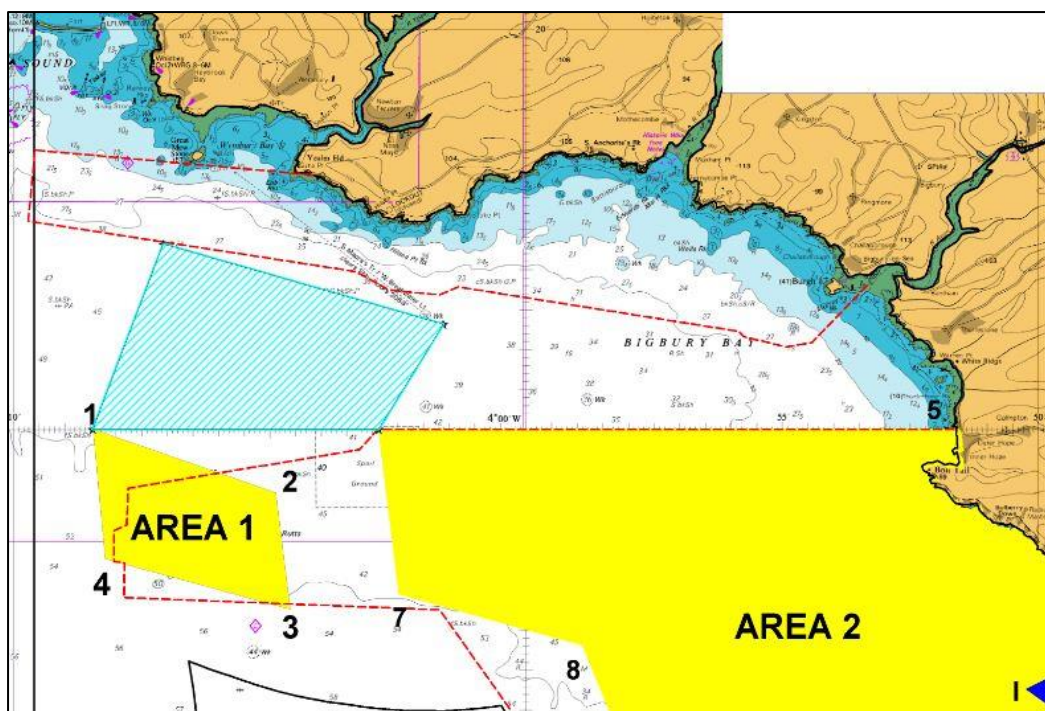
It has been concluded that as the proposed area is outside of the current IPA areas, it is not suitable for discussions by the IPA Committee. The stakeholder provided the following positions to define the proposed site:

- 50° 15.00 N 004° 08.45 W 50° 17.31 N 004° 07.05 W
- 50° 15.00 N 004° 02 .90 W 50° 16.31 N 004 01.64 W

Proposed site



⁵ Awaiting confirmation at time of writing



Officer comments

This proposed site is located on the western side of an area of seabed that is currently accessible to mobile fishing vessels. It is situated between IPA areas (potting all year) and the areas closed via Annex 5 (permit) of the Mobile Fishing Permit Byelaw. It should be noted that these areas of seabed were subjected to consultation in 2010⁶. Devon Sea Fisheries Committee (DSFC) [responded](#) to the Natural England consultation on designating new Special Areas of Conservation which included a site from Start Point to Plymouth Sound and the Eddystone rocks. From the evidence gathered by previous acoustic monitoring and underwater filming surveys DSFC was able to suggest which areas could remain open to demersal fishing gear and which areas could be closed to protect the reef habitat recorded from these surveys. The evidence submitted by Devon Sea Fisheries Committee was used to influence the extremity and boundary of the Start Point to Plymouth Sound and Eddystone SAC. Evidence was also provided in the DSFC response on the social and economic impact of closing an area between Hillsea Rock Point, Bigbury Bay, Bantham and Bolt Head to the mobile fishing sector and the jobs onshore that would be impacted. The recently proposed site sits in the area that was consulted on in 2010 and was kept open to mobile gear and not included in the Start Point to Plymouth Sound and Eddystone SCI, as there was little evidence of reef features in this area. This historic survey work and the consultation response offered by Devon Sea Fisheries are available from D&S IFCA.

The permits for both potting and mobile fishing do have scope to help manage gear conflict. Spatial, gear and time control are all elements of the flexible permit conditions that can be utilised. Although managing gear conflict has questionable links to conservation objectives, the duties for D&S IFCA do include seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district. In this case, the needs of both static gear and mobile are a discussion point.

⁶ Consultation on Marine Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in English, Welsh and inshore waters around the UK.

Regulation is not the only option for management. As with the process to create a new byelaw, members have the opportunity to consider the merits of voluntary measures.

The response indicated that a petition has begun to demonstrate support for the proposed site that includes signatures from both the potting and mobile fishing sectors; however this petition has not yet been submitted. Additional consultation would present an opportunity for those who may have signed a petition to respond individually to this stakeholder's proposal.

Gear Marking

Issues related to gear marking was raised by one commercial potter and also the Royal Yachting Association (RYA). The RYA submitted a response on behalf of over 108,000 personal members and an estimated 350,000 boat owners who are members of RYA affiliated clubs and other organisations. The concern raised by the RYA was in relation to safety and the dangers associated with becoming entangled with static fishing gear. The RYA have recognised the current permit conditions that state that all individual pots or string of pots is clearly marked by at least one floating marker and have concluded that this provision was developed to promote safety. The RYA have stated that in their view this provision does not provide sufficient guidance to the fisher and in addition more detailed provisions with minimum specifications are needed for collision avoidance.

The RYA have suggested the following be inserted into the current permit wording:

- Each buoy or dahn shall be a highly visible colour (red, yellow, pink or orange)
- Must be a minimum circumference of 60cm
- Or be fitted with a flag of a highly visible colour on a staff of at least 60cm inches high

Officer comments

The RYA has mistaken the aims of D&S IFCA in regard to gear marking. Whilst D&S IFCA recognises the importance of safety at sea, the duties of D&S IFCA as set out in the Marine and Coastal Access Act do not extend to safety and collision avoidance. The inclusion of a specific size of floating marker, the use of flags and bright colours have all been discussed during the formation of the Potting Permit Byelaw (and the permit conditions); however the provision to mark gear has only been inserted into the permits for the effective enforcement of the Byelaw. D&S IFCA cannot regulate to promote health and safety which includes collision avoidance. Finer requirement for the marking of pots has been used for the management of the "Live Wrasse Pot Fishery"; however at this time there is little evidence to suggest that more detailed gear marking such as bright colours or sizes of buoys and or flags are needed for the effective enforcement of other potting activities managed by the Potting Permit Byelaw. It is possible that industry or stakeholder led voluntary measures may be developed in the longer term which will improve safety for all sea users.

Issues associated with Category 2 permit holders & officer comments

Three responses submitted from commercial potters, were generally focussed on the current permit restrictions that apply to the recreational potting sector issued with Category Two permits. Two of the commercial responses explained that in their view, they suspect that not all the fishers that have Category Two permits either fully understand their own current restrictions or are choosing to ignore them. Suggestions have been made for D&S IFCA to improve stakeholder awareness of the potting permit conditions and possibly make better use of notice boards in different key locations within the district.

Officer's comments

D&S IFCA is continually developing its communication strategy. The current website is populated with information and a new site is being developed. In regard to the use of well-placed notice boards, D&S IFCA has attempted to make greater use of these in the past. Unfortunately some local Authorities are resistant to the placement of information on notice boards they own, unless they receive a payment from D&S IFCA.

Safety requirements

Commercial operators have expressed concern that safety requirements imposed on them by the Marine and Coastguard Agency such as certification and the carriage of safety equipment is not required for category two permit holders.

Officer's comments

The differences between sectors and the investment needed to comply with safety standards and regulations is clearly an issue for some commercial operators. The duties of the D&S IFCA in the Marine and Coastal Access Act do not extend to health and safety issues. The D&S IFCA is just not able to use permit conditions to address safety concerns or apply this type of regulation to Category Two permit holders.

Submission of landing data

The responses have highlighted that they (commercial operators) are required to submit monthly shellfish returns and comply with RBS⁷; however no such requirement is demanded from the recreational sector.

Officer's comments

The requirement for the submission of landing data & RBS is not imposed by the potting permit conditions. D&S IFCA does not collect data that it doesn't need. D&S IFCA can utilize section 17 of the Potting Permit Byelaw and request any relevant fisheries data from permit holders. This provision has been used in regard to the "live Wrasse Fishery" where catch data has been required as part of the implementation of a fully documented fishery. Category Two permit holders have not as yet been required to submit catch data for shellfish. Assuming compliance with the daily catch limits, an estimate of the maximum recreational "take" can be made, however section 17 may be utilized if more detailed information is needed.

Multiple permit holders working on a single vessel

Although one commercial response acknowledged that this is not a flexible permit condition, the Byelaw should be reviewed to address this issue. The stakeholder indicated that the acceptance for multiple category two permit holders to operate from a single vessel is not enforceable and needs to be reviewed.

Officer's comments

A selection of policy documents was recently circulated to try and clarify this and other issues. The content of some responses would indicate that all the information may not have been fully understood. When the Potting Permit Byelaw was created there were difficulties

⁷ Marine Management Organisation - Registered buyers and sellers requirements

establishing a mechanism to assign all permits to the owners of vessels. The ownership of commercial fishing vessels are divided into 64 shares as documented on the certificate of registry. Recreational vessels present a different scenario.

Multiple category two permit holders are entitled to operate from a single vessel, but they must all be attendance when working a combined total of pots. Non-compliance has been reported and acted on by enforcement officers. Investigations by D&S IFCA have led to the issue of fixed administrative penalties to offenders. Members may conclude that in the short term D&S IFCA can continue to advise all stakeholders to report potential illegal fishing activity as it continues with its intelligence led enforcement strategy.

Category Two Permit Holders hauling pots that belong to others

This issue was raised in one of the responses. A commercial potter stated that berried, soft, v-notched, undersize and mutilated lobsters are being taken by fishers using equipment that they don't own. In addition theft of pots and the content was also highlighted by commercial potters and this is presenting an additional financial burden on them. In the view of one stakeholder, the current wording in the Byelaw and permits is not clear enough to demonstrate that the hauling of other people's pots is an offence.

Officer's comments

The theft of fishing equipment is not an issue that can be addressed by D&S IFCA; however the tampering or un-authorized use of fishing equipment can. Firstly, it is prohibited for a person to fish with pots in the district without a permit. Anyone who wants to fish with pots in the district must get a permit. Paragraph 2 of the Potting Permit Byelaw currently states the following:

It is prohibited for a person to use pots for fishing⁸ within the District otherwise in accordance with a permit.

Paragraph 2.2 in the potting permit conditions is also intended to address this issue and currently reads:

A permit holder or named representative is not authorised under this permit to use any pots unless all individual pots or each string or shank of pots is clearly marked by at least one floating marker (buoy or dahn). Each of these buoys or dahns shall be clearly marked with either the relevant fishing vessels registration (port, letters and numbers) of the vessel named on the permit or the permit number.

In regard to Category Two permit holders, they can currently nominate a named representative to haul the pots of the permit holder which (for some) possibly adds confusion. The named representative is not authorised to continue working the pots (fish with them) in the absence of the Category Two Permit holder, but can (with approval of D&S IFCA) retrieve pots that otherwise can't be removed and brought ashore. This has been clarified in a policy document circulated to all permit holders.

The consultation response indicates that the provisions in the Byelaw and the permit conditions are potentially confusing and possibly lack clarity in regard to this issue. It is

⁸ Fishing is defined in the Potting Permit Byelaw as searching for sea fisheries resources, shooting, setting, hauling of a fishing gear and taking sea fisheries resources on board.

possible for the permit conditions (gear restrictions) to be amended and strengthened to clarify this issue. A new permit restriction is not needed; however members may consider that Paragraph 2.2 of the present permit conditions be amended. Further “focussed” consultation can be actioned and the specific amended wording used would also be subject to consultation.

Catch limit for category two permits

One commercial operator questioned the current catch restrictions for Category Two permit holders. This stakeholder suggested that one lobster and 2 crabs per day would be more appropriate for personal consumption. This stakeholder raised the point that retail outlets such as public houses often demand a “brace” of lobsters and don’t want to purchase single lobsters.

Officer’s comments

Category Two Permit holders are already prohibited to sell their catch. The stakeholder has identified rationale that a reduction in the bag limit would in his view help to reduce the temptation to illegally sell the catch by potentially restricting the number of outlets prepared to take single lobsters that were captured each day. No other responses were received in either consultation to suggest that the current catch restrictions for Category Two permit holders present an issue. It should also be noted that although it is illegal for Category Two Permit holders to sell their catch, a larger number of shellfish could be collected over time (at home) and then taken to an outlet for illegal sale. Members may conclude that in the short term D&S IFCA continues its intelligence led enforcement planning and investigate allegations of illegal sale of shellfish reported by concerned stakeholders.

Number of pots and working them in strings

A single response was received from a commercial operator that suggested a reduction from five pots per Category Two permit holder to three would reduce the overall daily catch and reduce alleged illegal sale of shellfish.

One commercial operator questioned the current gear restrictions that don’t prohibit Category Two permit holders from working strings of pots. The stakeholder has inferred that working strings of pots is a commercial venture. Others from the limited responses have questioned the policy documents that have been recently circulated and have inferred that D&S IFCA is giving permission for Category Two permit holders to work strings of pots.

Officer’s comments

Only one response indicated that the current pot limitation for Category Two permit holders was too high. Members may draw the conclusion that the limited response indicates that the majority of stakeholders are satisfied with the current gear limitation.

In regard to working strings of pots, a policy document was recently circulated in an attempt to clarify this issue. The policy document is not a “permission” for strings of pots to be used; instead it clarifies that working a string (or combined string) is possible under the current permit conditions. All Category Two permit holders must be present and adhere to marking requirements to work a combined string. It is acknowledged that commercial operators do generally work strings of pots. Commercial strings can and often do contain many pots, far higher than the current five pot per permit holder catch restriction for Category Two permit

holders. Mechanical assistance would often be needed to haul strings of pots; however this is dependent on several factors. In relatively shallow water it is quite possible to haul a string of pots by hand that are well spaced on the ground rope.

Otter mortalities within fixed traps in Devon

The Environment Agency submitted a response in regard to otter mortalities within fixed traps in Devon. The report provides a detailed account of the subject matter and the full report is hyperlinked in the final chapter of this supplement. In summary the report defines the following:

- The interactions with otters that are illegal
- The types of pots/traps that present the highest risk to otter populations
- A record of where and when otters have been entangled in pots/traps and died as a result

Officer comments and summary

The evidence for Devon has highlighted the rivers Yealm, Tamar, Plym and also Plymouth Sound as problem areas. The report has a summary and offers a potential solution as follows:

“Prawn” traps do not have a sufficiently restricted aperture to prevent otters entering, becoming trapped and subsequently drowning underwater. The wire loop entrance to these traps can expand allowing the otter to manoeuvre into the trap, but from which there is no escape and they will then drown. From the evidence available adult female otters and sub-adults of both sexes are the most likely otters to be able to enter these traps. Where adult female otters are killed there is a high risk of the associated deaths of any dependent cubs that are reliant on their mother for food. Young otters spend between 12 months to 15 months (some longer) with their mothers before becoming sufficiently accomplished hunters to survive independently.

Within freshwater all traps for eels (such as fyke nets) or crayfish traps are authorised by the Environment Agency in England and Natural Resources Wales in Wales. These freshwater traps with a larger entrance all are required to have robust otter guards fitted. As described above traps set in estuarine and coastal areas (such as “prawn” traps) can and do capture and drown otters as their entrances are too large. Such otter deaths are preventable otter mortalities.

A solution would be that all such “prawn” traps or other fixed traps with an entrance that can open to more than 85mm should have an otter guard fitted in a similar manner to that required for eel fyke nets. Such otter guards, whether made of hard plastic or metal, would be most unlikely to alter the efficiency of these “prawn” traps to catch marine target species such as prawns that would still easily enter through the otter guard. Such a measure would be commensurate with the measures taken on freshwaters to reduce the scale of non-natural mortality of otters as a result of incidental but avoidable drowning incidents.

4. Other identified items

In addition to the themes highlighted by stakeholders (and other consultees), the review process as specified in the Potting Permit Byelaw allows D&S IFCA to consider the

introduction of additional management. Items considered appropriate for discussion and potential additional consultation include the following:

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

The implementation of the Potting Permit Byelaw was a significant change from the more traditional byelaw model. As with many new initiatives, development was challenging and produced mixed legal opinions about 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 challenge and a potential enforcement weakness for any 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 Potting Permit Byelaw is due for a complete review in 2019. However, in the shorter term, the permit conditions can be amended to produce equivalent effectiveness as a deeming clause in a more legally acceptable manner. This has already been demonstrated in the development of the Netting Permit Byelaw⁹ where permit conditions (catch restrictions) have been created as follows:

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

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

If members agree in principle to changes to permit conditions as specified in the consultation, the actual provisions would require additional consultation.

⁹ Awaiting confirmation by the Secretary of State at the time of writing

Management of the removal of spiny lobster by pots from Tranche 2 Marine Conservation Zones (MCZ)

Devon & Severn IFCA officers have undertaken assessments in order to document and determine whether management measures are required to achieve the conservation objectives of all the Marine Conservation Zones (MCZs) in its district. The IFCA's responsibilities in relation to management of MCZs are laid out in Sections 124 to 126, & 154 to 157 Marine and Coastal Access Act 2009.

The spiny lobster, also known as crawfish and *Palinurus elephas*, is a feature of two Tranche 1 and one Tranche 2 MCZs designated in the D&S IFCA district and at each of these sites, this species has a recover to favourable condition conservation objective. Favourable condition with respect to spiny lobster means that the quality and quantity of its habitat and the composition of its population in terms of number, age and sex ratio are such as to ensure that the population is maintained in numbers, which enable it to thrive. Current permit conditions prohibit the removal of spiny lobster from within the Skerries Bank and Surrounds MCZ and also Lundy MCZ as set out in Annex 1 and Annex 2 of the potting permits.

For the Tranche 2 MCZ site, Biddeford to Foreland Point MCZ, spiny lobster is a feature of conservation importance with a 'recover to favourable conservation' objective and therefore will need protecting from the gear types operating in the site. The three year review of permit conditions for the Potting Permit Byelaw provides the opportunity to bring in a prohibition on the removal of spiny lobsters in these sites by fishers using pots. MCZ assessments for this site are currently being prepared and changes to the permit conditions to afford protection to the spiny lobster in the designated MCZ is being highlighted within the assessments, to show that the IFCA is able to introduce management to protect the feature, prevent deterioration of spiny lobster populations and ensure the conservation objective is furthered.

It is the IFCA's statutory responsibility to seek to further the conservation objectives of the sites. When the MCZ was designated there had been sightings of spiny lobster in the site. However more recently there have been very few reports of spiny lobsters being caught by fishing vessels using pots that have access to the Tranche 2 MCZ site, Biddeford to Foreland Point. In order to ensure that the spiny lobster feature is protected from this gear type, the permit conditions of the Potting Permit Byelaw will need to be adapted to prohibit the removal of spiny lobster from this MCZ site. An additional permit Annex can be created to mirror the restrictions already imposed by permit (Annex 1 and Annex 2) which already prohibit the removal of spiny lobster from the Skerries Bank and Surrounds MCZ and Lundy MCZ.

Protection of spiny lobsters that have recently cast their shell

Each permit contains a list of catch restrictions. Due to the original wording used, the potting permits (catch restriction 1.1 iv) currently provides no protection for spiny lobsters that have recently cast their shell. This oversight has been addressed in the creation of the Netting Permit Byelaw¹⁰, where the findings from the formal consultation period prompted members of the Byelaw and Permitting Sub-Committee to amend the original netting permit conditions to include the wording "spiny lobster" to the list of protected species which also include edible crab and lobster.

¹⁰ Awaiting confirmation at time of writing

If members agree in principle to changes to permit conditions, the actual provisions would require additional consultation.

Managing the whelk fishery

Over the past decade fishing effort for whelks (*Buccinum undatum*) in the UK has been increasing relatively quickly. In 2002 UK whelk landings were worth just over £4million, for 8,687 tonnes. Whelk landings in the UK totalled 16,000 tonnes in 2012, valued at £10.8million. Of this, the landings in Ilfracombe were 661 tonnes valued at £479,000, while the Exmouth landings were valued at £170,599 for 241.8 tonnes (MMO Annual Statistics¹¹), making whelk fishing a significant sector within these two ports in the D&S IFCA District. In 2014, 301 tonnes of whelks worth £238,605 were landed into Exmouth and 716 tonnes were landed into Ilfracombe worth £564,646. In 2015 there was an increase in the landings with 315 tonnes landed into Exmouth the value of which was £282,674 and 874 tonnes were landed into Ilfracombe with a value of £818,401. The landings by UK vessels into UK port for 2015 were 20,855 tonnes worth £18.60million. MMO statistics for 2016 have just been issued and these show the value of the whelk fishery to Ilfracombe was £640,877 for 533 tonnes.

Table 1: Annual Landings and Value of Whelks

Whelk Landings per year for Exmouth and Ilfracombe 2012-2016				
	Ilfracombe		Exmouth	
Year	Landings tonnes	Value £	Landings tonnes	Value £
2012	671.98	£487,953.65	241.83	£170,599.01
2013	2014.23	£432,043.08	401.83	£300,646.84
2014	716.93	£564,646.25	301.63	£238,605.85
2015	874.45	£818,401.56	315.05	£282,674.30
2016	533.39	£640,877.70	302.22	£328,075.82

Figures 1 & 2 show graphically the monthly landings into these two main ports in Devon and the value of these landings in 2015. In the UK Ilfracombe is in the top ten landing ports for whelks in both weight and value.

¹¹ UK Sea Fisheries Annual Statistics Report 2016 – MMO. Gov.uk website

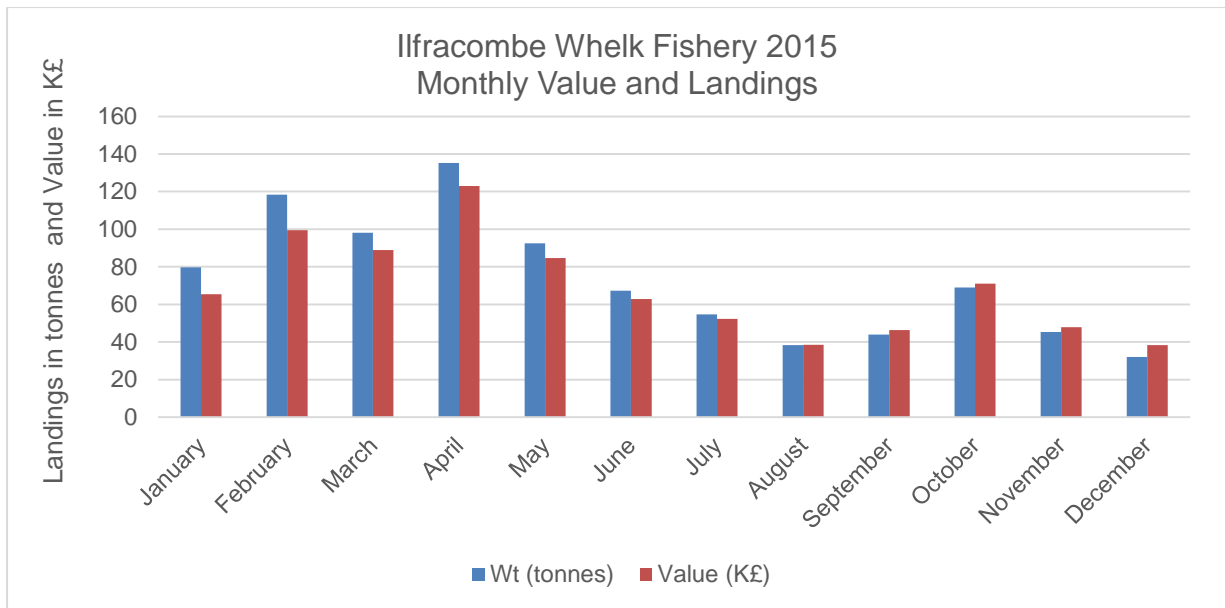


Figure 1 Ilfracombe Whelk Fishery 2015

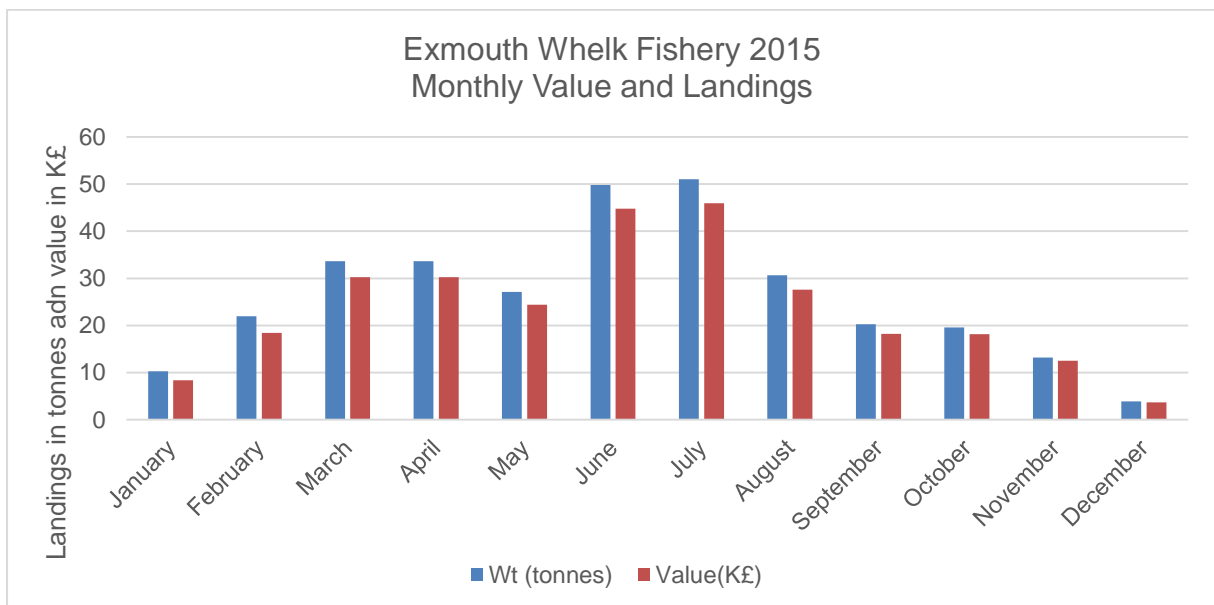


Figure 2 Exmouth Whelk Fishery 2015

Whelk Research

Between 2014 and 2016 D&S IFCA Environment Officer Katherine Stephenson undertake extensive research to determine the size of sexual maturity of the whelk, *Buccinum undatum* within the Devon and Severn IFCA district (Stephenson, 2015 & 2016).

[D&S IFCA Whelk Report 2015](#)

[D&S IFCA Whelk Report 2016](#)

The 2015 report looked at the size of sexual maturity and spawning period of whelks sampled over a year from Ilfracombe in North Devon and Exmouth in South Devon. The D&S IFCA 2016 report focussed on additional research undertaken on whelks taken from Start Bay in South Devon. The size of maturity (SOM) is defined as the size at which 50% of the population is sexually mature. A previous study, conducted by Andy Lawler of Cefas (Lawler, 2013¹²), estimated the SOM for both sexes of whelk in the main fisheries around the country. Only one sample at each of 10 sites was used to estimate the SOM in this study. He found that in most areas the whelk SOM is greater than the EU Minimum Conservation Reference Size (MCRS) of 45mm, including areas within D&S IFCA district, suggesting that the spawning stocks are not receiving adequate protection. This raises concern as there has been a rapid increase in fishing effort over the last decade largely attributed to a boom in demand from the Far East. The two IFCA studies also found that in the D&S IFCA district the SOM for whelks is greater than the current MCRS. The table 1 below highlights these findings:

Table 2: Size of sexual maturity of whelks sampled from three sites in the D&S IFCA district

Site	Sex	IFCA Research SOM (shell height mm)	Cefas Research SOM (shell height mm)
Start Bay	Female	57.8	-
	Male	64.4	
Exmouth	Female	69.3	72.4
	Male	70.9	69.2
Ilfracombe	Female	76.5	75.5
	Male	76.4	75.5

Conclusions from this Research:

- The current *Buccinum undatum* EU Minimum Conservation Reference Size (MCRS) of 45mm is too low to protect the spawning stock, and recruitment over-fishing is likely to be occurring
- SOM estimates based on shell height were calculated as:
 - 69.3mm (female) and 70.9mm (male) from Exmouth,
 - 76.5mm (female) and 76.4mm (male) from Ilfracombe,
 - 57.8mm (female) and 64.4mm (male) from Start Bay
- SOM estimates could be used as a basis from which to review the current MCRS.
- If a district wide increase in MCRS was implemented then stocks in some areas will have more stringent management compared to others. From the data in table 2 a mean of 70.79mm and a median of between 70.9 and 72.4mm can be calculated. If a mid-point of the SOM estimates was used this would afford greater protection of the stock will be provided than the current EU MCRS affords. However, there are differences in SOM in the different parts of the district and if a single MCRS is to be

¹² Determination of the Size of Maturity of the Whelk *Buccinum undatum* in English Waters – A Defra Project MF0231. Andy Lawler, Cefas 2013.

used as an effective management measure a more pragmatic approach may need to be taken.

- Table 3 below indicates the percentage of the population sampled being mature at five different shell heights. Increasing the MCRS to 65mm will give greater protection to the stock in all areas sampled. Introduction of an increase in MCRS over a period of time, in a phased approach, would allow the fishers to adapt gear, reduce the direct impact on landings and income, spreading it over years rather than a big hit initially, and will allow IFCA officers to monitor the impact of the management measures.

Table 3: Percentage of whelks sampled that were sexually mature at each of the given shell

		% mature at each shell height				
		45mm	50mm	55mm	60mm	65mm
Exmouth	Female	0.3	0.7	3	8	27
	Male	0.006	0.4	2	6	19
Ilfracombe	Female	0.09	0.5	1.6	4	10
	Male	0.002	0.2	0.5	2	6
Start Bay	Female	0.2	0.9	15	78	98
	Male	0.6	2	7.5	23.5	54

- A strong positive linear relationship between shell height and both shell minimum width and shell maximum width has been determined from the analysis. This relationship was tested statically with the Person Correlation Coefficient. Table 4 shows the results of this analysis. The closer to 1 the coefficient values are the stronger the relationship, meaning that as the shell height increases, the shell width increases and vice versa. There are enough data to be able to estimate the shell width at a given height.

Table 4: Pearson's correlation Coefficient values for shell height and width

Site	Sex	Pearson's correlation coefficient height v min width	Pearson's correlation coefficient height v max width
Exmouth	Female	0.925	0.963
	Male	0.939	0.968
Ilfracombe	Female	0.957	0.958
	Male	0.926	0.955

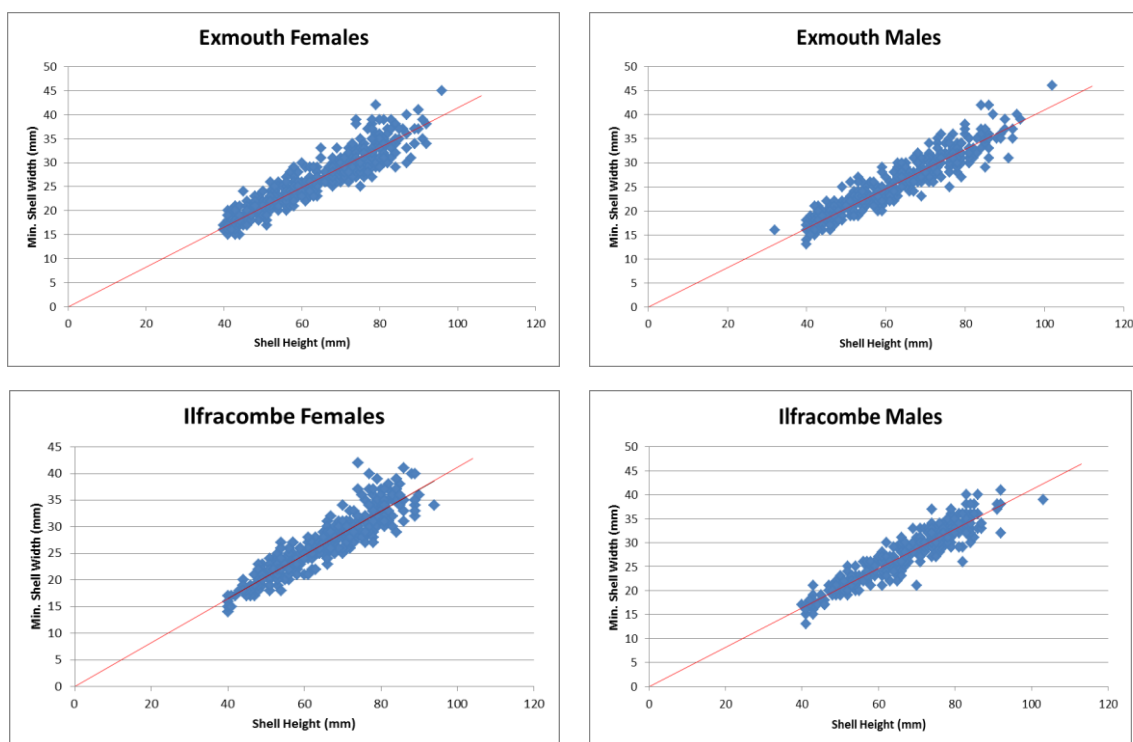


Figure 3: Relationship between Shell Height and Shell Width at Ilfracombe and Exmouth

- This means that there is the opportunity to have a width based MCRS, which may make sorting the large volumes of catch with a riddle more effective. However, there are two width measurements that can be taken (minimum and maximum) which may be less practical for easy MRCS compliance monitoring. A decision may have to be made as to which measurement would be most effective i.e. height, max width or min width. If height was to remain the MCRS measurement then D&S IFCA could issue guidance on the relative width at a given MRCS to aid configuration of the riddle and riddle bar spacing.

Table 5 SOM by shell width

Site	Sex	SOM estimate using min shell width (mm)
Exmouth	Female	28.6
	Male	29.1
Ilfracombe	Female	31.7
	Male	31.5

- At both Ilfracombe and Exmouth, it appears that mating and spawning take place during the winter. Whilst samples were missing for both sites in January, there is a decrease in gonad indices, which suggests breeding and spawning have taken place. Peak breeding activity appeared to have occurred between December and January.

In Exmouth females' gonad sizes increased towards December with a fall in size in January / February suggesting eggs are maturing until December, copulation follows and then spawning takes place thereafter. Males show a similar pattern. The Ilfracombe sample analysis was less clear due to smaller samples size for females, although it appears copulation may take place between November and January. Therefore, a closed season during these months could potentially be considered to protect the spawning whelks, however more data is needed to verify and reinforce these results. The impact of any seasonal closure will need to be evaluated. Figures 1 & 2 show the landing and values over the winter period at both ports.

Whelk Management Measures

The only current management in the D&S IFCA district is the EU MCRS of 45mm. Other IFCAs and regulatory authorities are considering or have introduced management measures for the whelk fisheries they have jurisdiction over.

Sussex IFCA Whelk Management Measures

Research was undertaken by Sussex IFCA together with Cefas as part of the 2009 Whelk Fisheries Science Partnership project. The survey estimated the size of sexual maturity for whelks within the Sussex IFCA district between 55.8mm and 60.7mm. Peak spawning activity occurred at the end of November/ early December. Research into the effectiveness of different riddle sizes for sorting catch has been carried out and Sussex IFCA have since introduced management measures based on the use of riddles within its Districts and also on escape holes in whelk pots. Current management measures in the Sussex IFCA district are:

- Introduction of a Shellfish Permit Byelaw in 2015 which include some management measures for whelks
- Whelk pots must be fitted with escape holes which must
 - (a) be positioned at least 150 millimetres from the inside base of the pot or no more than 50 millimetres from the top of the pot;
 - (b) be of a size that a cylindrical bar of the specified diameter will pass freely through the hole;
- The permit holder must pass all whelks removed from the fishery over or through a riddle which has sufficient space between bars so that a gauge of a specified size will pass through; and a whelk which passes through the bars of the riddle, or which is of a size below the minimum size for whelks as contained in provisions within European or national legislation must be returned immediately to the sea.
- MCRS is 45mm shell height

Kent & Essex IFCA Whelk Measures

Kent & Essex IFCA has introduced management measure for its whelk fishery. These include:

- Introduction of Whelk Fishery Permit Byelaw in 2013
- Commercial whelk fishermen are restricted to 300 pots

- Recreational whelk fishermen are restricted to 10 pots
- Pots must be tagged
- Pots must contain at least 10 escape holes of no less than 22cm, in diameter and positioned at least 150mm from the base and no less than 50 mm from the top of the pot.
- MCRS remains at 45mm shell height
- Strings must be marked with buoy or dahn
- Dahns must be 30cm diameter or more and marked with whelk permit number

Eastern IFCA Whelk Management Measures

Eastern IFCA introduced a Whelk Permit Byelaw in 2016 to replace the Whelk Fisheries Permit Emergency Byelaw.

- Whelk pots must be tagged
- Strings must be marked clearly
- Fishers must not be used edible crab for bait
- Returns forms must be completed
- Pot limitation
 - Commercial – 500 pots
 - Recreational – 5 pots
- Pot size limited to 30 litres internal volume
- Minimum of 2 escape holes of at least 24mm diameter per pot
- MCRS 55mm – shell height
- Catch must be sorted over a screen with bar spacing of 24mm

Welsh Government Proposed Whelk Management Measures

Welsh Government issued a consultation on Sustainable Management Measures for the Welsh Whelk Fishery. There were many consultation points and the responses are available [here](#).

Some of the key measures consulted on and responses are included in:

Table 6: Welsh Government Consultation Responses to Potential Management Measures

Measure	Response
Increase MCRS from 45mm to 65mm	81% in favour
Should increase in MCRS be phased over 2/3 years?	74% in favour
Permit scheme for whelk vessels	94% in favour
Flexible permit conditions	67% in favour
Limit the number of permits	35% in favour
Should effort control be introduced	76% in favour
Cap on weight of whelks that can be landed	76% in favour
Cap on number of pots fished	85% in favour

Data collection requirements	85% in favour
Closed spawning season (Oct to Dec/Jan)	77% in favour
Use of escape holes	80% in favour
Whelks landed in fish boxes or net sacks should weigh no more than 40kg	33% in favour

Jersey Government Whelk Management Measures

There are currently new proposed management measures around Jersey which will apply differently to different catch boats.

- Small catch boats will only be permitted to land 30kgs per day – 30 permits to this category will be issued. They will be able to set gear anywhere in the 0-3miles limit.
- Large catch boats will require pots to be tagged; certain areas will be only open for 5 months of the year (October to January); 1800 tags will be issued in total to this category with no boat having more than 300 pots.
- For all categories in the catch per pots reduced to below 1.5kg in a specific area then this area will be closed to allow recovery.

Jersey 0 – 3	Jersey 3 - 12	France
MLS 50mm	MLS 50 Jersey boats MLS 45 French boats	MLS 45mm
Pot allocation on track record to 5 boats	40 permits	Fixed number of permits
Pot tagging (2683 pot cap)	900 pots per vessel	240 pots per person
12m Max, vessel length	12m max. vessel length	720 pots per boat
Minimum grader bar spacing of 22mm	Minimum grader bar spacing of 22mm	Minimum grader bar spacing of 22mm
Landing limit of 30kg for boats without a permit		300kg daily quota / person
		900kg daily quota / boat
		Weekend closures
		January closure

Table 7 Current Whelk Management Measures in Jersey Waters

Lyme Bay Fishermen's Voluntary Code of Conduct

- Fishermen will not fish more than 500 whelks
- Strings of whelk pots will not exceed a max of 30 in each

Officer Comments/ Suggestions for Managing the D&S IFCA Whelk Fishery:

A. Size Increase:

1. Increase in MCRS is needed to protect whelk stocks in the D&S IFCA district and allow 50% of the population to reproduce at least once. The current EU MCRS of 45mm is not sufficient and this should be increased to 65mm which will afford greater protection.

2. If an increase in MCRS is introduced this should be undertaken under a phased approach – 5mm per year or 10 mm every 2 years to reach a maximum of 65mm.
3. Width could be used instead of height as the MCRS as analysis of the data has indicated a very strong linear relationship between width and height.

B. Seasonal Measures

4. Closed spawning season could be introduced between December and January but more data should be completed to verify the seasonality and the impact of such measures investigated.

C. Gear Restrictions

5. All pots should have escape holes fitted that allow the escape of smaller undersize whelks.

D. Data Collection

6. Vessels involved in the whelk fishery could submit monthly landings data together with number of strings and pots used to calculate LPUE. Areas works could also be identified to inform spatial distribution of effort and LPUE.
7. D&S IFCA officers will collect additional data as required and monitor the impact and benefit of the management measures introduced.

5. Further Information/recommended reading

- [D&S IFCA communication strategy \(available upon request\)](#)

Hyperlinks

[Potting Permit Byelaw – A basic guide to explain the three year review of the permit conditions](#)

[D&S IFCA Whelk Reports for 2015 & 2016](#)

[Sustainable Management Measures for the Welsh Whelk Fishery \(Oct 2017\)](#)

[Environment Agency – Otter mortalities within fixed traps in Devon by Robert Hurrell](#)