



Potting Permit Byelaw

A Three-Year Review of the Permit Conditions



Supplementary Report – A Summary of Response from the Focussed Consultation Items and Permit Condition Proposals

(31st January 2018 to 14th March 2018)

27th March 2018

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1. Aim of this supplementary report

This supplementary report (March 2018) has been prepared for members of the Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) Byelaw and Permitting Sub-Committee. This supplement is intended to assist the decision making of members in regard to the mandatory three-year review of the (general) potting permit conditions. This supplement focusses on the findings from the final phase of consultation that included eight focussed items and proposed amendments to potting permit conditions.

- 1. To use permit conditions to replace a reliance on the deeming clause**
- 2. Protection of spiny lobster that has recently cast its shell**
- 3. Prohibition on the removal of spiny lobster from MCZ areas**
- 4. Gear restrictions to protect populations of otters in estuaries**
- 5. Inshore Potting Agreement Areas¹**
- 6. Managing the whelk fishery**
- 7. Lundy Island No Take Zone**
- 8. Category Two Restrictions**

This supplementary report can be read in conjunction with pre-existing D&S IFCA publications, both of which are embedded (hyperlinked) in this document and are also posted on the D&S IFCA website:

[Potting Permit Byelaw – A Three-Year Review of the Permit Conditions \(2nd edition – 15th January 2018\)](#)

[The extract document focussed on the consultation items and proposed permit conditions](#)

As well as presenting the consultation items and proposed permit conditions, the overarching report documents the complete process to date. It demonstrates the measures already taken by D&S IFCA, the developed evidence base and the decision making prior to the final phase of consultation that was conducted between 31st January 2018 and 14th March 2018. The extract document was produced only as a means to simplify the consultation for stakeholders.

The content of this supplement and the decisions taken by members will be merged with the overarching report and a final edition created that will document the complete process from start to finish. If permit conditions are amended as part of this process, new permit conditions will be circulated free of charge to existing potting permit holders and enforced by D&S IFCA.

Process and making use of this supplement report:

1. Members to examine the collated response information from the final phase of consultation
2. Members to evaluate the collated response information in conjunction with the proposed measures set out in the consultation
3. Members to decide how to proceed with a view to the issue of amended permit conditions (including Annexes)

¹ Included in the consultation to provide information to the potting sector only

Further Alterations to Permit Conditions

The suggested changes to the management of potting has been a complex issue to potentially put into practice. Legal advice has been taken prior to the start of final phase of consultation to formulate the proposed potting permit conditions and the format of the permits as a whole which do include multiple Annexes (charts) that link to permit wording. The potential introduction of gear restrictions for the protection of otters within estuaries is a good example, as multiple new annexes (charts) have been created and linked to the wording in the permit conditions. Significant alterations have been required as compared to the original potting permit conditions. Members should be aware that along with revised permit condition wording, draft documentation such as revised application forms have been developed which support the potential changes and in effect produce a complete package of relevant documentation. Major changes to permit condition wording at this stage could have a knock-on effect on other elements of the package (including Annexes) and increase the risk that unintended consequences can arise.

The consultation process has demonstrated how the potting permit conditions could potentially be amended to accommodate the additional items and in regard to the Inshore Potting Agreement Areas (IPA), how the mobile fishing permit conditions would potentially be amended. Whilst the permit wording and multiple Annexes (charts) were formulated to achieve the stated goals, scope still exists to make minor alterations in the final permit conditions that may be issued. Further minor changes are possible without additional consultation providing that these changes do not produce material changes.

- **It is advised that members apply more consideration in their decision making to the merits of the focussed items and the concepts applied (Permit conditions and Annexes) when balanced against the consultation responses, rather than the fine detail of the permit conditions.**

2. Communication

Communication was conducted as per the strategy set out in the consultation report. The D&S IFCA consultee list was used, with all stakeholders and interested parties directly notified about the consultation. Notification was also sent to all D&S IFCA members. All permit holders were either sent email notification or letters that contained a range of information including:

[Notification letter/email message](#)

- **What the consultation items were**
- **How to find more information (Background & Evidence Base)**
- **Notice of the D&S IFCA Publication Policy (Payment required for posting hard copies)**
- **How to respond and details of the multiple options that were available to provide a response**

The website was the main platform to display the consultation information, although face book and twitter were also utilised. All stakeholders, regardless of their interest or fishing activity conducted, had the opportunity to engage in the consultations.

3. Consultation Items and the Response from Stakeholders

In general, the response was very limited. A total of eleven written responses were received during the consultation period (31st January to March 14th 2018), two of which were submitted via the on-line survey form that was made available. One potting permit holder took advantage of an interview with an officer to provide some feedback which was entirely focussed on the management of the whelk fishery. Several of the responses contained a mixture of information relevant to more than one consultation. Some of the responses contained information that did not relate to any of the consultation items for either potting, potting for Live Wrasse or mobile fishing.

To Use Permit Conditions to Replace a Reliance on the Deeming Clause

Aims and Requirements:

- To recognise the legal advice offered by Defra
- To take this approach with all permit Byelaws
- To link authorisation to fish under the permit to defined species
- To correct minor numbering errors within present permits

Proposed Permit Conditions:

- Modification and re-formatting of the current species list, the removal of which is prohibited
- Adjustment made to a collection of minimum conservation reference sizes within the catch restrictions (section 1)

Response from Stakeholders

Devon Wildlife Trust (DWT) demonstrated support providing the same level or greater protection for wildlife is afforded through the new conditions. No other responses commented on this item.

Officer Comments

As highlighted in the consultation, this change does have implications to fishers. When a vessel is fishing within the District, the catch must conform to the sizes (or provisions) as set out in the permit which are in some cases more restrictive than National or EU size restrictions. For example, a potting vessel cannot fish within the District with a lobster of less than 90mm (carapace length) on board and remain compliant with the permit conditions. A vessel issued with a potting permit does have the option to transit through the District with species caught outside of the District that do not comply with the sizes/provisions as set out in the permit, providing that the catch complies with National or EU legislation.

Protection of Spiny Lobster that has Recently Cast its Shell

Aims and Requirements:

- To take this approach with all permit Byelaws
- To add clarity to the permit conditions
- To re-number permit provisions

Proposed Permit Conditions:

- The words “spiny lobster” added to an existing paragraph that already prohibits the removal of edible crab or lobster that has recently cast its shell

Response from Stakeholders

Response relevant to this topic was submitted by the Marine Conservation Society (MCS) and Devon Wildlife Trust (DWT). The MCS stated it was supportive of protection for spiny lobster relevant to MCZ or outside MCZ without adding any other detail. DWT submitted more detail as follows:

While Devon Wildlife Trust welcomes the proposed added protection for spiny lobster that has recently cast its shell, we call for complete protection for this species in light of its depleted numbers in the South West.

The JNCC states: “The number of spiny lobsters caught has been falling (in some cases dramatically), the animals that are caught tend to be smaller, and they seem to have disappeared entirely from areas of south-west England in which they were common during the 1970s”.

Noting this, Devon Wildlife Trust would like to see this Potting Permit Byelaw take a zero-catch approach to this species to enable its recovery. This should ideally be across the District but as a minimum within all MPAs.

One individual stakeholder referred to the protection of spiny lobster as another form of income that has been lost with nothing given back in return.

Officer Comments

Additional protection for spiny lobster that has recently cast its shell has already been incorporated into the Netting Permit Byelaw permit conditions that are now being issued. As part of the re-drafting of the mobile permit conditions, the need for this additional protection has also been recognised and it is proposed that diving permit conditions are also adjusted to harmonise with this approach. The recommendation from DWT to prohibit the removal of all spiny lobster (that have not recently cast its shell) from all areas has not been applied to other D&S IFCA permit conditions.

Prohibition on the Removal of Spiny Lobster from MCZ Areas

Aims and Requirements:

- To take this approach with all permit Byelaws
- To add clarity to the permit conditions by creating new Annexes (charts) that link to permit wording
- To make better use of the format of permits (spatial restrictions)
- To include the Bideford to Foreland Point MCZ within the permit conditions
- To clearly define the MCZ areas (within the District only)
- To re-number permit provisions

Proposed Permit Conditions:

- Bideford to Foreland Point MCZ added within a single Annex (2) that also includes Skerries Bank and Surrounds MCZ² and also Lundy Island MCZ
- To prohibit the removal of spiny lobster from all three MCZ

Response from Stakeholders

One individual stakeholder referred to the protection of spiny lobster as another form of income that has been lost with nothing given back in return.

Response relevant to this topic was also submitted by the Marine Conservation Society (MCS) and Devon Wildlife Trust (DWT). The MCS stated it was supportive of protection for spiny lobster relevant to MCZ or outside MCZ without adding any other detail. DWT submitted more detail on spiny lobster as documented in the previous section. In addition to this the following was included:

While Devon Wildlife Trust welcomes the proposed added protection for spiny lobster within the three named MCZs, we call for complete protection for this species in light of its depleted numbers in the South West.

Officer Comments

The recommendation from DWT to prohibit the removal of all spiny lobster from all areas (in the D&S IFCA District) has not been applied to other D&S IFCA permit conditions.

² The section of the MCZ that is within the D&S IFCA District

Gear Restrictions to Protect Populations of Otters in Estuaries

Aims and Requirements:

- To recognise the evidence³ submitted by the Environment Agency
- To apply restrictions to pots with an entrance of 85mm or less
- To make an assumption that the issue could extend to multiple estuaries within the District
- To take a precautionary approach and extend restrictions to all estuaries within the District
- To apply the restrictions within defined estuary limits
- To define Plymouth Sound as an estuary for the purposes of applying the protective measures

Proposed Permit Conditions:

- A new paragraph added within section two of the permit (gear restrictions)
- Multiple charts (Annex 3) created that define the estuary closing lines
- A new paragraph added to section 3 (spatial conditions)

The proposed permit condition wording in section 2 is as follows:

2.2 *Within the estuaries to the landward of the coordinates set out in the attached Annex 3 of this permit, a permit holder or named representative, is not authorised under the permit for the purposes of fishing, to use any pot with an entrance at its narrowest point of 85mm or less in width unless;*

- a) the entrance to the pot at its narrowest point is fitted with a ring constructed of a rigid material and;***
- b) the ring is fitted across the narrowest part of the entrance to the pot and is the same width as the narrowest part of the entrance to the pot.***

Response from Stakeholders

Natural England and Devon Wildlife Trust were the only responses that referred to this proposed permit condition. Both were supportive although some concern and confusion exists.

Natural England:

Natural England agrees that it is appropriate to bring in a gear restriction to protect otters. It should however be noted that otters are not limited to estuaries and their associated catchments but are also known to utilise the open coast. Records such as those held by National Biodiversity Network are not comprehensive due to the secretive nature of the species but illustrate that otters are wide ranging. It is worth considering

³ Otter mortalities within fixed traps in Devon - R Hurrell – October 2017

at some stage if it is a district wide restriction may be more appropriate than estuarine only. However, NE would not wish to see the restriction within estuaries delayed as we agree that this is the area where the risk is likely to be highest.

Devon Wildlife Trust:

Devon Wildlife Trust welcomes the addition of otter guards to the potting permit byelaw although makes the following comments:

- It is our understanding that guards would be required on all traps, pots, etc that have an opening of more than 85mm, not as stated under 85mm.

Robert Hurrell (EA) provided the following in his report to the Devon and Severn IFCA: “traps that.... do not have a sufficiently restricted aperture to prevent otters entering underwater, 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.... 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.”

This should be amended in order to afford appropriate protection for otters.

- The otter guards should conform to the same set of guidance as that used by the Environment Agency for freshwater traps for consistency and in order the guards afford genuine protection to otters.
- Otters are distributed throughout Devon being found along rivers, lakes, estuaries and along the coastline. Bearing in mind the large numbers of coastal streams in Devon, it is reasonable to assume that otters may be found along large stretches of non-estuarine coast.

Devon Wildlife Trust would therefore like to see these gear restrictions (otter guards) applied to all high risk inshore coastal waters and not just within estuaries. Devon Wildlife Trust would be happy to work with D&SIFCA and other stakeholders to define these high-risk areas.

- Enforcement of such a byelaw would require engagement with anglers, fishing tackle retailers and the general public. Devon Wildlife Trust would be happy to assist the Devon and Severn IFCA in such work, which would extend the reach of such messages through DWT’s considerable social media networks and membership audiences.

Officer Comments

The submissions from both Natural England and Devon Wildlife Trust suggest that there is scope for more evidence to be collected over time in regard to where otters may be found within the District and the level of risk that pots with no guards fitted presents to this species. Proposed permit conditions were formulated after officers studied the report submitted by the Environment Agency which is imbedded in this supplement and has been posted in the publications area of the D&S IFCA Website.

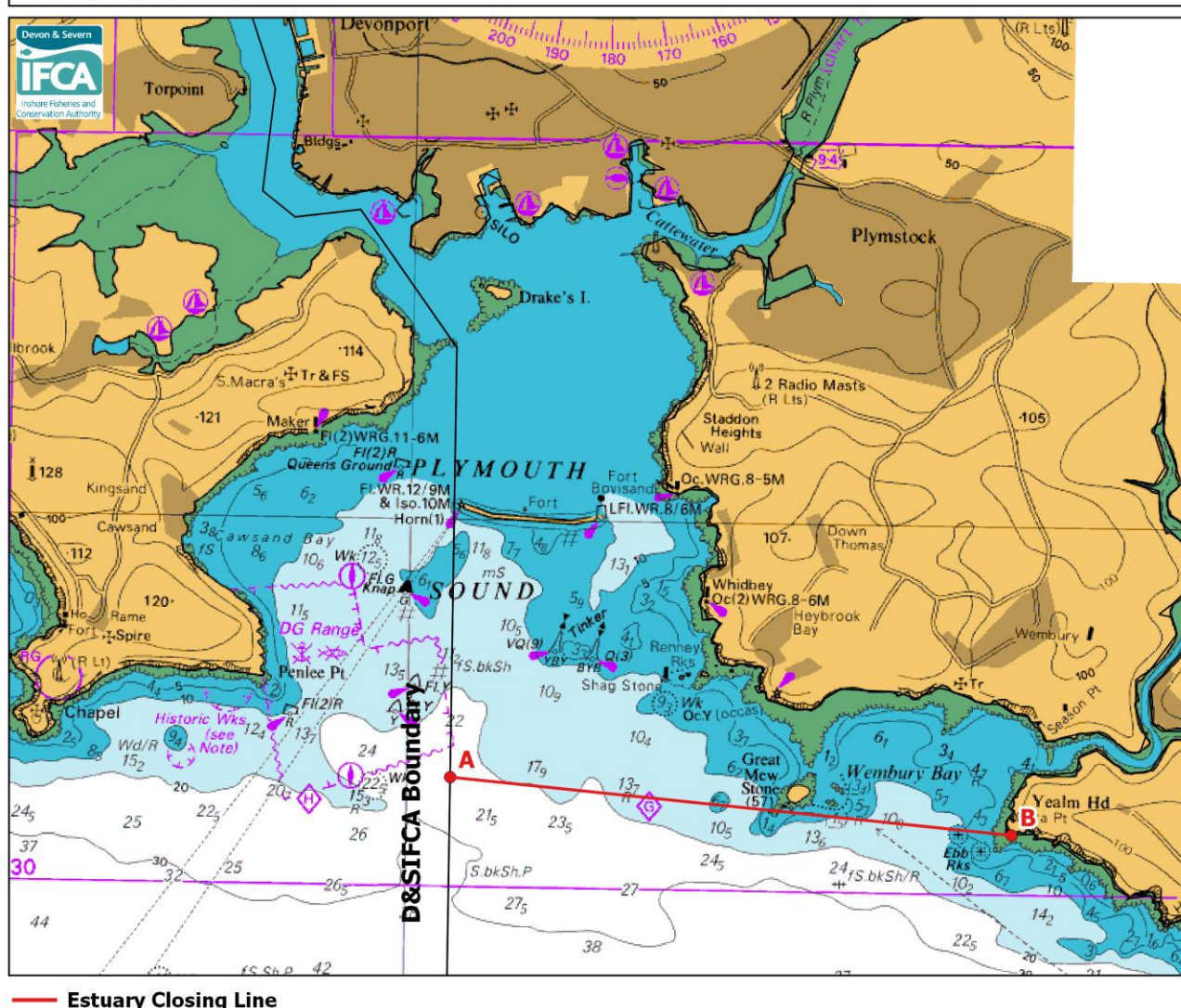
The report on otter mortalities within fixed traps in Devon (October 2017) by R. Hurrell (Environment Agency) is embedded (hyperlinked) below:

Otter mortalities within fixed traps in Devon

Many new charts have been created with a view to introduce the restrictions as proposed. An example of an Annex 3 chart is shown below and, in this case, incorporates both Plymouth Sound and the river Yealm.

Similar charts have been created for all estuaries within the District.

Annex 3 Chart of Plymouth Sound closing line - No access to the use of pots with an opening of less than 85mm otherwise in accordance with paragraph 2.2 a & b of the Potting Permit Conditions



Inshore Potting Agreement Areas (IPA)

Officer Comments

The Inshore Potting Agreement Areas (IPA) have been managed under licence variation by the Marine Management Organisation (MMO). Under this management the IPA areas are referred to as the South Devon Inshore Fishing Grounds.

This topic is relevant to the potting sector but potential changes to permit conditions would only be for mobile fishing permits. The aims and requirements for this topic were included in the potting consultation to promote better communication with the potting sector and an increased response in the consultation.

For the purposes of the Byelaw and Permitting Sub-Committee meeting, all responses submitted that referred to this item from either the potting consultation or the mobile fishing consultation have been documented in the mobile fishing supplement.

Managing the Whelk Fishery

Aims and Requirements:

- To increase the minimum conservation reference size of whelk from 45mm to 65mm
- To implement a phased increase
- To provide two options for the phased increase
- To link the phased increase to time restrictions (section 4) of the permit conditions
- Not to introduce other gear restrictions (riddle and escape holes) at this time
- To seek feedback on the development of guidance for fishers for both a riddle size and the inclusion of escape holes within whelk pots
- To inform all fishers engaged in the fishery that D&S IFCA has the intention to collect information to implement a fully documented fishery

Proposed Permit Conditions:

- To introduce a minimum size of 65mm for whelks within the catch restriction section 1 subject to time restrictions set out in section 4 of the permit conditions
- For consultation only – produce two separate tables in section 4 with alternative size increases (10mm per two year) or (5mm each year)

Response from Stakeholders

A total of five written responses included comments in regard to the management of the whelk fishery. The Marine Conservation Society simply stated that they support an increase in the size of whelk. The response from Devon Wildlife Trust was more detailed. Coombe Fisheries stated that they support proposal to increase the size of whelk with 10mm increases applied each year until a size of 65mm is reached. Coombe Fisheries explained that their business is likely to be impacted by the changes however; the measures will help to avoid a boom and bust situation and provide longer term benefits.

Two written responses were from potting permit holders working in different areas of the District (Ilfracombe area - North Devon and the Exmouth area – South Devon). Another active fisher (Brixham area) took advantage of an interview with an officer to provide feedback.

Feedback from fishers in some cases expanded into areas not subjected to consultation such as increasing the minimum conservation size of scallops (110/115 mm) or extending the closed season for scallops. In regard to whelk, all three fishers recommended a closed season for whelks with a period somewhere between September and December being favoured. Other suggestions included applying a 400 to 500 whelk pot limitation and a prohibition on the use of two sets of gear. Concern was raised that an increase in size may not be adequately enforced by D&S IFCA with the increased risk that non-compliant vessels (in particular visiting vessels) may remove large quantities of undersize whelk and go undetected. The fisher interviewed explained that larger whelk is more brittle than smaller shelled whelk and will often get smashed by scallop vessels working the same ground.

One response highlighted that potters (that also target crab) have already faced financial impact from the relatively recent increase in minimum conservation reference sizes for both female brown crab and also spider crab. A maximum of 25 pots to 30 pots on a string was stated in one response which also suggested that all whelk gear should be marked with flags (outside ends) and bouys (inside end). The fisher interviewed by an officer proposed uniform setting of gear in a North, South, East and West arrangement.

The mixed nature of comments received from the active fishers more relevant to the permit condition proposals are bullet pointed below:

- **Introduce the 65mm whelk size immediately**
- **Introduce a riddle size and escape holes via permit conditions as soon as possible**
- **Increase whelk by 5mm and another 5mm in two years**
- **Only increase whelk to 60mm over a 3-year period (5mm per year)**

And in regard to other measures (guidance) such as riddle size and escape holes:

- **Introduce a 21mm riddle size**
- **All whelk pots to have 18mm escape holes**
- **Introduce permit conditions instead of guidance**

The response from DWT is as follows:

(a) Devon Wildlife Trust welcomes the increased minimum size of whelk to 65mm and would prefer option 1 for transition period. For clarity, wording for paragraph 4.3 should be:

‘A permit holder or named representative is only authorised to remove from a fishery within the District, whelk no smaller than the size specified for the relevant dates in Table 1 below as measured along the length of the shell.’

The table should be altered to make clear start and end dates for each size and also clearly state this is minimum size for the period

(b) Devon Wildlife Trust feels that where evidence shows a clear correlation between height and width of a shell such that a riddle could be used to ensure separation of undersized catch (i.e. below 65mm height), this would be a sensible tool to be implemented and managed through the byelaw. If such evidence supports this, a riddle size should be introduced as soon as reasonably possible within the byelaw.

If such a correlation is demonstrated, Devon Wildlife Trust welcomes escape gaps in pots also being implemented as part of the byelaw, as this will both reduce time for fishers and reduce risk of damage/disturbance to smaller whelks which can return to their habitats without being hauled. Once again, this should be introduced as soon as reasonably possible within the byelaw.

Officer Comments

Following legal advice, the relevant permit condition proposals (for whelk) that were prepared and considered to be suitable for use in the consultation were as follows:

- 1.1 *A permit holder or named representative is not authorised to fish under this permit if the permit holder or named representative has retained on board or has in their possession any catch that does not comply with any of the catch restrictions set out in paragraphs 1.2 to 1.5.4 inclusive.*
- 1.3 *A permit holder or named representative is not authorised under this permit to remove from a fishery within the District:*
- d) *a whelk less than 65mm measured along the length of the shell, except where paragraph 4.3 applies;*

This permit condition is linked to the time restriction 4.3 shown below:

- 4.3 *A permit holder or named representative is only authorised to remove from a fishery within the District, whelk of a size specified in Table 1 below as measured along the length of the shell.*

Option 1

Date	Size
May 2018	55mm
May 2020	65mm

Option 2

Date	Size
May 2018	50mm
May 2019	55mm
May 2020	60mm
May 2021	65mm

The consultation document explained that the intention is to increase the minimum size of whelk to 65mm. Paragraph 1.3 indicates this and specifies a size of 65mm. The fact that this permit condition is linked to paragraph 4.3, enables this increase to be phased in over time. For consultation purposes, the tables shown provided two options:

- *5mm increase per year over a longer period or;*
- *10mm increase per two-year period.*

Stakeholders were encouraged to respond and indicate which option (if any) they would prefer to be introduced.

The 21mm riddle size (as suggested by a stakeholder) would not be large enough to allow whelks any larger than 45mm to pass through the riddle and then be returned to the sea. There are still concerns about the effectiveness of introducing escape holes in whelk pots. It is possible that small whelk may use the holes to enter pots and therefore reducing the effectiveness of this potential measure if it was introduced.

If a decision is taken to increase the minimum conservation reference size of whelk, there is scope to apply the restriction later in the year rather than the date in May that has been specified in the consultation. This may provide fishers with more time to adjust to new restrictions.

Lundy Island No Take Zone

Aims and Requirements:

- To include the existing legacy measure in the potting permit conditions
- To simplify legislation by placing more of the restrictions in one place (the permit)

Proposed Permit Conditions:

- Wording added in the spatial restrictions (section 3) to clarify that the removal of any sea fisheries resources from this area is prohibited
- A new Annex (4) created to define the No Take Zone at Lundy Island

Response from Stakeholders

Two responses referred to this item. One, submitted by a fisher, simply remarked – **“waste of time and has not been managed properly from day one”**. The other response was from Devon Wildlife Trust and supported the proposal providing the same or greater wildlife protection is afforded.

Category Two Restrictions

Aims and Requirements:

- To use the re-drafting process to improve and clarify wording in the permit conditions
- To clarify that Category Two Permit holders are not authorised to haul pots that are not their own

Proposed Permit conditions:

- Revised wording added in the gear restrictions (section 2)

Response from Stakeholders

A couple of responses remarked that pots are not being marked correctly and enforcement action could be improved. Another response applauded the efforts being made to clarify the restrictions but did remark that he has had approximately 15 pots cut away by other fishermen. Another response commented that a restriction of five prawn pots is too severe but did not focus on the consultation item. Devon Wildlife Trust welcomed the new wording of the Category Two restrictions and also the clarity regarding the restriction on hauling of another fishers' gear.

4. Further Information & Hyperlinks

Hyperlinks

Potting Permit Byelaw – A Three-Year Review of the Permit Conditions (2nd edition – 15th January 2018)

The extract document focussed on the consultation items and proposed permit conditions

Notification letter/email message

Otter mortalities within fixed traps in Devon

National Biodiversity Network (Part of the Natural England Response to Otter Mortality)

Other

D&S IFCA communication strategy (available upon request)

End of Supplement