



# Members' Familiarisation 2024

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Module 01

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## Byelaws & Permit Conditions

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April 2024

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0.1	16 <sup>th</sup> April 2024	1 <sup>st</sup> draft – to accompany other presentational material
1.0	25 <sup>th</sup> April 2024	Finalised ready to circulate to Members

## Introduction

The Annual Plan for 2024/2025 sets out that officers will host multiple virtual training and familiarisation sessions for Members. The sessions will set out the role of Members in the decision making and overall governance of the Authority. The intention was to include an overview of current management - byelaws and how permitting byelaws function as a legal framework for the introduction of management measures (permit conditions). In addition, the sessions were envisaged to explore how pre-consultation and formal consultation can be used to inform decision making relating to changes to management measures.

A combination of PowerPoint presentations and development of Members' Familiarisation Booklet/s can help to achieve the objectives and provide Members with longer term reference/re-fresher information.

### Key Points and Aims of the Familiarisation Sessions

- The familiarisation sessions will be virtual as this provides more flexibility;
- The familiarisation sessions will focus on the set up for D&S IFCA and how we approach our work – different IFCA's have different approaches and set ups;
- The familiarisation sessions are not formal – they are not being recorded, and the presentations you receive and this booklet that will expand over time are not being published – they are for Members only;
- All questions are good questions – officers' welcome questions and will do their best to answer at the sessions or after the sessions with follow up correspondence;
- A broader knowledge will help with discussion and decision making relating to many aspects of our work;
- A broader knowledge may reduce the amount of background information presented in some of the officers' papers you will receive;

### Your Information and Materials

Officers will listen to feedback and can adapt presentations and materials provided to Members.

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## Module 1 – Byelaws and Permit Conditions

What is covered in this module?

- Duties and our management of fishing activity
- How we are set up for our byelaw work
- The different types of byelaws that we have
- How byelaws & permit conditions function
- The differences between byelaws and permit conditions
- How a byelaw is made, re-made, and how we review permit conditions
- How byelaw work interlinks with communication – and different types of consultation
- Where to find information

## 1.1 Duties and our Management of Fishing Activity

- D&S IFCA must manage the exploitation of sea fisheries resources in its District;
- There are different drivers for our management – for example, MaCAA 2009; Fisheries Act 2020; Fisheries Management Plans; Environment Act 2021; Environmental Targets Regulations 2023;
- Our management of fishing activity can include legislation (byelaws);
- Our management measures can only apply in our own District;
- Our legislation must relate to fishing activity – we can't legislate for other things such as health & safety;
- Our management measures focus on localised issues, and work in combination with national legislation;
- Our legislation (byelaws or permit conditions) cannot be less restrictive than superior/national legislation – it can't undermine superior legislation;
- Where appropriate, and possible, attempts are made to harmonise management with neighbouring IFCA's.

### Some observations & key points:

Management measures can include voluntary codes of conduct; however, these often fail in the longer term – a recent example of this is the Emsstrom Angling Zone. The B&PSC recognised that the voluntary code was failing to achieve its aims as nets were being placed on the wreck. The review of the Netting Permit Conditions in 2023/24 resulted in changes to management measures for netting activity. This included the introduction of a prohibition of all commercial and recreational netting activity in the area of the Emsstrom wreck.

Regarding byelaws, the management measures, and approaches to regulation, harmonising with other IFCA's can be challenging as there can be different needs and different approaches taken.

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## 1.2 D&S IFCA's set up for Byelaw Work

### Byelaw & Permitting Sub-Committee

D&S IFCA differs from some other IFCA's. The Authority has created a Byelaw & Permitting Sub-Committee (B&PSC) with its own Terms of Reference. The B&PSC has delegated powers from the Authority for byelaw related decision making. The Terms of Reference for the B&PSC do get reviewed each year, and sometimes alter. The current Terms of Reference can be viewed [here](#).

### Summary of B&PSC Terms of Reference

- All General members are invited to attend, and membership may include representatives of the funding Authorities;
- Six Members must be present at the B&PSC meetings for it to be quorate;
- There are typically four B&PSC meetings each financial year (depends on workload).

Members of the B&PSC bring their knowledge and expertise to the decision making. The work undertaken by the B&PSC is reported to the full Authority. On rare occasions the work undertaken by the B&PSC can become decision making for the full Authority. For example, is a key decision is needed, and the first opportunity for that decision is an Authority meeting, rather than a B&PSC meeting. All Officers' papers and the minutes from B&PC meetings are

published on the website. Officers' papers can set out issues or choices to be considered by the B&PSC.

Some of the B&PSC work involves decision making leading to legal drafting; however, the Members of the B&PSC do not need to be experts in law or need to have a broad knowledge of underlying considerations for legal drafting. Legal drafting is handled by another group acting on behalf of the B&PSC called the Byelaw Technical Working Group.

### **Byelaw Technical Working Group**

The B&PSC recognised the value in setting up a sub-group – the Byelaw Technical Working Group (BTWG). This working group is informal but does have its own Terms of Reference that can be viewed [here](#).

### **Summary of BTWG Terms of Reference**

- Membership includes D&S IFCA officers, any Member of the B&PSC and D&S IFCA's prosecuting solicitor (team);
- The role of the BTWG is to prepare legal documentation that is relevant to support the functions of the B&PSC;
- The BTWG has no delegated decision-making powers;
- The work of the BTWG is reported to the B&PSC.

Having the BTWG saves time as B&PSC are not needed for drafting of byelaws or permit conditions. Instead, the B&PSC meetings can focus on what is potentially needed to be placed into a byelaw or permit conditions.

### **Some observations & key points:**

- Members of the B&PSC bring their knowledge and expertise to the decision making;
- Members of the B&PSC do not need to be experts in law;
- Members of the B&PSC do not need to have a broad knowledge of underlying considerations for legal drafting;
- Issues associated with drafting or legality will be highlighted by the BTWG;
- Officers' papers can set out issues or choices to be considered by the B&PSC.

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## **1.3 Byelaws – Old and New**

D&S IFCA inherited byelaws from both Devon Sea Fisheries and the Environment Agency. These are often called "legacy" byelaws. D&S IFCA has a Byelaw Booklet that sets out the inherited byelaws and the new byelaws that have been made by D&S IFCA. The D&S IFCA website has a display area – a drop down menu for ***Enforcement and Legislation***. One of the choices from this menu is to view the D&S IFCA Byelaw Booklet. It can also be viewed [here](#).

There are 31 separate inherited Byelaws in place with some applicable to Devon County boundaries, and others relating to specific areas such as the Taw and Torridge or the River Yeo.

### **Inherited Byelaws (DSFC)**

- Shellfish – Scallop (7)
- Shellfish – Re-deposit of (8)

- Temporary Closure of Shellfish Beds (9)
- Winkles (10)
- Crab – *Cancer pagurus* (11)
- Prohibition of Spear Fishing in Lundy Marine Conservation Zone (MCZ) (13)
- Fixed Engines (17)
- Size of Vessels (18)
- Jurisdiction (20)
- Parts of Edible Crab (*Cancer pagurus*) (21)
- Harvesting of Shore Crab (24)
- Protection of V-Notched Lobsters (26)
- Protection of Undersize and Berried Lobsters (27)
- Lundy "No Take Zone" (28)

#### **Inherited Byelaws (EA)**

- Application (1)
- Interpretation (2)
- Sea fishing in areas inland of Devon Sea Fisheries Committee District (8)
- Sea fishing in River Severn (10)

#### **Inherited Byelaws (EA – Taw and Torridge)**

- Application (1)
- Revocation of existing Byelaws (2)
- Trawling and Trammelling (3)
- Stake or Stop Nets (4)
- Mesh and Nets (5)
- Reducing Mesh of Nets (6)
- Shellfish – Minimum Sizes (7)
- Lobster, Crawfish and Crabs (8)
- Shellfish – Redeposit of (9)
- Regulation of Shellfish Beds (10)
- Deposit of Refuse (11)

#### **Inherited Byelaws (EA – River Yeo)**

- Prevent Sea Fishing in the Tidal River Yeo (Barnstable) (1)

The D&S IFCA Byelaw Booklet also sets out new byelaws made by D&S IFCA. These include:

- Mobile Fishing Permit Byelaw
- Potting Permit Byelaw
- Diving Permit Byelaw
- Netting Permit Byelaw
- Exemptions Byelaw

#### **Some observations and key points:**

Although many of the legacy byelaws are dated, in terms of their construction and language, the legacy byelaws serve a purpose. There are reasons why we have not revoked some of

them and the legacy byelaws can and do work in combination with newer byelaws for our management of fishing activity.

When the B&PSC considers the development and making of new byelaws, revocation of older byelaws can be considered. The legacy byelaws are different to permit-based byelaws in how they function – for this Members familiarisation session, it is good to think of these as “**stand-alone**” byelaws.

## 1.4 Stand-Alone Byelaws

The stand-alone byelaws function in a particular way. These byelaws focus on specific issues, topics, species etc – but they are fairly limited in their scope. The stand-alone byelaws typically apply to “any person”, regardless of a specific fishing activity being undertaken. Because of this they are often easier to develop than permit-based byelaws, but you often need more of them to achieve the desired result.

Stand-alone byelaws are rigid in their approach to fisheries management. The management measures set out a byelaw cannot change unless the byelaw is revoked and remade. The stand-alone byelaws include the management measures (restrictions) within the byelaw itself. There are no permits that extend from the stand-alone byelaws. Many of the stand-alone byelaws had no provision to enable D&S IFCA to issue exemptions, which is covered in the next section (1.5).

### Example of a stand-alone byelaw:

#### Byelaw 24 – Harvesting of Shore Crab

For the purpose of conservation of marine resources, the taking of shore crab (*Carcinus maenas*) is prohibited in the following areas:

- a) In the Exe estuary north of a line joining Starcross Yacht Club Lat 50 38.8N Long 003 27.00W and Parsonage Stile Lat 50 38.99N Long 003 25.90W.
- b) In the vicinity of Dawlish Warren, south of a line joining Lat 50 36.65N Long 003 26.62W and Lat 50 36.62N Long 003 25.74W.

### Some observations & key points:

This inherited Harvesting of Shore Crab Byelaw is short and focussed on one species and one area (the Exe Estuary). Byelaw (24) serves a purpose. The byelaw applies to any person. D&S IFCA does not have a byelaw (for example a Hand Working Permit Byelaw) to prohibit the hand collection of shore crab in the Exe or anywhere else. Many believe that D&S IFCA has prohibited the use of crab tiles in an area of the Exe, but this is not so. D&S IFCA has just retained an inherited byelaw that prohibits a species from being removed that is often targeted with crab tiles.

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## 1.5 Exemptions/Authorisations

The Exemptions Byelaw 2019 was made by the Authority on 13<sup>th</sup> June 2019. This is the point at which the Byelaw (in an advanced draft form) can be subjected to formal consultation; however, it is only when the Byelaw is confirmed by Defra, that it comes into force. The byelaw making process can last for many months or even years dependent on differing factors and complications encountered. The final Exemptions Byelaw 2019 was subjected to a prolonged quality assurance phase and was changed significantly before it was confirmed by Defra on 14<sup>th</sup> April 2020.



The introduction of the Exemptions Byelaw 2019 enables the Authority to consider an application relating to scientific work or for stocking or breeding purposes where a fishing activity is undertaken that would otherwise be in contravention of one or more of the byelaws, or one or more of the permit conditions that are associated with the respective permit byelaw. Exemptions are often referred to as dispensations, and authorisations.

The development of the Exemptions Byelaw 2019 followed on from the implementation of an Emergency Application Byelaw in 2018. The Emergency Application Byelaw provided a temporary replacement to the legacy Application Byelaw (a stand-alone byelaw) introduced by Devon Sea Fisheries Committee (DSFC), which was discovered to have significant, but unforeseen, weakness. The legacy byelaw did not enable Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) to provide authorisations regarding new byelaws, or permit byelaws made by the Authority.

The Emergency Application Byelaw, that came into force on 9th May 2018, had to be replaced within a defined time frame (1 year). Development of a replacement took longer than expected and a six-month extension for the Emergency Byelaw was sought and approved by the Secretary of State to enable more time to complete the process of introducing its replacement.

During the confirmation phase, legal advice was received which had a bearing on the structure and content of the Exemptions Byelaw 2019 as advertised during formal consultation in 2019. Amendments were needed to satisfy Defra, and this resulted in changes to the Byelaw (as compared to the version advertised during formal consultation) and resulted in a further delay. From November 2019 until April 2020, D&S IFCA was limited in the number of authorisations that it could issue via the original legacy Application Byelaw made by DSFC.

D&S IFCA adhered to the “byelaw making” advice published by Defra during the making of the Exemptions Byelaw 2019 and, not without reservation, accepted the legal advice provided by the Marine Management Organisation and Defra during the confirmation phase. The Exemptions Byelaw 2019, that is now in place, differs considerably from the version advertised during formal consultation and has reduced scope regarding the types of authorisations that can be considered by the Authority.

- The Exemptions Byelaw 2019 is limited to stocking, breeding, or scientific purposes.
- The final report on how the Exemptions Byelaw 2019 was developed can be viewed [here](#).
- D&S IFCA has a website page setting out exemptions that have been issued.
- The website page also provides a link to the application form that must be completed for an exemption/authorisation to be considered.

### **Moving forward:**

The advice from Defra is that any new byelaw should have its own exemption clause and exemption clauses are now being included in new byelaws that are developed. An exemptions clause has been inserted in the new stand-alone Size of Fishing Vessels Byelaw 2022 – now waiting to be signed by the Secretary of State.

Notwithstanding previous advice from Defra, the B&PSC could see the merits in expanding the scope of exemptions. The exemption clause in the Size of Fishing Vessels Byelaw 2022 has wider scope - it includes “maintenance”. The same approach has been taken with the Mobile Fishing Permit Byelaw 2022 – now with the MMO for quality assurance.



## 1.6 D&S IFCA – Byelaw Review Strategy

The Authority agreed to follow an activity-based model for its byelaw review. This became one of the byelaw principles for the B&PSC. Following this approach is interlinked with the development of permit-based byelaws which have advantages over traditional types of byelaws.

### Some observations & key points:

- The advantages of permit-based byelaws outweigh the disadvantages;
- Permit-based byelaws are more complicated to develop, but give us far more flexibility;
- The permit-based byelaws and associated permit conditions, developed so far, have enabled revocation of 12 inherited byelaws;
- The permit conditions and how they have evolved have removed a need for us to make multiple stand-alone types of byelaws;
- The permits enable us to react to changes in circumstances – for example to recognise new MPA areas that need spatial management – we may not have to use “Emergency” byelaws that cater for unforeseen events;
- The use of permit conditions provides greater flexibility as they can be changed without changing the byelaw;
- The use of permits gives D&S IFCA more independence – we don’t need Defra approval for changes to permit conditions;
- The use of permit-based byelaws in an inclusive type of management – stakeholders can help to inform the management of fishing activity at shorter intervals than would be the case waiting for a byelaw with fixed provisions (management measures) to be replaced;
- The permit conditions must be reviewed at shorter intervals than the byelaw itself;
- Reviews are fully documented and published – we have an evidence trail of considerations, information and evidence relating to decision making and changes to our management.

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## 1.7 How Permit Byelaws Function

There are two separate parts:

1. The byelaw itself which is the framework for the issuing of permits and what they can contain.
2. The permit conditions – the management measures for the fishing activity

Because the byelaw is the framework, it is intentionally as broad as possible. Broad wording in the byelaw enables the permit conditions to have greater flexibility in what they can contain - what can be managed and how it can be managed.

We have learned from experience and as we re-make permit-based byelaws we are including new things or making changes to earlier permit-based byelaws - addressing relative weakness.

## **The Byelaw – (what it does or can contain)**

- Sets out the activity being managed;
- Interpretations/definitions;
- Exemptions;
- Differing types of permits available & how to get one;
- Criteria to gain a permit – who qualifies per type;
- The byelaw sets out that a fee will be charged for a permit;
- A provision to enable permit conditions to include monitoring technology (specified equipment);
- Provisions to enable us to collect relevant information/data;
- A review process (steps to take) for any changes to permit conditions and the fees for a permit;
- Offences, revocation, commencement and potentially schedules.

Schedules can be included in a byelaw setting out restrictions. Content within a schedule cannot be amended during the lifetime of the byelaw. This is not such an issue if there is no reasonable expectation that the content will need to change. The proposed Mobile Fishing Permit Byelaw 2022, now with the MMO for quality assurance includes a schedule for sand eel trawling.

## **The Permit Conditions**

- There can be different categories of permit conditions;
- Permit categories can separate types of activity or types of user (fishermen);
- The permit conditions also include interpretations applicable to the content of the permits – more focussed interpretations;
- The permit conditions set out management measures for the fishermen - for example catch requirements, gear restrictions, spatial conditions and times when certain restrictions apply;
- The permit conditions are where requirements such as monitoring of vessels are set out, with the equipment defined;
- The permits are accompanied with annexes – charts that show closed and open areas for different activity.

### **Some observations & key points:**

The Mobile fishing Permit Conditions have two categories (1) and (2). These categories of permit separate the activity into “at sea” or “estuary” areas. Other permit-based byelaws also have separate categories of permits; however, they separate fishermen (sectors) – commercial fishermen and recreational fishermen, rather than permits for different areas.

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## **1.8 D&S IFCA’s Permit Based Byelaws**

- Mobile Fishing Permit Byelaw (introduced 2014)
- Potting Permit Byelaw (introduced 2015)
- Diving Permit Byelaw (introduced 2015)
- Netting Permit Byelaw (introduced 2018)

These four permit-based byelaws have enabled D&S IFCA to introduce permits to regulate each of the activities. The Diving Permit Byelaw is slightly different as its scope limits it to diving for scallop, crab and lobster (not just diving and not spearfishing for finfish whilst diving).

The management measures relating to these four types of fishing activity have enabled revocation of 12 inherited byelaws – as the relevant management measures in the revoked legacy byelaws have been absorbed, where appropriate, into the relevant permit conditions.

Legacy (stand-alone) byelaws revoked include the following:

1. Scallop Closed Season
2. Scallops – Method of Fishing
3. Prohibition of Trawling in Start Bay
4. Restriction of Trawling in Estuaries
5. Definition of Trawling
6. Dredging in Salcombe Estuary
7. Dredging in Dart
8. Potting Restriction Lundy MCZ
9. Pots used for Crustacea
10. Prohibition of Netting (Exe - 1988)
11. Trawling & Netting – Lundy MCZ
12. River Exe Prohibition of Netting (2009)

Permit conditions that extend from three of the four permit-based byelaws have been amended more than once. Without the ability to amend permit conditions, we would potentially have needed to introduce multiple stand-alone byelaws. Introducing multiple stand-alone byelaws would have been expensive and very time consuming. Not all fishing activity is regulated using permit-based byelaws. The methods that stand out are hook and line (which includes angling) and a range of hand collection activities, described to the B&PSC as Hand Working. There is a longer term aim to develop two additional permit-based byelaws:

- Hand Working Permit Byelaw
- Hook and Line Permit Byelaw

#### **Some observations & key points:**

Developing these additional permit-based byelaws would enable the Authority to revoke more inherited/legacy byelaws, but not all of them. Stand-alone byelaws can play an important part in our management of fishing activity. The Size of Fishing Vessels Byelaw 2022 is an example of a stand-alone byelaw that does what it needs to – without the need to use permit conditions.

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## **1.9 Permit Byelaws & Permit Conditions – A Closer Look**

Section 1.9 is a closer examination of two permit-based byelaws and associated permit conditions.

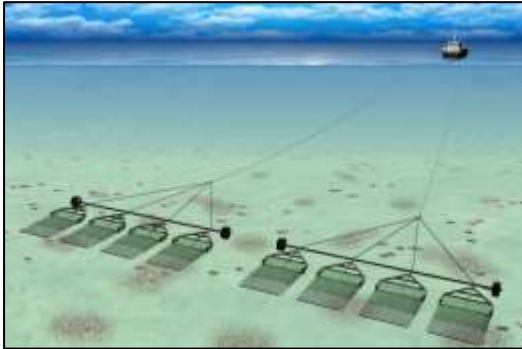
### **The Mobile Fishing Permit Byelaw (2014)**

The Byelaw defines the activity and provides the scope to manage the activity. The interpretation used in the Byelaw to define the activity is as follows:

*“Mobile fishing gear” means a dredge, trawl or similar device, that is designed to be towed or pushed to take any sea fisheries resources.*

The Byelaw (prohibitions) set out that no person shall operate any vessel using mobile fishing gear without a permit – with an exception relating to sand eel trawling (small vessels less than 7 metres in overall length, using a specified mesh size).

Methods covered by the definition of mobile fishing in the Byelaw are as follows:



- **Trawling**
- **Scallop dredging (shown left)**
- **Ring Netting**
- **Mussel Dredging**

The provisions in the Byelaw are fixed – they cannot change during the lifetime of the Byelaw. As the Byelaw cannot change, the scope and broadness of wording in the Byelaw is beneficial to give us greater flexibility in the Mobile Fishing Permit Conditions.

- The Byelaw enables permits to be issued – Category One & Category Two;
- Both categories of permit are applicable to commercial fishing activity;
- The application criteria - Permits are issued to the owner of a registered vessel that has a fishing licence;
- Owners can have “named representative/s” (skipper/s) to use a vessel under the permit;
- Category One Permits are issued to manage “at sea” mobile fishing activity;
- Category Two Permits are issued to manage limited “estuary” mobile fishing activity;
- Both Categories of permit are accompanied with annexes (charts);
- The Byelaw sets out that a £20 fee will be charged for a permit (valid for 2 years);
- The Byelaw includes a provision to enable permit conditions to include monitoring technology (presently limited in the Byelaw to Inshore Vessel Monitoring Systems - IVMS);
- The Byelaw includes a review process (steps to take) for any changes to permit conditions;
- Limited sand eel trawling can be undertaken without a permit (as per a provision in the Byelaw).

### Accurate information:

The Mobile Fishing Permit Byelaw (introduced in 2014) can be viewed [here](#).

### Some observations:

The new Mobile Fishing Permit Byelaw 2022 (currently with the MMO for quality assurance) has updated interpretations – for example “mobile fishing gear” means a dredge, **elevator harvester**, trawl, **ring net**, or similar device, that is designed to be towed or pushed to take any sea fisheries resources.

The use of the interpretations shapes the Byelaw and the Permit Conditions that extend from the Mobile Fishing Permit Byelaw. For mobile fishing, the categories of permit separate areas, not people. The Byelaw defines the areas – it sets out closing lines for estuaries listed in the Byelaw.

The Byelaw sets out the types of permits that are available, based on the separation of areas – Category One (at sea) or Category Two (estuary).

Regarding the criteria to gain a permit – having a vessel that is both registered and has a fishing licence is defined as a “**relevant fishing vessel**” and this term is used a lot in our byelaw making. Therefore, a recreational fisher would not meet the requirement to gain a mobile fishing permit of either category – one or two.

The phrasing used in paragraphs within the Permit Conditions to set out the management measures has a relationship to the interpretations in the Byelaw and the interpretations present in the Permit Conditions.

## The Mobile Fishing Permit Byelaw Permit Conditions (1)

### Category One (At Sea) Permit Conditions

- More focussed interpretations that relate to the management measures;
- Catch Restrictions – MCRS for species set out in permits;
- No removal of specified species – for example berried (egg carrying) lobster or edible crab;
- Gear restrictions relating to the number, size, and construction of scallop dredges;
- Gear restrictions relating to mussel dredging – number, size, and blade size;
- Conditions relating to vessel monitoring – it must be fitted, fully functioning;
- Steps to take for a permit holder if the vessel monitoring fails to work correctly;
- Defined areas that include Marine Protected Areas where vessels cannot operate (set out in Annexes);
- Defined areas where access is limited (set out in annexes);
- Time restrictions such as a closed period for removal of scallop or limited access per date;
- A twelve-hour (overnight) prohibition on using scallop dredges;

Category One Permits currently have 9 annexes (39 pages) including charts to show restricted areas and define locations (harbours) where vessel monitoring devices can be repaired when not functioning.

### Annexes - Category One Mobile Fishing Permit

The Annexes are often separated into two parts – in the first instance a chart to show (define) the area in question – it will demonstrate “no access” as the default position. A table of coordinates are included with each chart. Some Annexes have a second element – to show

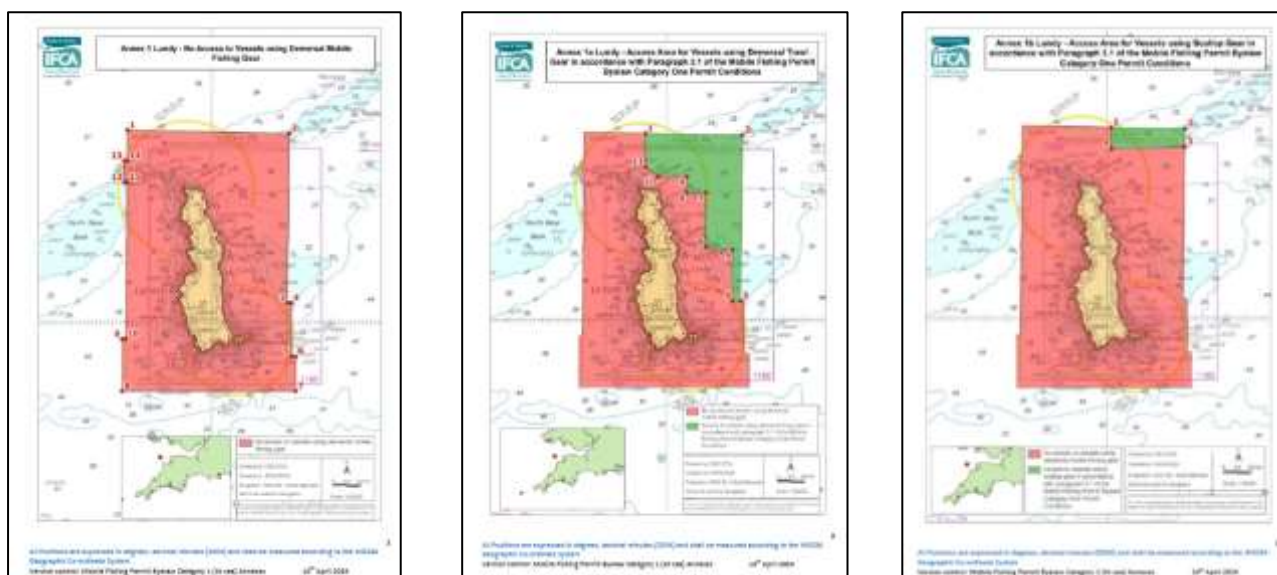
where access is authorised subject to conditions. This corresponds to how the permit conditions are written.

### **Annexes – Access and no Access**

Annex 1 - (see below left) - Lundy – No Access to Vessels using Demersal Mobile Fishing Gear

Annex 1a – (see below middle) - Lundy - Access for Vessels using Demersal Trawl Gear in accordance with Paragraph 3.1 of the Permit Conditions

Annex 1b (see below right) defines another “green” area which is access for vessels using scallop gear. The access area for the use of scallop gear is smaller than the access area for demersal trawl gear.



### **Some observations & key points - technology:**

The Annexes interlink with the use of vessel monitoring equipment. If a vessel is within one of the areas (Annexes 1 to 8) their iVMS unit (a remotely accessed electronic monitoring device) must be fully functioning and transmitting required information at three-minute intervals.

Annex (9) sets out areas where the IVMS does not have to transmit. These are harbour type of areas where the vessel monitoring equipment can be repaired.

The use of IVMS as a permit condition has been made possible because the Byelaw included a provision for the fitting of remotely accessed electronic reporting devices. The permit conditions cannot include the use of cameras (REM) as the Byelaw did not include a provision for its use. This is being addressed in the new Mobile fishing Permit byelaw 2022 as the scope of the Byelaw has been widened to include “specified equipment”, which is a broader term for the use of monitoring equipment.

### **Accurate information:**

The Category One Permit Conditions set out in this booklet have been summarised and simplified for use in this module. The Category One Permit Conditions and Annexes can be viewed in full on the D&S IFCA website or by using the links below:

- [The Mobile Fishing Permit Conditions – Category One \(at sea\)](#)
- [Category One Annexes \(1 to 9\)](#)



## The Mobile Fishing Permit Byelaw Permit Conditions (2)

### Category Two (Estuary) Permit Conditions

- A relatively simple permit, with less content;
- Current permits authorise activity in the Exe, Dart, Teign, and Salcombe Estuary;
- Cat 2 permits are for activity relating to mussel and scallop;
- Cat 2 permits set out vessel length restrictions;
- Permits set out a mix of conditions (gear/time, spatial access);
- Permits can require notification of fishing and submission of catch data;
- There is no requirement under a Cat 2 permit for vessel monitoring;
- Annexes (charts) are used to show access areas and prohibited areas.

Category Two Permits currently have 3 annexes (5 pages) including charts to show restricted areas.

#### Accurate information:

The Category Two Permit Conditions set out in this booklet have been summarised and simplified for use in this module. The Category Two Permit Conditions and Annexes can be viewed in full on the D&S IFCA website or by using the links below:

- [The Mobile Fishing Permit Conditions – Category Two \(estuary\)](#)
- [Category Two Annexes \(1 to 3\)](#)

#### Some observations & key points:

MCRS means Minimum Conservation Reference Sizes – for us this relates to permit conditions for “removal from a fishery”, not a “landing size”. Far more mobile fishing activity is undertaken at sea, rather than estuaries. Mobile fishing in estuaries is small scale activity – and is not authorised in every estuary.

The re-made Mobile Fishing Permit Byelaw 2022 will be accompanied with new permit conditions and annexes – Category One could extend to 14 annexes. Category Two annexes will reduce as activity has become more restricted – there will be no authorised mobile fishing activity in the Teign or the Dart.

Both categories of permits for mobile fishing relate to commercial activity – not recreational activity. The only form of recreational mobile fishing that can be undertaken is sand eel trawling. This is because the Byelaw enables this activity (with restrictions) to be undertaken without the requirement of having a permit.

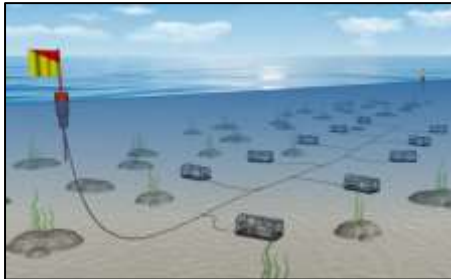
Although the permits do set out a lot of information about what is or is not authorised for their activity, the permits don't cover everything. Other legislation, other than D&S IFCA's management measures will apply. Fishermen have a responsibility to be aware of other legislation that applies to their activity.



## The Potting Permit Byelaw (2015)

The Byelaw defines the activity and provides the scope to manage the activity. The interpretation used in the Byelaw to define the activity is as follows:

*“Pot” means any folding or rigid cage device or structure with one or more openings or entrances capable of capturing any sea fisheries resources.*



### Types of Pot:

- Crab & Lobster Pots
- Whelk Pots
- Prawn Pots
- Cuttle Pots

The Byelaw prohibits any person to use pots otherwise in accordance with a permit. The provisions in the Byelaw are fixed – they cannot change during the lifetime of the Byelaw. As the Byelaw cannot change, the scope and broadness of wording in the Byelaw is beneficial to give us greater flexibility in the Potting Permit Conditions.

- The Byelaw prohibits any person to use pots otherwise in accordance with a permit;
- The Byelaw enables permits to be issued – Category One & Category Two;
- Categories of permit separate different users (commercial and recreational fishermen);
- The criteria needed to get a Category One Permit is having a registered vessel and a fishing licence;
- A Category Two Permit (recreational fishermen) can be issued to a person with or without a vessel;
- Permit holders using a vessel may nominate named representatives (skippers);
- D&S IFCA has introduced policy and guidance relating to named representatives for Category Two Permits;
- The Byelaw gives us the scope to require the fitting of tags to pots;
- The Byelaw sets out that a £20 fee will be charged for a permit (valid for 2 years);
- The Byelaw includes a provision to enable permit conditions to include monitoring technology (presently limited to IVMS) – **but this has not been implemented in potting permits;**
- The Byelaw includes a review process (steps to take) for any changes to permit conditions.

### Accurate information:

The Potting Permit Byelaw (introduced in 2015) can be viewed [here](#).

### Some observations:

The use of the interpretations shapes the Byelaw and the Permit Conditions that extend from the Potting Permit Byelaw. For potting, the categories of permit separate people (sectors), not areas.

The Byelaw sets out the types of permits that are available, based on the criteria needed to gain a permit - Category One (commercial) or Category Two (recreational).

To qualify for a Category One (commercial) Potting Permit, the applicant to become a permit holder must have a vessel that is both registered and has a fishing licence. This is defined as a “**relevant fishing vessel**”. Therefore, a recreational fisher would not meet the requirement to gain a Category One (commercial) Potting Permit.

The phrasing used in paragraphs within the Permit Conditions to set out the management measures has a relationship to the interpretations in the Byelaw and the interpretations present in the Permit Conditions.

Although the Potting Permit Byelaw caters for the introduction of IVMS as a permit condition, this has not taken place. There is an expectation that for the management of potting vessels to rely on national legislative requirements for vessel monitoring.

### The Potting Permit Byelaw Permit Conditions (1)

- More focussed interpretations that relate to the management measures;
- Catch Restrictions – MCRS for species set out in permits;
- No removal of specified species – for example berried (egg carrying) lobster or edible crab;
- Gear restrictions relating to use of escape gaps in pots;
- Gear restrictions relating to size of entrances for pots placed in estuaries (protection for otters);
- Gear marking restrictions – buffs clearly marked;
- Restrictions on the use of bait;
- Restrictions relating to potting for live wrasse;
- Spatial restrictions – applicable to estuaries, Lundy Island and MCZs (spiny lobster);
- Time restrictions relating to the fitting of escape gaps and potting for live wrasse;
- A Schedule – Guidance on the Measurement of a Marine Organism.

Category One and Category Two Potting Permits currently have 4 annexes – The content is relevant to both sectors.

There are charts to define the Lundy (Knoll Pins – No removal or use of store pots), the MCZ areas (no removal of spiny lobster), estuary areas (otter protection), and Lundy Island (no take zone).

### Some observations & key points:

MCRS means Minimum Conservation Reference Sizes – for us this relates to permit conditions for “removal from a fishery”, not a “landing size”. Far more potting activity is undertaken at sea, rather than estuaries. There are less Category One (commercial) Potting Permits issued than Category Two (recreational) Potting Permits. The Permit Conditions are set out with many of the restrictions applicable to both user groups. Where there are differences, this is introduced as “additional restrictions” for either user group.

Pots with an entrance of 85mm or less are not authorised for use in estuaries, unless they have a rigid ring fitted in a specified way and of a certain size.

Although the Category One permits do set out a lot of information about what is or is not authorised for their activity, the permits don't cover everything. Other legislation, other than D&S IFCA's management measures will apply. Fishermen have a responsibility to be aware of other legislation that applies to their activity.

## **The Potting Permit Byelaw Permit Conditions (2)**

Many conditions apply as they do to commercial fishermen issued with a Category One Permit. In the Category Two Permit there are additional or more appropriate restrictions to recognise the "hobby" activity:

- A daily bag limit for crab (3), lobster/spiny lobster (2)
- Catch is for personal consumption only;
- A maximum of 5 pots can be used by a permit holder;
- Pots must be fitted with tags;
- No store pots can be used anywhere at sea or in an estuary.

Category One and Category Two Potting Permits currently have 4 annexes – The content is relevant to both sectors.

There are charts to define the Lundy (Knoll Pins – No removal or use of store pots), the MCZ areas (no removal of spiny lobster), estuary areas (otter protection), and Lundy Island (no take zone).

## **D&S IFCA Policy & Guidance**

In addition to the Permit Conditions, the B&PSC have developed "Policy and Guidance" relating to potting. Policy relates to application for a permit, the use of multiple Category Two Permits on a single vessel and also the use of pots by a named representative (acting under the permit issued to a permit holder).

- For applications, the policy is that either an email address or a mobile telephone number must be supplied in the application process.
- Multiple Category Two Potting Permit holders may work together on a single vessel. However, they all must be present to work the pots they have (5 each), and the individual bag limit can be combined – but to the maximum of the permit holders on board the vessel.
- It is possible for a Category Two Potting Permit holder to have a "named representative". However, this is different to a "named representative" from a commercial perspective. Named representatives for Category Two Potting Permit holders should not work pots on a regular basis – they are authorised to retrieve gear, but not continue to work gear in the absence of the permit holder.

## **Accurate information:**

The Category One and Category Two Potting Permit Conditions set out in this booklet have been summarised and simplified for use in this module. The Category One and Category Two Potting Permit Conditions and Annexes can be viewed in full on the D&S IFCA website or by using the links below:

- [The Potting Permit Conditions – Category One and Category Two](#)
- [Category One and Category Two Potting Annexes \(1 to 4\)](#)

## 1.10 Making Byelaws & Reviewing Permit Conditions

There are differences between making byelaws and reviewing permit conditions. Although there are similarities with some of the required work, the process is very different.

### Byelaw Making

- We follow the Guidance from Defra (March 2011);
- The guidance is dated, but must be followed;
- Voluntary measures must be considered;
- All byelaws are based on sound evidence, decision making and appropriate consultation;
- We may undertake pre-consultation (scoping) to inform development of a byelaw and decision making;
- An Impact Assessment (template) must be created for use in formal consultation;
- A byelaw must be advertised in newspapers;
- Objections must be considered by the B&PSC;
- A final Impact Assessment must be created;
- The MMO will quality assure the Byelaw and check our process;
- The Secretary of State may sign a byelaw.

### Review of Permit Conditions

- This can be triggered in different ways – either periodically or as the need arises;
- We follow the review process set in our own permit-based byelaws;
- The process is fully documented – in our own way;
- Communication work can be conducted in our own way;
- Our process enables multiple stages of engagement as required;
- **Pre-consultation (e.g. “Have Your Say”) can be used as a scoping exercise or to gather information and evidence – to fill gaps;**
- The B&PSC will determine what potential implementation of permit conditions or changes to permit conditions are appropriate based on information and evidence;
- **Formal Consultation - We will formally consult on changes to permit conditions;**
- The B&PSC must agree to changes;
- There is no quality assurance from the MMO;
- The Secretary of State does not need to approve the changes.

### Some observations & key points:

- Byelaw making is more complicated when making a new byelaw, rather than remaking a byelaw.
- Elements of making a byelaw are out of our control – they can be delayed – this can impact our planning.
- Making byelaws is expensive and time consuming – formally advertising in newspapers is expensive, but not that effective.

### 1.11 Reviewing Permit Conditions – The Process

Firstly, a review of any of the implemented permit conditions can be triggered in different ways as set out below:

- 1. Issues identified by Officers – for example findings of Research Work or Environmental Assessments;**
- 2. Issues identified by Members;**
- 3. Issues identified by Permit Holders;**
- 4. The mandatory 3-year cycle for a review.**

Once triggered the process begins. Depending on what triggered the review the process may be different and involve pre-consultation to inform the review or it may be a case of going straight to a formal consultation phase. There are differences between pre-consultation and formal consultation. Pre-consultation is often called **“Have Your Say”** or **“A Call for Information”**. Pre-consultation acts more like a scoping exercise and can provide the B&PSC with missing information or to gauge a reaction to a potential change in approach – “testing the water”. Pre-consultation has been used for the mandatory 3-year reviews of permit conditions, with the initial phase an “open” opportunity for all stakeholders to have their say regarding current management measures. In these cases, there were no immediate suggestions for change set out in pre-consultation.

There may be strong reasons or sufficient evidence already available why permit conditions should change, less dependent on the gathering of additional information or evidence. There may be no need to seek additional evidence to justify why changes should be considered. Formal consultation represents the changes that the B&PSC consider to be appropriate and unless information or evidence is provided to the contrary, there is a greater expectation that the changes as set out will be implemented as set out in the formal consultation. There is no set process for a review of permit conditions, it is a case-by-case process and can involve different communications. An example of process is set out below.

- 1. Presentation of officer’s papers – background information and advice;**
- 2. Possibility of pre-consultation to gather information and evidence that is lacking;**
- 3. Consideration of pre-consultation findings by B&PSC;**
- 4. Consideration of the officers’ recommendations;**
- 5. Potentially conduct more pre-consultation if gaps remain;**
- 6. B&PSC to determine what is appropriate for formal consultation;**
- 7. Formal consultation;**
- 8. B&PSC to consider findings of formal consultation;**
- 9. B&PSC to determine the changes (or not) to the Permit Conditions;**
- 10. Drafting of permit conditions, potential creation, or amendments to annexes;**
- 11. Roll out of amended permit conditions/annexes;**
- 12. Documenting process throughout and at the end with a final report.**

## 1.12 Re-Making a Permit-Based Byelaw – The Process in More Detail

Byelaw re-making is easier than starting from nothing, but still requires a significant amount of work for the officers, the B&PSC and the BTWG. This section of the familiarisation module is of great importance as the Annual Plan 2024-25 sets out the intention to consider the re-making of three permit-based byelaws before the end of March 2025. It is important to recognise that “making” the byelaws is not implementing the byelaws, it is getting the proposed byelaws to a position where formal consultation can take place. All three of the permit-based byelaws being re-made have permit conditions already in place; however, these do not need to materially change as the B&PSC re-makes the byelaws. The permit conditions will have to be amended, but this is only so that the wording within them synchronises with the wording used in the re-made byelaws. Not materially amending the associated permit conditions simplifies the Impact Assessments that must be created. The process set out in the “blue” boxes are the steps that need to be taken to meet the goals in the Annual Plan 2024-25.

### 1. B&PSC Meeting

- **Officers’ papers – background information – planning, principles, strengths & weaknesses/the reasons to re-make?**
- **Consider voluntary measures (potentially ruling them out).**
- **Consider scope of the Byelaw – its broadness as a framework.**

### 2. Pre-consultation? - This may or may not be required

- **This is dependent on discussion by B&PSC interlinked with scope of a byelaw to be re-made.**
- **If it is required, this adds an extra phase of decision making as the B&PSC will factor in the findings of the pre-consultation.**

### 3. Drafting

- **Officers to work with the BTWG drafting byelaws.**

### 4. Impact Assessment

- **Officers create an Impact Assessment to accompany byelaws in formal consultation.**

### 5. B&PSC Meeting

**The B&PSC considers “making” the byelaws, triggering formal consultation.**

## Remaining Phases & Additional Tasks

Following formal consultation, officers will collate the responses. Objections will also be provided directly to the Marine Management Organisation (MMO). The B&PSC will have to consider any objections and the byelaws may have to be adapted. In addition to managing the responses, a Final Impact assessment will need to be created and a package of information will be sent to the MMO who will check the process has been conducted correctly and quality assure the byelaws. After this, the MMO may support the byelaws in the submission package to Defra. The Secretary of State will determine if the byelaws are to be confirmed.

### Some observations & key points:

The remaining phases above are largely out of our control, and it is difficult to estimate how long they will take to complete. In all three byelaws to be re-made, the intention is to add similar elements. This includes:

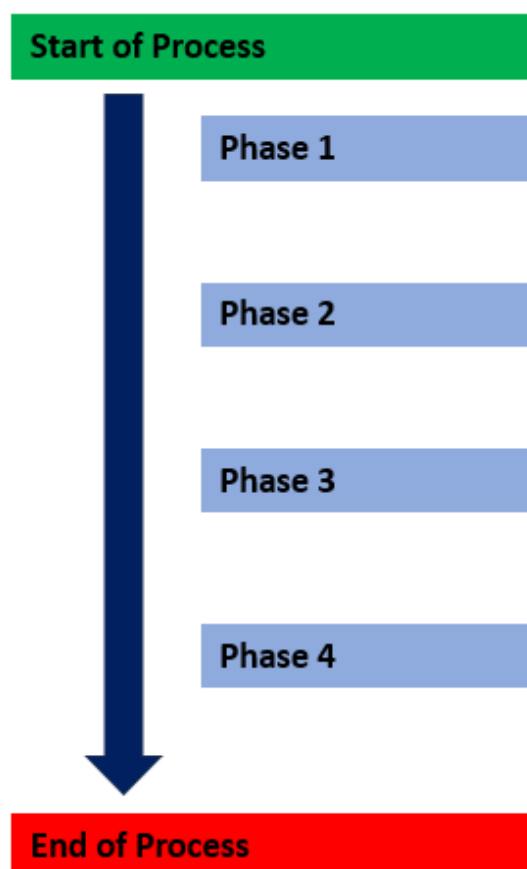
1. a change in approach for fees (with an increase to £40 per two years).
2. a revised review process for permit conditions and fees.
3. exemption clauses that include maintenance.
4. a provision to enable permit conditions to include monitoring equipment other than IVMS – such as cameras (REM)

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## 1.13 Evolving Workstreams

Byelaw making, re-making, or reviews of permit conditions takes time; they are all relatively long processes with different phases. It is not possible to predict how many phases there will be; however, each would require multiple meetings of the B&PSC to complete each task. This is not a “decision making” familiarisation module, but the need for good and consistent decision making is of importance.

The availability of officers’ papers and the minutes from each B&PSC meeting is important to help Members throughout the process. Minutes from B&PSC meetings can help Members not present during discussions to see what decisions were taken and why.



### Some observations & key points:

Decision making relating to different phases drives work forward.

Revisiting discussions or reversing decisions without new information or evidence is to be avoided.

Not fully understanding what decisions have already been taken by the B&PSC and why they were taken can impact or confuse the process.

Consideration regarding “what has changed” is important as we move forward from phase to phase.

What new information or evidence is available to justify a change is a good basis for decision making.

Consistency with decision making is important.



## 1.14 Communication and Consultation

This is not a communication familiarisation module which officers intend to create. However, communication plays an important part in the byelaw work. The current approach to communications is based on D&S IFCA's current Communication Strategy which can be read [here](#).

Communications relating to byelaw work is heavily based on electronic communications, which is more time efficient and less expensive than some other forms of communications such as "road shows", port visits, or specific meetings in person.

The current communications for byelaw work have proved to be effective. During the review of the Netting Permit Conditions, the content of the formal consultation reached a large audience – a combination of our own communications and having others build upon it.

D&S IFCA's use of permit-based byelaws has enabled a data base of permit holders to be set up. The contact information (mainly email) provided by permit holders enables D&S IFCA to send information directly to permit holders. D&S IFCA's master contact data base includes other stakeholders and also Members – separate tabs. Although we have limitations, we are able to target our communications to different groups of people. Our main mailing list is used for Mailchimp – this group includes all of our contacts.

Our communications are internally generated, with none of our communication work outsourced. The range of communications typically used for byelaw related work is set out below. When making or re-making a byelaw D&S IFCA must advertise in a selection of newspapers. This is not likely to be very effective and is expensive, but it must be undertaken to meet the byelaw making requirements set out by Defra.

Website	Mailchimp
<ul style="list-style-type: none"><li>• News Scroll.</li><li>• Latest News page.</li><li>• Engagement &amp; Have Your Say Page.</li><li>• Meeting Tab (papers &amp; Minutes).</li><li>• Resource Library.</li></ul>	<ul style="list-style-type: none"><li>• Utilises contact database.</li><li>• Direct notification (including all permit holders).</li><li>• Forwarding of information.</li></ul>
Facebook/Twitter "X"	Postal Notification
<ul style="list-style-type: none"><li>• News repeated on Facebook.</li><li>• Headlines on "X".</li></ul>	<ul style="list-style-type: none"><li>• For permit holders with no email supplied to us.</li></ul>
Officer & Member Engagement	Newspapers
<ul style="list-style-type: none"><li>• Responding to telephone queries.</li><li>• Responding to emails.</li><li>• Officers briefed about work – explanations to stakeholders when out in the field.</li><li>• Officers reporting at relevant meetings/forums.</li><li>• Members spreading the news.</li></ul>	<ul style="list-style-type: none"><li>• Mandatory advertising in press.</li></ul>

## 1.15 Transparency and Finding Information

D&S IFCA has a Publication Scheme, and a huge range of information is available to all stakeholders. The website is the main platform to provide access to information, including all information relating to byelaw related work.

The website is designed to include different areas to access information and Members are encouraged to visit the website to find information. The same information provided on the website for stakeholders is available to Members.

### Key Areas of D&S IFCA's Website:

The home page of the website has both a news scroll, and a selection of tabs/drop down menus. For B&PSC meetings and access to more recent officers' papers and minutes from meetings the following is a good place to visit:



This tab reveals a display page and after some introductory text there are a collection of folders.

Each folder is dated and within each folder all papers for the meeting are set out as downloadable pdf's.

This is a [link](#) to the Authority and B&PSC meetings page.



The website is a storage tank for B&PSC papers and meeting minutes going back many years.

The website Resource Library is effectively an open filing cabinet that can be explored. Section B of the Resource Library is where B&PSC papers and meeting minutes are available to download and read. This is a [link](#) to Section B of the website Resource Library.

The content is arranged in folders. B&PSC related information is divided into Sub-Committee Minutes and Sub-Committee Papers, further divided into year groups.

### ENGAGEMENT & HAVE YOUR SAY

There is a dedicated page that is used for consultation work. The content of the Engagement & Have Your Say website page is typically the same information that would also appear in a news item on the home page about a consultation. This is a [link](#) to the "active consultation/events" page.

### Some observations & key points:

Officers are always willing to help Members and stakeholders find information they need. During the review of the Netting Permit Conditions there was a lot of positive feedback regarding the amount of information available on the website and how easy it was to locate.

**End.**