

Amendments to the Potting Permit Conditions

Members' Consideration

That Members consider supporting one of the two options set out in this Officers' paper regarding changes to the Potting Permit Conditions.

1. Background

On 5th December 2024 the B&PSC was presented with information and a recommendation to formally consult on capping the numbers of pots that could be used within the District. The B&PSC deferred a decision to formally consult on pot capping and requested further related information including an analysis of the current potting fleet and a range of management options with consideration of the strengths and weaknesses associated with each option. On 27th February 2025 Officers set out a summary of the main issues that had been identified from pre-consultation as follows:

- There is a need to safeguard existing operators against increased levels of effort being applied, in particular from the vivier fleet being displaced from Cornwall and offshore grounds.
- There is a need to consider the current levels of effort being applied to the fishery.
- There is a desire for managing the two coasts of the District differently to reflect the different fisheries and how fleet operate.
- There is an interest in localised measures being applied within the coastal belt around the District, including steps being taken to protect smaller scale fishing activity and to reduce conflict between commercial and recreational fishers.

Based on the identified issues above, an assessment of the different options to address the four issues was presented to the B&PSC, with other factors also recognised including the Fisheries Act 2020 Objectives. Officers recommended formally consulting on capping the number of pots that can be operated by a commercial potting vessel in the District with a maximum level set out to apply per vessel, and different levels set for pot types used in South and North Devon. Having considered the same information, and following discussion at the B&PSC meeting, Members unanimously determined:

That following the recommendations of the BTWG, D&S IFCA consults on the appropriate management mechanism to prohibit the use of vessels in the District that are fitted with integral, below deck level, tanks having a volume of more than 2m³.

A Byelaw Technical Working Group (BTWG) meeting was held on 14th March 2025. The advice from the BTWG was that the Potting Permit Conditions could legally be amended (following formal consultation and decision making by the B&PSC) to introduce the intended prohibition as a gear restriction. A permit condition and an interpretation of "vivier tank" was developed by the BTWG for use in the formal public consultation, as follows:

A permit holder or named representative is not authorised under this Permit to use within the District a vessel for the purpose of fishing which is equipped with one or more vivier tanks below the uppermost continuous deck with a volume (in aggregate) that exceeds two cubic metres.

"vivier tank" means a tank or storage compartment used or capable of being used to contain live sea fisheries resources immersed in or dampened by water.

2. Officers' Advice

Formal public consultation has been undertaken based on the decision making of the B&PSC, as set out in the Formal Consultation Report (Agenda Item 8). The consultation responses in full (with personal information removed) were made available for Members on the secure area of D&S IFCA's website, with the Formal Consultation Report summarising the responses.

Alternative management measures were highlighted within the consultation responses, such as suggestions for implementing pot capping, regional management, and vessel size restrictions; however, these management options were not set out in the formal public consultation. These measures therefore cannot be considered for implementation as Potting Permit Conditions at the June 2025 B&PSC meeting.

Officers have set out two options that can assist the B&PSC with their determination of how to proceed.

To recognise the content of the objections, the points raised about grandfather rights and blocking new entrants to the fishery, and other factors as set out in this paper, Officers advise the B&PSC to select **Option 1**, details of which are set out in this Officers' paper.

3. The Objections and Main Points of Concern

The Formal Public Consultation Report (Agenda item 8) has documented how the consultation was undertaken and summarised the findings which included 15 responses (informing the discussion) of which two were options, and the others provided either qualified or full support for the proposal.

The two responses, identified as objections, which were submitted by commercial fishers operating on the South coast of Devon. Both fishers work pots, with one also operating nets. In addition, within other responses there was a call for the application of grandfather rights to protect vessels with a vivier tank (exceeding an aggregate volume of 2m³) that are already operating under a valid permit.

Objection (1) – An integral tank used for ballast:

This fisher operates an under ten metre vessel that is equipped with a vivier tank and fishes solely within D&S IFCA's District on the South coast of Devon. The vessel operator supplied supporting information (MCA survey, and photographs). The stated tank capacity has a volume of 3.6m³; however, the tank is only used for ballast (stability) with water drained at the end of each working day to make the draft suitable for operating out of their home port.

The catch of shellfish is stored in containers on the deck, and not within the vivier tank. The vessel is restricted by its MCA Certification to limit fishing trips to a maximum of 24 hours and to have the access to the vivier tank sealed whilst operating at sea. The operator is aware that the proposal (as worded in combination with the interpretation) would prohibit his vessel from operating within the District. The operator stated the proposal puts his business at risk, his investment could become worthless, and the income for three individuals and families is at risk.

This operator stated that they were operating about 1000 pots which is less pots than other vessels that would not be impacted by the proposal of the B&PSC. Whilst not opposed to the

principle of the proposal by the B&PSC, this operator does not believe the proposal was intentionally aimed at his own fishing operation.

“....our vessel would fall under the category of those to be banned from working the district, despite not being the target of the prohibition and not falling under the spirit of the intention of the new Bye-Law Conditions”.

“I.....remain hopeful that the Authority will ensure that our operation does not fall foul of the new Bye-Law which we support in as far as our operation isn't affected due to a technicality”.

Objection (2) – Protectionism, Unfairness & Management Approach:

The fisher explained that he would not be impacted by the proposal, but raised several concerns. In his view the proposal amounts to protectionism, rather than managing the activity correctly.

In his view it is unfair that D&S IFCA would use permit conditions to exclude a vessel of a particular design from operating within the District, with a view that this approach could lead to other vessels being excluded completely from fishing within the District based on their design, or other factors including not being local to the area being fished.

“....how can it be fair to exclude a vessel because it has a vivier tank. Next you will be excluding vessels with refrigerated fish rooms”.

“As I work mostly nets and a few pots, if this goes ahead where is it going to stop if the crabbers don't like netting near them which they don't, or your boat's the wrong colour, or work from a different harbour - we have already witnessed that in the eastern end of Lyme Bay”.

This fisher highlighted that vessel operators that have already been fishing (or with permits to operate) should be protected from a change that would exclude them from fishing within the District, with grandfather rights, until the vessel is sold. In his view, if this proposal is an attempt to protect stocks, the better approach would be to introduce pot limits with tags.

“The logical way would be to have pot limits with tags”.

“This needs a total rethink in a fair and just way that protects stocks and all fisherman's livelihoods”.

Grandfather Rights/Exemptions

Four other responses asked for consideration relating to protecting existing operators (with a valid permit) that have a vessel fitted with a vivier tank (exceeding an aggregate volume of 2m³). These responses were from the National Federation of Fishermen's Organisations (NFFO), the South Devon and Channel Shellfishermen Ltd (SD&CS), Dart Harbour, and one commercial fisher. The responses called for the application of **grandfather rights** or an **exemption** on a temporary basis. The NFFO suggested that prevention of new entrants with vivier tanks into the fishery is preferable to a blanket exclusion to all vessels with vivier tanks.

Other Points

There were other views raised within the responses which included the view that other measures should potentially be implemented by D&S IFCA such as **pot limitation**, **regional**

management, vessel size restrictions based on hull design. One fisher stated that D&S IFCA is not going far enough to harmonise with the approach being taken by Cornwall IFCA with their intended byelaw.

4. Options

Option 1

This option consists of amending the proposed wording, as set out in the formal public consultation, to apply in the Potting Permit Conditions. The amendment would result in a prohibition on the use of a vivier tank (exceeding an aggregate volume of 2m³) for the **storage of sea fisheries resources whilst the vessel was fishing within the District**. Officers have set out the suggested Permit Condition for Option 1 as follows:

*A permit holder or named representative is not authorised, **whilst fishing in the District**, to store sea fisheries resources in a vivier tank or tanks below the uppermost continuous deck that have a volume (in aggregate) that exceeds two cubic metres.*

“vivier tank” means a tank or storage compartment used or capable of being used to contain live sea fisheries resources immersed in or dampened by water.

This amendment with focus on **whilst fishing¹ in the District**, would address several points raised in the formal public consultation and also recognises some other factors.

How Option 1 addresses the objections and points raised in the formal public consultation is set out below.

Addressing Objection 1: An integral tank used for ballast:

The consultation highlighted a vessel not known previously to have a vivier tank (exceeding an aggregate volume of 2m³). Although this vessel does not use its tank to store sea fisheries resources, the proposed permit conditions would result in this vessel not being able to operate under the potting permit he already has. This was one of two identified objections.

- *Option 1 would resolve this objection, as the vessel does not store sea fisheries resources in their vivier tank (exceeding an aggregate volume of 2m³), whilst fishing within the District. The vessel operator will therefore not be impacted.*

Addressing Objection 2 : Management Approach, Protectionism and Unfairness:

Option 1 is consistent with how D&S IFCA already manages potting activity and other fishing methods. The suggested wording with focus on **whilst fishing in the District** would be comparable to how the catch restrictions (sizes of sea fisheries resources) are set out in the current Potting Permit Conditions. Sizes for sea fisheries resources vary both inside and outside of the District. When any vessel with a valid permit is fishing within the District, the catch on board must comply with the sizes set out in the Permit Conditions. Regardless of where the catch may have been removed from (e.g. inside the District or from outside of the District), when inspected at sea whilst in the act of fishing (as defined) in the District, all catch on board must be compliant with the Permit Conditions. This is not a deeming clause, that is now not advised by Defra for use in byelaws. The difference is that the applicant has the

¹“fishing” includes searching for sea fisheries resources, shooting, setting, wowing, hauling of a fishing gear, and taking sea fisheries resources on board.

choice to either acquire a permit and be bound by its restrictions, or not have a permit. The same approach with focus on **whilst fishing in the District** can apply to how catch is stored on a vessel, as a catch restriction.

Option 1 would be a catch restriction in the Potting Permit Conditions, and more in keeping with how D&S IFCA has applied permit conditions to date. This would mean that a vessel's capability or design would not be the basis of the Permit Conditions. For example, vessels scallop dredging within the District are all subject to the same restrictions – size of scallop, number of dredges, length of pole, no fishing after 7pm or before 7am, regardless of the vessel construction. Some of these scallop vessels have greater capability than others to work more demanding weather, some will have refrigerated fish rooms for better storage of catch, but none of these vessels under 15 metres in overall length are prohibited due to their vessel design or capability compared to others.

Choices for Operators and Working Arrangements

Option 1 does not prevent a vessel with a vivier tank (exceeding an aggregate volume of 2m³) fishing within the District; however, it does prevent the catch removed from a fishery inside and outside of the District being stored in the vivier tank (exceeding an aggregate volume of 2m³) whilst the vessel is fishing within the District.

A vessel with a vivier tank (exceeding an aggregate volume of 2m³) can fish within the District but cannot use the vivier tank (exceeding an aggregate volume of 2m³). The vessel can leave the District and continue to fish. When outside of the District, the vessel operator can transfer the catch from other storage devices into a vivier tank or tanks that are fitted as part of the vessel design. However, the vessel operator cannot return to fish within the District whilst there are any sea fisheries resources in the vivier tank or tanks (exceeding an aggregate volume of 2m³). This would be a contravention of the proposed Potting Permit Conditions. The vessel could fish exclusively outside of the District on a fishing trip and place the catch into the vivier tanks.

The vessel operator can transit to a port to land their catch, but cannot stop and fish en route, potentially adding to the catch held in the tank on a repeating cycle working inside and outside of the District. When the vessel operator chooses to conduct part of the fishing activity within the District, the vessel would therefore be used in a way closer resembling vessels that work shorter fishing trips – e.g. day trips, or those classed by some to be “day boats”.

Regarding their own business model, this option may be challenging to owners of vessels fitted with a vivier tank (exceeding an aggregate volume of 2m³), as the vessel is not designed to store large quantities of sea fisheries resources in areas other than in the vivier tank.

The B&PSC is aware that the vessels already operating with vivier tanks (exceeding an aggregate volume of 2m³) in the District are reported to be working less pots in the District than some operating within the District that have no vivier tanks fitted. Option 1 would not prevent vessels with vivier tanks (exceeding an aggregate volume of 2m³) deploying and using more pots in the future; however, no other commercial potting permit holder with other types of hull design or specifications (such as pot cages added to original vessel construction) are limited by the Potting Permit Conditions regarding how many pots they can use within the District.

- *Option 1 counters the concern raised in the second objection response about protectionism/unfairness and D&S IFCA's management approach. In terms of how catch is stored, other than the smallest in-built vivier tanks (not exceeding an aggregate volume of 2m³), all commercial vessels operating under a Category One Potting Permit will have the same restriction.*

Addressing the Call for Grandfather Rights to Apply:

The B&PSC is aware that several vessels fitted with vivier tanks (exceeding an aggregate volume of 2m³) are already operating within the District. These vessels have valid permits to fish; however, the proposed permit conditions would prevent them from using their vessel to fish. Three responses to the formal public consultation highlighted a need to consider protecting these operators with the use of a **grandfather rights clause** to enable them to continue fishing within the District.

As highlighted by the NFFO, some IFCA byelaws (for example NEIFCA Trawling Prohibition Exceptions Byelaw 2003) contain grandfather rights that terminate after a set period, typically a change in ownership. D&S IFCA had a grandfather rights clause in its Size of Vessels Byelaw. The B&PSC determined that the use of grandfather rights (for vessel size) was a weakness, as many vessels are not sold for many years. The Size of Fishing Vessels Byelaw 2022 was introduced with no grandfather rights clause. The formal public consultation is related to changes to the Potting Permit Conditions, not consideration regarding amending (re-making) the Potting Permit Byelaw to include grandfather rights.

- *Option 1 removes the need for any consideration regarding grandfather rights/sunset clauses as the vessels with vivier tanks (exceeding an aggregate volume of 2m³) will not be prohibited from fishing in the District, only that their vivier tanks cannot be used whilst fishing within the District.*

Addressing the Call to Block New Entrants:

The NNFO highlighted that their members have mixed views on the proposal and stated within their response that they would favour a **prevention of new entrants** with vivier tanks (exceeding an aggregate volume of 2m cubed) into the fishery rather than a blanket exclusion to all vessels with vivier tanks of this size.

The criteria to gain a Potting Permit is set out within the Potting Permit Byelaw, rather than the Potting Permit Conditions. Limiting the number of permits issued by the Authority was not an objective of the Potting Permit Byelaw. The following principle has been adopted by the Authority, and this would have to be reviewed to prevent new entrants to a fishery:

- Principle: To not limit the number of permits issued.

The Potting Permit Byelaw contains the provision “the Authority may authorise the use of a pot”, rather than “the Authority will authorise the use of a pot”, with this authorisation dependent on meeting criteria to gain a permit. The Potting Permit Byelaw, in tandem with the Size of Fishing Vessels Byelaw 2022, sets the criteria for applicants to gain a Category One (commercial) Potting Permit. Vessels below 15 metres in overall length that have a Fishing Licence, and a Certificate of Registry can qualify for a Category One Potting Permit, and then be bound by the restrictions set out in the Potting Permit Conditions.

Although it is considered legally possible to use the Potting Permit Conditions to effectively introduce a prohibition of the use of a vessel with a particular design or specification as a gear restriction, Officers have the view that this is not best practice, in particular if other options exist to manage the fishery. The view of Officers is that the issuing of permits to applicants, who then potentially find they are unable to use the permit would be an odd scenario.

Therefore D&S IFCA would need to rely on a “Policy” rather than legislation as the basis for refusing a new application for a Potting Permit if the vessel was of a particular design. This refusal would not be based on the vessel meeting the criteria to gain a permit as set in the Potting Permit Byelaw. The refusal would be because the vessel is of a particular design that could not be used for fishing within the District, as a Permit Condition prevents it from fishing anywhere within the District.

- *Option 1 removes the need for any consideration regarding development of D&S IFCA policy for the blocking of new entrants to the fishery that have vessels fitted with vivier tanks (exceeding an aggregate volume of 2m³), as these vessels will be able to fish in the District, but not able to use those tanks to store sea fisheries resources whilst fishing in the District.*

Existing Fishers with Vivier Tanks (exceeding an aggregate volume of 2m³)

As explained in the formal public consultation, if the proposal is implemented, existing operators with a vivier tank (exceeding an aggregate volume of 2m³) would have their permits cancelled and the purchase cost of their permit refunded. Provision for terminating a permit and providing refunds for permits, that are effectively of no use, is not set out in the Potting Permit Byelaw.

- *Option 1 removes the need for any consideration regarding development of D&S IFCA policy, or a requirement to refund payments for permits already purchased and issued, regardless of whether vessel owners are making use of their permit or not.*

Addressing the Call for Exemptions/Temporary Permissions:

Responses highlighted the potential for D&S IFCA to consider the use of exemptions or temporary permissions to enable vessel owners to operate a vessel with a vivier tank (exceeding an aggregate volume of 2m³) on a temporary basis, for example when another vessel owned by the same person was being repaired or in refit.

The Exemptions Byelaw 2019 (that provides the basis for exemptions against many current byelaws) does not cater for this and there is no specific exemptions clause within the Potting Permit Byelaw for maintenance (for example recovering pots not being used).

The Potting Permit Conditions do allow the owners of pots to be hauled by different vessels that they also own, providing all vessels, that may be used for this scenario, have valid potting permits. All pots (each string of pots) must be marked with the vessels Port Letters and Numbers (PLN) or permit number that will be working those pots. It is possible for a vessel owner to change the markings on a string of pots on a temporary basis, whilst another vessel they own is having repairs or is in refit. This can be done by changing over the floating marker (buoy or dahn). The change of gear marking allows the second vessel they own to be used to work the gear, normally worked by their other vessel.

- *Option 1 would address the points raised in the responses by SD&CS, Dart Harbour and the individual fisher. Providing the pots were correctly marked, the vessel fitted with a vivier tank/s (exceeding an aggregate volume of 2m³) could be used on a temporary basis to work the pots of the other vessel (with no vivier tanks) providing the vivier tanks were not used whilst fishing in the District.*

Alignment with the Fisheries Act Objectives and the Impact Assessment

The Blue Marine Foundation (Blue), stated:

“We commend the IFCA officers for the level of stakeholder engagement and collation of data to support the proposed measures. The evidence and rationale as presented by IFCA Officers for proposing a prohibition on vessels with vivier tanks fully considers and supports the objectives of the Fisheries Act 2020”.

For clarity, Officers did not recommend or propose the prohibition and therefore did not set out how the Members’ proposal would align with the objectives of the Fisheries Act.

When the Potting Permit Byelaw was developed an Impact Assessment (IA) was created to set out the objectives of the Potting Permit Byelaw, and by extension the Potting Permit Conditions. The IA recognised that some operators with a permit may fish both inside and outside of the District, and the IA highlighted that D&S IFCA did not intend to restrict the number of permits being issued and create a restrictive licencing system. The IA did not suggest that future management of potting would potentially include prohibition of vessels due to their design.

- *It is the view of Officers that Option 1 closer aligns to the objectives of the Potting Permit Byelaw as set out of the Impact Assessment and in the minutes of Authority (and B&PSC) meetings, where the development of the Potting Permit Byelaw was discussed.*

Enforcement and Monitoring

Option 1 would require physical inspection at sea to check that vessels fishing within the District have no sea fisheries resources placed in vivier tank/s (exceeding an aggregate volume of 2m³). The national roll out of IVMS, in tandem with intelligence gathering can help D&S IFCA Enforcement Officers identify fishing patterns, higher risk vessels, and target their inspection work accordingly. In the future a new Potting Permit Byelaw can introduce the scope for REM technology that can also be used to complement this proposed Potting Permit Condition.

Option 2

The consultation highlighted a vessel not known previously to have a vivier tank (exceeding an aggregate volume of 2m³). Although this vessel does not use its tank to store sea fisheries resources, the proposed permit conditions would result in this vessel not being able to operate under the potting permit they already have. This was one of two identified objections.

Option 2 consists of retaining the wording set out in the formal public consultation, but doubling the stated vivier tank capacity to 4m³ within the Potting Permit Condition.

*A permit holder or named representative is not authorised under this Permit to use within the District a vessel for the purpose of fishing which is equipped with one or more vivier tanks below the uppermost continuous deck with a volume (in aggregate) that exceeds **four cubic metres**.*

The interpretation of vivier tank can remain as:

“vivier tank” means a tank or storage compartment used or capable of being used to contain live sea fisheries resources immersed in or dampened by water.

- Although the vessel does not use the vivier tank, Option 2 would resolve the objection, as the vessels vivier tank capacity, calculated by the vessel owner, is 3.6m³; therefore, below 4m³. The vessel operator will therefore not be impacted if Option 2 is selected.

Officers believe that the remaining four vivier vessels would remain excluded from the District by virtue of having tanks greater than 4m³.

Resolving the Other Objections and Points Raised

It is the view of Officers that Option 2 will not resolve the points raised in the second identified objection regarding D&S IFCA's Management Approach, Protectionism and Unfairness. It is the view of Officers that Option 2 will not resolve the points made in the consultation responses about the application of grandfather rights or temporary exemptions.

Members' Consideration

That Members consider supporting one of the two options set out in this Officers' paper regarding changes to the Potting Permit Conditions.

Based on the B&PSC's proposal relating to vivier tanks, and to recognise the content of the identified objection responses, and the points raised about grandfather rights and blocking new entrants to the fishery, and other factors as set out in this paper, Officers advise the B&PSC to support **Option 1**.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers

B&PSC Meeting 5th December 2024:

- [Agenda Item 6: Potting Formal Consultation](#)
- [Agenda Item 6 - Annex 1: Potting Informal Consultation Report \(26th Nov 2024\)](#)
- [Agenda Item 6 – Annex 2: Analysis of Pot Numbers](#)
- [Finalised B&PSC meeting minutes from 5th December 2024](#)

B&PSC Meeting 27th February 2025

- [Agenda Item 7: Options for Management - Potting Formal Consultation](#)
- [Agenda Item 7: Discussion Presentation \(options - strengths and weaknesses\)](#)
- [Draft B&PSC meeting minutes from 27th February 2025](#)

End.