



Potting Permit Byelaw

The Three-Year Review of the Permit Conditions



Edition 3 - Final Report:

Process, Decision Making and Changes to the Potting Permit Conditions

July 1st 2018

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Version Control/Previous Editions

Author	Date	Comment	Edition
Neil Townsend, et al	August 2017	Basic guide developed to introduce and explain the three-year review of potting permit conditions for phase one “open” consultation	1
Neil Townsend, et al	15 th January 2018	Developed for consultation following discussions by the D&S IFCA Byelaw & Permitting Sub-Committee on November 13 th 2017. Replaces the mini guide used in phase 1.	2
Neil Townsend, et al	1 st July 2018	Final edition compiled from information documented within previous versions. The Final edition includes the response (previously documented in supplements) from all phases of consultation. The Final edition also includes the decision making of the Byelaw & Permitting Sub-Committee (12 th April 2018)	3 (Final Edition)

Executive Summary

Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) manages all potting activity in the District via the Potting Permit Byelaw. The Permit Conditions for the Byelaw must be reviewed at least every three years.

The Three-Year Review of more generalised¹ Potting Permit Conditions began in 2017 with the decision-making process reaching its conclusion at the D&S IFCA Byelaw & Permitting Sub-Committee (B&PSC) meeting on the 12th April 2018. The process involved two separate phases of consultation and D&S IFCA B&PSC meetings. This process has resulted in changes to the Potting Permit Conditions which come into force following their circulation in August 2018. Other changes have been made to the Potting Permit Conditions (and voluntary measures) in regard to the Live Wrasse Fishery, which is fully documented in a separate report.

New restrictions/amendments to the Potting Permit Conditions are as follows:

- 1. The implementation of Potting Permit Conditions to replace a reliance on the deeming clause;**
- 2. The implementation of Potting Permit Conditions for the protection of spiny lobster that has recently cast its shell;**
- 3. The implementation of Potting Permit Conditions to prohibit the removal of spiny lobster from MCZ areas;**
- 4. The implementation of Potting Permit Conditions to protect populations of otters within estuaries;**
- 5. The implementation of Potting Permit Conditions to introduce a 65mm minimum conservation reference size for whelk;**
- 6. The implementation of Potting Permit Conditions to introduce a restriction for the Lundy Island No Take Zone.**

This report (**Edition 3 - Final Report: Process, Decision Making and Changes to the Potting Permit Conditions**) is a large document and it is recommended that readers use the contents page to navigate to the sections which they find most relevant. This report documents the complete process from start to its conclusion. All relevant evidence and information² that has been used for deliberations by the D&S IFCA B&PSC is contained in this single document. This report has been created by merging previous editions that were created throughout the process. This report and previous editions achieve the following:

- Document the findings of the consultations and the evidence base used for decision making**
- Demonstrate how, when and why decisions have been taken**
- Provide background information to all stakeholders about D&S IFCA and how the organisation functions**

Minutes are taken of all D&S IFCA B&PSC meetings and posted³ on the D&S IFCA website.

¹ A separate process was conducted to formally review the Live Wrasse Fishery and the relevant Potting Permit Conditions

² Within the scope of the D&S IFCA Data Protection Policy

³ When approved at the following meeting

1. Timetable of Key Events

Table 1

Date	Action/event	Comments
2014	D&S IFCA makes the Potting Permit Byelaw	Permit conditions introduced to manage potting activity for both commercial and recreational fishers
2015	Consultation undertaken on Potting Permit Conditions	The size of female brown hen crab increased to 150mm
2017 (Sept – Oct)	Start of the mandatory three- year review of Potting Permit Conditions	Phase 1 “open” consultation conducted
2017 (November)	Meeting of the B&PSC	All summarised responses from the phase 1 consultation considered and “focussed” items for additional consultation formulated.
2017 (Nov - Dec)	Consultation preparation	Consultation documents prepared
January 2018	Focussed consultation (2 nd phase)	6-week consultation conducted on the “focussed” items & proposed permit condition changes
March 2018	Collation of consultation responses	All summarised responses from the 2 nd phase “focussed” consultation documented in a supplement report for B&PSC
April 2018	Meeting of the B&PSC	Decision making process. Changes to the Potting Permit Conditions agreed.
May & June 2018	Preparation of amended Potting Permit Conditions and associated Annexes	Legal advice taken and final drafting of Potting Permit Conditions completed
August 2018	Communication & Circulation	New Potting Permit Conditions issued to permit holders

2. The First Phase “Open” Consultation

The B&PSC made the decision that the Three-Year Review of Potting Permit Conditions would require two completely separate phases of consultation. The first phase would be completely “open” with no specific items. Based on the response and information submitted in the first phase consultation, and the changes D&S IFCA would also consider implementing, decisions would then be taken in regard to which items would be subjected to a more focussed second phase of consultation.

This section of the report demonstrates:

- **The information supplied by stakeholders (the summarised response) from the phase 1 “open” consultation conducted between 11th September & 23rd October 2017**
- **The extent of the information considered by members including officer comments in the B&PSC meeting in November 2017**
- **How the information was considered by members of the B&PSC and decisions taken in regard to further consultation**

A wide-ranging consultation was conducted and a newly developed consultee list was utilised. Different communication methods were used including face book and twitter with the D&S IFCA website providing the main platform for the consultation presentation.

All permit holders⁴ (who had a permit on 11th September 2017) were directly notified by email or letter that consultations were about to begin, but not the exact detail of their content. It was assumed that stakeholders would contact D&S IFCA or visit the website (as instructed) to engage in the process.

Permit holders directly notified:

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

- **The first phase “open” consultation provided all stakeholders with the opportunity to consider the current permit conditions and respond accordingly.**

The information (consultation response) was collated and documented in a supplementary report which was presented to members of the D&S IFCA B&PSC in advance of their meeting on 13th November 2017. Information that was received by stakeholders after the closing date of 23rd October 2017 was not documented in the supplementary report. The information that was presented in the first supplementary report (October 2017), including the officer comments, has been transcribed below. Following this, the decisions taken by the B&PSC in regard to the submitted responses in the first phase consultation has also been documented.

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

The Phase One Consultation Response (Transcription of Supplement)

Although the consultation was open to all stakeholders, very few responses were received. A total of nine responses were received that related to the potting consultation. Three of these responses were submitted by organisations which were the Environment Agency, the Royal Yachting Association and South Devon and Channel Shellfishermen Ltd. Only one response was received from a Category Two Potting Permit Holder.

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

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

The Inshore Potting Agreement Areas (IPA)

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

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

The responses from the individual stakeholders do not object in principle to D&S IFCA managing the IPA; however, the importance of retaining protection for the area of the IPA that is beyond the six-mile limit was clearly stressed. These two stakeholders explained how this small area is populated with their pots, with one stakeholder reporting that he works 150 pots in this location. The failure of voluntary measures prior to the implementation of a licence condition in 2008 was also highlighted. The benefits that the IPA provides for conservation was highlighted with particular reference made to Marine Conservation Zones. The responses indicate that any loss of regulatory control (licence condition) for areas beyond six miles would be unacceptable to these stakeholders, significant numbers of other commercial potters and also their associations. Failure to maintain full regulatory controls would most likely raise objection to a change in this management.

Response from South Devon and Channel Shellfishermen Ltd

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

The response was critical of the consultations as this particular item has only been a focussed item documented (at the time) within the Mobile Fishing consultation. In addition, it has been

suggested that any potential changes to the IPA should firstly be discussed at the annual IPA Management Committee meeting on 23rd October 2017.

In regard to the response content, South Devon Shellfishermen Ltd provided background information on how the IPA was developed and how the annual discussions between different industry sectors are used to refine the IPA chart which is used as a fishing vessel licence schedule. The response also highlighted the importance of this management structure in regard to the Marine Protected Area (MPA) network⁵ which extends beyond the six-mile limit.

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

- The Management of the IPA is suggested to be outside the scope of the IFCA mobile fishing consultation
- Local management may not be as well known to visiting vessels and risks of non-compliance may increase as a result of any potential change
- The MMO should remain involved in future management of the IPA
- Cross warranting, asset sharing can be further explored so the IPA can continue to be managed in its entirety
- Further advice would be welcomed on how the management of the IPA and MCZ⁶ areas would interact
- The response (at this time) is compromised due to uncertainty in regard to the lack of a documented response by the MMO.

Officer Comments

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

The IPA evolved for gear conflict resolution rather than conservation initiatives; however as highlighted in the responses, the closure of spatial areas to mobile fishing has obviously provide conservation benefits. The existence of the IPA (both regulatory and voluntary) over many decades has meant that the rock and reef habitats have been protected from the impact of bottom towed gear in a majority of the area. This has led to most of the IPA being designed

⁵ Skerries Bank and Surrounds Marine Conservation Zone

⁶ Skerries Bank and Surrounds Marine Conservation Zone

as Marine Protected Areas. The Skerries Bank and Surrounds MCZ co-locates with the eastern part from Salcombe to Start Bay and circalittoral rock is one of the main features of the site. The Start Point to Plymouth Sound and Eddystone SCI co-locates with western part of the IPA from Start Point to Plymouth Sound and the northern part of the IPA lies within the Torbay part of the Lyme Bay to Torbay SCI. Both these European Marine Sites are designated for reef habitats. The current management of the IPA (both inside the 6nm and outside) helps allow the conservation objectives of the Marine Protected Areas that co-locate with the IPA to be met or furthered. The IPA chart forms a regulatory layer above D&S IFCA Mobile Fishing Byelaw permit (annexes) which were introduced to support conservation and protect habitat and features. The complex IPA management arrangement does close areas of ground to Mobile fishing methods either all year or part of the year. Conversely, the IPA also provides access to Mobile fishing vessels for part of the year or in regard to Zone 5 (Start Bay area) – all year.

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

Response from the Marine Management Organisation

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

Permit conditions for different sectors?

The flexibility needed to manage the IPA is not confined to the Mobile Fishing Permit Byelaw. The same scope in regard to gear, catch, spatial and time restrictions forms the basis of all D&S IFCA permit based Byelaws. If the Mobile Fishing Permit Byelaw was potentially used to manage the IPA, an additional permit annex would be produced for fishers and issued to permit holders. The wording on the current permits would be amended and these alterations would be subject to additional consultation. A similar approach could be taken in regard to the potting permits, with the placement of pots prohibited within areas open to mobile fishing methods. As the IPA also manages other static gear (nets) the same approach can be taken with the permits for the Netting Permit Byelaw⁷ in the future.

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

⁷ Awaiting confirmation

Consideration by the Byelaw and Permitting Sub-Committee

Members acknowledged that due to the response offered by the MMO, the management of IPA areas via permit conditions would not be a replacement of the current MMO licence condition (schedule) for mobile fishing vessels, rather the permit conditions would support the current MMO restrictions. Members acknowledged that this item is relevant to different fishing sectors and recommended that this item be subjected to further consultation (and placed in both the mobile fishing and potting consultation reports).

Due to the complex nature of the gear, spatial and time restrictions required to manage access to the IPA areas, the mobile permit conditions would require re-drafting with changes to the current annexes (charts) that are issued. No permit conditions relating to this item would be included in the proposed potting permit conditions but section 3 of this report does show the proposed permit conditions for the mobile fishing sector.

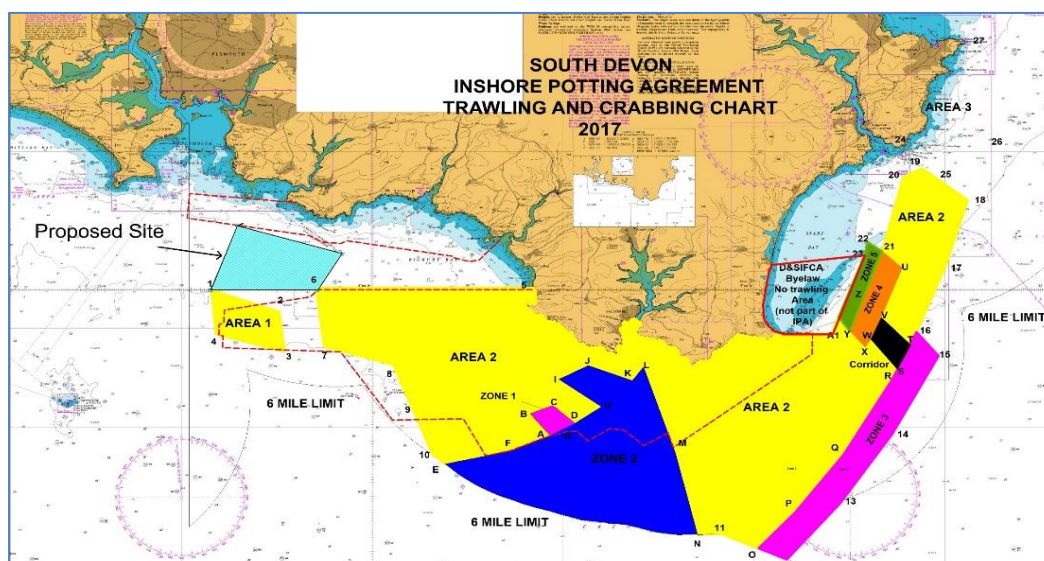
Officers were actioned to prepare suitable wording in mobile fishing permit conditions to manage access in the Inshore Potting Agreement Areas and consult with stakeholders.

Other Gear Conflict Management

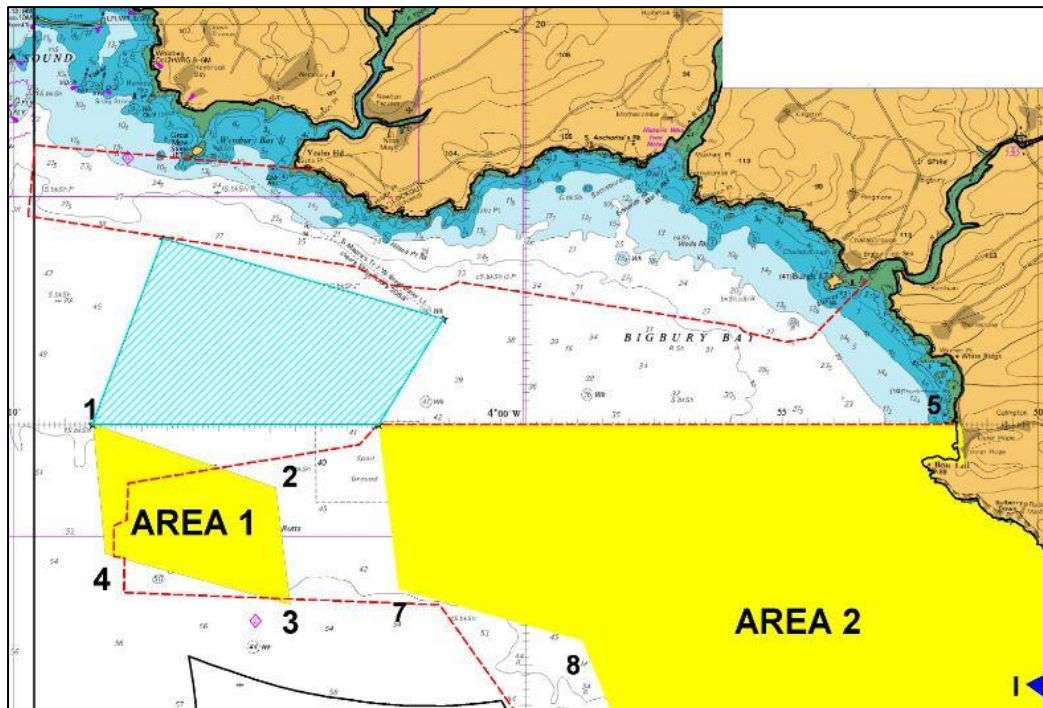
A response was submitted for the consultation on mobile fishing; however, the content also relates to potting and has therefore been duplicated and added to this supplement. The response was in regard to reducing gear conflict in coastal areas near Plymouth. This response was submitted by a stakeholder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

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

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



Zoomed in image of the proposed site



Officer Comments

This proposed site is located on the western side of an area of seabed that is currently accessible to mobile fishing vessels. It is situated between IPA areas (potting all year) and the areas closed via Annex 5 (permit) of the Mobile Fishing Permit Byelaw. It should be noted that these areas of seabed were subjected to consultation in 2010⁸. Devon Sea Fisheries Committee (DSFC) [responded](#) to the Natural England consultation on designating new Special Areas of Conservation which included a site from Start Point to Plymouth Sound and the Eddystone rocks. From the evidence gathered by previous acoustic monitoring and underwater filming surveys DSFC was able to suggest which areas could remain open to demersal fishing gear and which areas could be closed to protect the reef habitat recorded from these surveys. The evidence submitted by Devon Sea Fisheries Committee was used to influence the extremity and boundary of the Start Point to Plymouth Sound and Eddystone SAC. Evidence was also provided in the DSFC response on the social and economic impact of closing an area between Hillsea Rock Point, Bigbury Bay, Bantham and Bolt Head to the mobile fishing sector and the jobs onshore that would be impacted. The recently proposed site sits in the area that was consulted on in 2010 and was kept open to mobile gear and not included in the Start Point to Plymouth Sound and Eddystone SCI, as there was little evidence of reef features in this area. This historic survey work and the consultation response offered by Devon Sea Fisheries are available from D&S IFCA.

The permits for both potting and mobile fishing do have scope to help manage gear conflict. Spatial, gear and time control are all elements of the flexible permit conditions that can be utilised. Although managing gear conflict has questionable links to conservation objectives,

⁸ Consultation on Marine Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in English, Welsh and inshore waters around the UK.

the duties for D&S IFCA do include seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district. In this case, the needs of both static gear and mobile are a discussion point.

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

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

Consideration by the Byelaw and Permitting Sub-Committee

Members concluded that more information should be submitted to trigger a review of management in regard to gear conflict. No decision was taken to continue consultation at this time.

Gear Marking

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

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

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

Officer Comments

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

It is possible that industry or stakeholder led voluntary measures may be developed in the longer term which will improve safety for all sea users.

Consideration by the Byelaw and Permitting Sub-Committee

Whilst recognising the benefits that specific gear marking can provide, members also had regard to the officer comments as set out in the supplement. No decision was taken by members to continue consultation on this item.

Issues Associated with Category 2 Permit Holders & Officer Comments

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

Officer's Comments

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

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation on this item.

Safety Requirements

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

Officer's Comments

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

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation on this item.

Submission of Landing Data

The responses have highlighted that they (commercial operators) are required to submit monthly shellfish returns and comply with RBS⁹; however, no such requirement is demanded from the recreational sector.

Officer's Comments

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

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation on this item.

Multiple Permit Holders working on a Single Vessel

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

Officer's Comments

A selection of policy documents was recently circulated to try and clarify this and other issues. The content of some responses would indicate that all the information may not have been fully understood. When the Potting Permit Byelaw was created there were difficulties establishing a mechanism to assign all permits to the owners of vessels. The ownership of commercial fishing vessels is divided into 64 shares as documented on the certificate of registry. Recreational vessels present a different scenario.

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

⁹ Marine Management Organisation - Registered buyers and sellers requirements

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation on this item.

Category Two Permit Holders Hauling Pots that belong to Others

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

Officer's Comments

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

It is prohibited for a person to use pots for fishing¹⁰ within the District otherwise in accordance with a permit.

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

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

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

The consultation response indicates that the provisions in the Byelaw and the permit conditions are potentially confusing and possibly lack clarity in regard to this issue. It is possible for the permit conditions (gear restrictions) to be amended and strengthened to clarify this issue. A new permit restriction is not needed; however, members may consider that

¹⁰ Fishing is defined in the Potting Permit Byelaw as searching for sea fisheries resources, shooting, setting, hauling of a fishing gear and taking sea fisheries resources on board.

Paragraph 2.2 of the present permit conditions be amended. Further “focussed” consultation can be actioned and the specific amended wording used would also be subject to consultation.

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation (as a focussed item).

Additional information

In the subsequent process of formulating the proposed potting permit conditions, the provisions relating to gear restrictions (including 2.2) have been amended and potentially provide additional clarity on this item.

Catch Limit for Category Two Permits

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

Officer’s Comments

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

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation on this item.

Number of Pots and working them in Strings

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

One commercial operator questioned the current gear restrictions that don’t prohibit Category Two permit holders from working strings of pots. The stakeholder has inferred that working strings of pots is a commercial venture. Others from the limited responses have questioned

the policy documents that have been recently circulated and have inferred that D&S IFCA is giving permission for Category Two permit holders to work strings of pots.

Officer's Comments

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

In regard to working strings of pots, a policy document was recently circulated in an attempt to clarify this issue. The policy document is not a "permission" for strings of pots to be used; instead it clarifies that working a string (or combined string) is possible under the current permit conditions. All Category Two permit holders must be present and adhere to marking requirements to work a combined string. It is acknowledged that commercial operators do generally work strings of pots. Commercial strings can and often do contain many pots, far higher than the current five pots per permit holder catch restriction for Category Two permit holders. Mechanical assistance would often be needed to haul strings of pots; however, this is dependent on several factors. In relatively shallow water it is quite possible to haul a string of pots by hand that are well spaced on the ground rope.

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the summary of response and the officer comments. No decision was taken by members to continue consultation on this item.

Otter Mortalities within fixed traps in Devon

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

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

Officer Comments and Summary

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

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

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

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

Consideration by the Byelaw and Permitting Sub-Committee

Members evaluated the information that had been provided.

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

Members accepted that regardless of the target species of the traps (prawn traps), it is the combination of the construction and placement that increases risk to otters rather than what the pots are designed to catch. In addition, members concluded that the recently developed estuary boundaries (for the Netting Permit Byelaw) would be an adequate starting point for spatial restrictions and importantly a consultation period would help raise awareness of this otter mortality issue to all stakeholders. Members actioned officers to consult with all stakeholders and prepare suitable wording in potting permit conditions to control the use of fixed traps with a view to protecting otters.

3. Additional Items Identified by D&S IFCA for Consultation

As well as items highlighted by stakeholders, the Three-Year Review of the Potting Permit Conditions provided the opportunity for the B&PSC to decide where potential changes to the Potting Permits would benefit the management of potting activity. On November 13th 2017, members of the D&S IFCA B&PSC were presented with a supplement report demonstrating the rationale for potential changes related to several items. After studying the supplement report, members agreed that several items should be subjected to a focussed six-week consultation that began on 31st January 2018. The protection of otters (within estuaries) and changes to Category Two Potting Permit Conditions (gear restrictions), highlighted in the phase one “open” consultation were considered as suitable items to also be included.

Phase Two Focussed Items:

- 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 Areas¹¹**
- 6. Managing the whelk fishery**
- 7. Lundy Island No Take Zone**
- 8. Category Two Restrictions (changes to gear restrictions)**

It should be noted that the rationale for the management of the Inshore Potting Agreement Areas was also documented in a separate supplement report relating to the management of mobile fishing activity and the proposed permit changes to the Mobile Fishing Permit Conditions. The rationale provided to members for the inclusion of the remaining above items other than the protection of otters (within estuaries) and changes to Category Two Potting Permit Conditions (transcript of the supplement report) is set out below:

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

The implementation of the Potting Permit Byelaw was a significant change from the more traditional byelaw model. As with many new initiatives, development was challenging and produced mixed legal opinions about elements of the framework, content and review of conditions process.

Why was a deeming clause introduced?

A deeming clause was introduced to support the effective enforcement of some of the management measures that were introduced in the Byelaw and permit conditions. Byelaws only apply within the district, normally six nautical miles from the coast or, in places on the north coast of the D&S IFCA district, the median line with Wales. Proving where vessels have been fishing and what was caught where is an inherent and significant challenge and a potential enforcement weakness for any byelaws, especially without the implementation of I-VMS. Measures that apply within the byelaws such as minimum conservation reference sizes

¹¹ Included in the consultation to provide information to the potting sector only

can be different (more restrictive) than domestic or EU legislation. The absence of a deeming clause can reduce the ability to enforce the legislation and consequently the effectiveness of the management measures.

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

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

The Potting Permit Byelaw is due for a complete review in 2019. However, in the shorter term, the permit conditions can be amended to produce equivalent effectiveness as a deeming clause in a more legally acceptable manner. This has already been demonstrated in the development of the Netting Permit Byelaw¹² where permit conditions (catch restrictions) have been created as follows:

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

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

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

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

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

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

¹² Awaiting confirmation by the Secretary of State at the time of writing

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

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

Protection of spiny lobsters that have recently cast their shell

Each permit contains a list of catch restrictions. Due to the original wording used, the potting permits (catch restriction 1.1 iv) currently provides no protection for spiny lobsters that have recently cast their shell. This oversight has been addressed in the creation of the Netting Permit Byelaw¹³, where the findings from the formal consultation period prompted members of the Byelaw and Permitting Sub-Committee to amend the original netting permit conditions to include the wording "spiny lobster" to the list of protected species which also include edible crab and lobster.

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

Managing the whelk fishery

Over the past decade fishing effort for whelks (*Buccinum undatum*) in the UK has been increasing relatively quickly. In 2002 UK whelk landings were worth just over £4million, for 8,687 tonnes. Whelk landings in the UK totalled 16,000 tonnes in 2012, valued at £10.8million. Of this, the landings in Ilfracombe were 661 tonnes valued at £479,000, while the Exmouth landings were valued at £170,599 for 241.8 tonnes (MMO Annual Statistics¹⁴), making whelk fishing a significant sector within these two ports in the D&S IFCA District. In 2014, 301 tonnes of whelks worth £238,605 were landed into Exmouth and 716 tonnes were landed into Ilfracombe worth £564,646. In 2015 there was an increase in the landings with 315 tonnes landed into Exmouth the value of which was £282,674 and 874 tonnes were landed into Ilfracombe with a value of £818,401. The landings by UK vessels into UK port for 2015 were

¹³ Awaiting confirmation at time of writing

¹⁴ UK Sea Fisheries Annual Statistics Report 2016 – MMO. Gov.uk website

20,855 tonnes worth £18.60million. MMO statistics for 2016 have just been issued and these show the value of the whelk fishery to Ilfracombe was £640,877 for 533 tonnes.

Table 1: Annual Landings and Value of Whelks

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

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

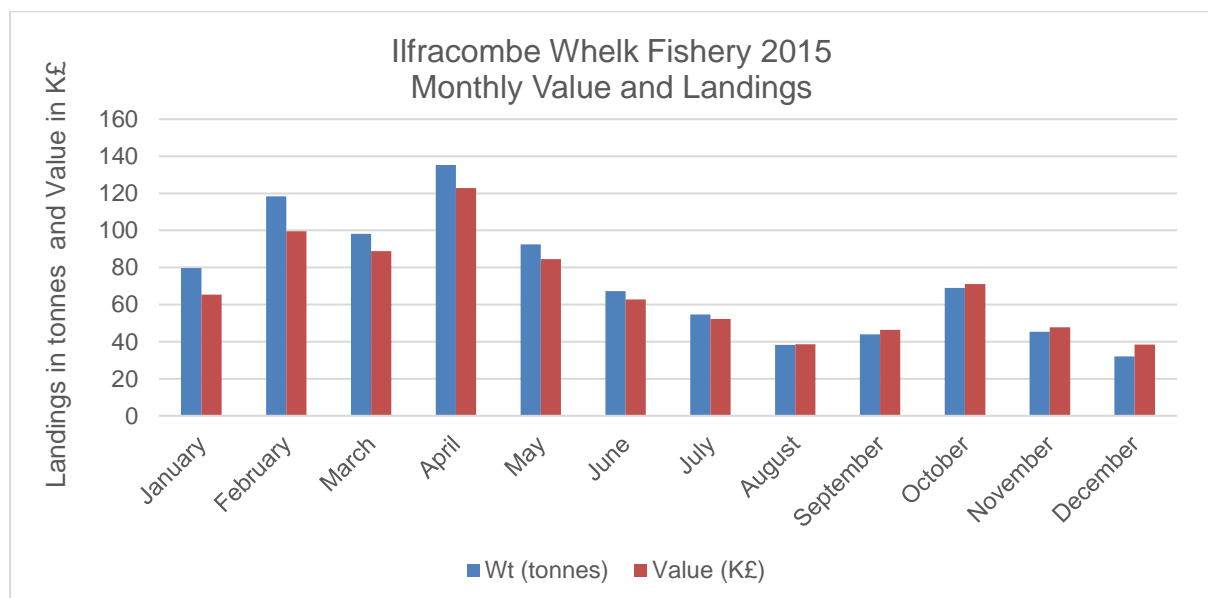


Figure 1 Ilfracombe Whelk Fishery 2015

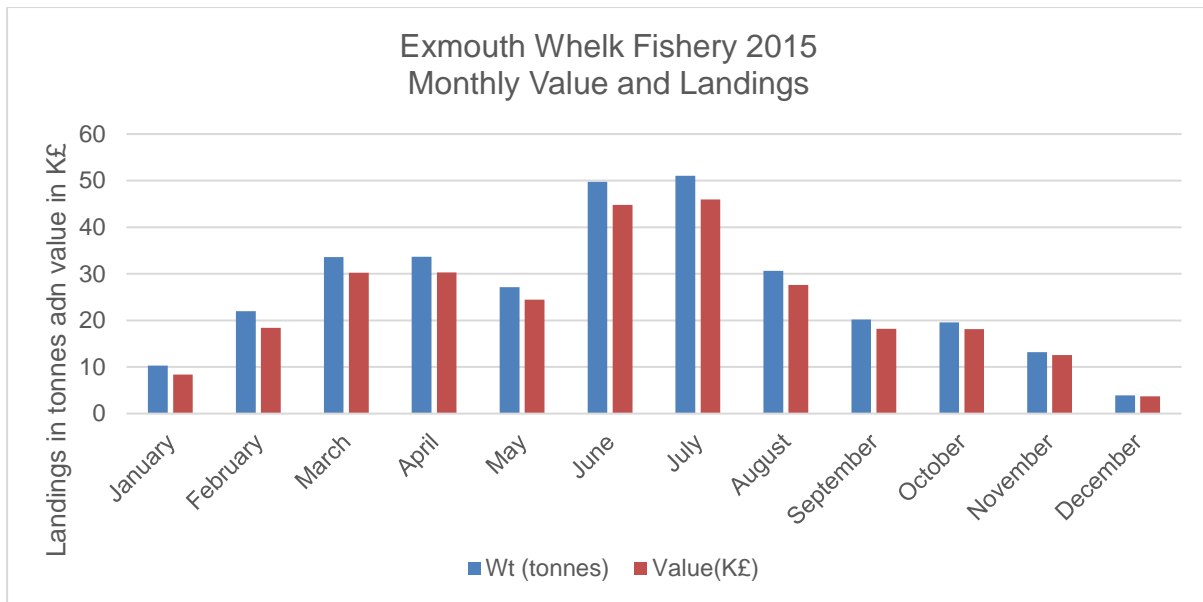


Figure 2 Exmouth Whelk Fishery 2015

Whelk Research

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

- **D&S IFCA Whelk Report 2015**
- **D&S IFCA Whelk Report 2016**

(Both reports can be viewed on the D&S FICA Website)

The 2015 report looked at the size of sexual maturity and spawning period of whelks sampled over a year from Ilfracombe in North Devon and Exmouth in South Devon. The D&S IFCA 2016 report focussed on additional research undertaken on whelks taken from Start Bay in South Devon. The size of maturity (SOM) is defined as the size at which 50% of the population is sexually mature. A previous study, conducted by Andy Lawler of Cefas (Lawler, 2013¹⁵), estimated the SOM for both sexes of whelk in the main fisheries around the country. Only one sample at each of 10 sites was used to estimate the SOM in this study. He found that in most areas the whelk SOM is greater than the EU Minimum Conservation Reference Size (MCRS) of 45mm, including areas within D&S IFCA district, suggesting that the spawning stocks are not receiving adequate protection. This raises concern as there has been a rapid increase in fishing effort over the last decade largely attributed to a boom in demand from the Far East. The two IFCA studies also found that in the D&S IFCA district the SOM for whelks is greater than the current MCRS. The table 2 below highlights these findings:

¹⁵ Determination of the Size of Maturity of the Whelk *Buccinum undatum* in English Waters – A Defra Project MF0231. Andy Lawler, Cefas 2013.

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

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

Conclusions from this Research:

- The current *Buccinum undatum* EU Minimum Conservation Reference Size (MCRS) of 45mm is too low to protect the spawning stock, and recruitment over-fishing is likely to be occurring
- SOM estimates based on shell height were calculated as:
 - 69.3mm (female) and 70.9mm (male) from Exmouth,
 - 76.5mm (female) and 76.4mm (male) from Ilfracombe,
 - 57.8mm (female) and 64.4mm (male) from Start Bay
- SOM estimates could be used as a basis from which to review the current MCRS.
- If a district wide increase in MRCS was implemented then stocks in some areas will have more stringent management compared to others. From the data in table 2 a mean of 70.79mm and a median of between 70.9 and 72.4mm can be calculated. If a mid-point of the SOM estimates was used this would afford greater protection of the stock will be provided than the current EU MCRS affords. However, there are differences in SOM in the different parts of the district and if a single MCRS is to be used as an effective management measure a more pragmatic approach may need to be taken.
- Table 3 below indicates the percentage of the population sampled being mature at five different shell heights. Increasing the MCRS to 65mm will give greater protection to the stock in all areas sampled. Introduction of an increase in MCRS over a period of time, in a phased approach, would allow the fishers to adapt gear, reduce the direct impact on landings and income, spreading it over years rather than a big hit initially, and will allow IFCA officers to monitor the impact of the management measures.

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

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

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

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

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

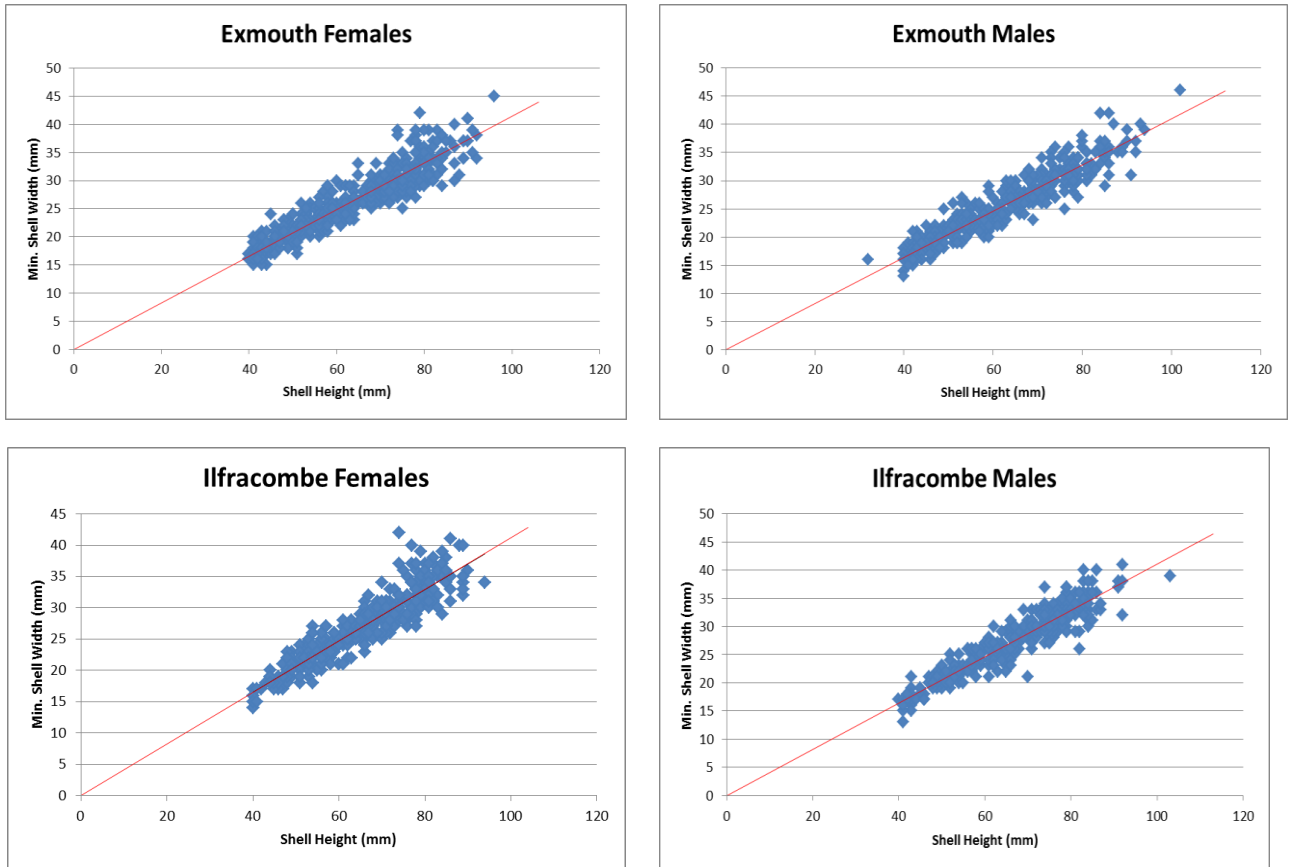


Figure 3: Relationship between Shell Height and Shell Width at Ilfracombe and Exmouth

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

Table 5 SOM by shell width

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

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

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

Whelk Management Measures

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

Sussex IFCA Whelk Management Measures

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

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

Kent & Essex IFCA Whelk Measures

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

- Introduction of Whelk Fishery Permit Byelaw in 2013
- Commercial whelk fishermen are restricted to 300 pots
- Recreational whelk fishermen are restricted to 10 pots
- Pots must be tagged
- Pots must contain at least 10 escape holes of no less than 22cm, in diameter and positioned at least 150mm from the base and no less than 50 mm from the top of the pot.
- MCRS remains at 45mm shell height
- Strings must be marked with buoy or dahn
- Dahns must be 30cm diameter or more and marked with whelk permit number

Eastern IFCA Whelk Management Measures

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

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

Welsh Government Proposed Whelk Management Measures

Welsh Government issued a consultation on Sustainable Management Measures for the Welsh Whelk Fishery. There were many consultation points and the responses are available [here](#). Some of the key measures consulted on and responses are included in:

Table 6: Welsh Government Consultation Responses to Potential Management Measures

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

Cap on weight of whelks that can be landed	76% in favour
Cap on number of pots fished	85% in favour
Data collection requirements	85% in favour
Closed spawning season (Oct to Dec/Jan)	77% in favour
Use of escape holes	80% in favour
Whelks landed in fish boxes or net sacks should weigh no more than 40kg	33% in favour

Jersey Government Whelk Management Measures

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

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

Table 7 Current Whelk Management Measures in Jersey Waters

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

Lyme Bay Fishermen's Voluntary Code of Conduct

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

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

A. Size Increase:

1. Increase in MCRS is needed to protect whelk stocks in the D&S IFCA district and allow 50% of the population to reproduce at least once. The current EU MCRS of 45mm is not sufficient and this should be increased to 65mm which will afford greater protection.
2. If an increase in MCRS is introduced this should be undertaken under a phased approach – 5mm per year or 10 mm every 2 years to reach a maximum of 65mm.
3. Width could be used instead of height as the MCRS as analysis of the data has indicated a very strong linear relationship between width and height.

B. Seasonal Measures

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

C. Gear Restrictions

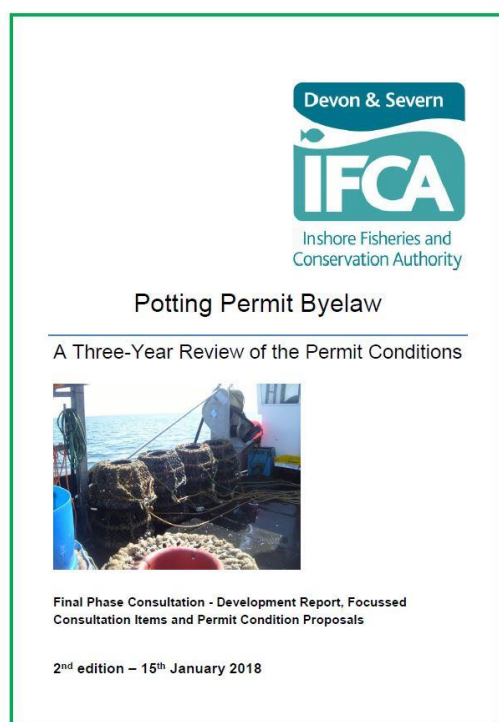
5. All pots should have escape holes fitted that allow the escape of smaller undersize whelks.

D. Data Collection

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

4. The Second Phase “Focussed” Consultation

The six-week second period of consultation, which began on 31st January 2018, provided an opportunity for all stakeholders to consider the focussed items and submit a response. In addition to highlighting the separate topics, proposed permit conditions were also included in the consultation reports which were posted on the D&S IFCA website. The potting consultation report was relatively large due to the amount of detail, rationale, images and background information on the role and duties of the Authority that was also included.



Extract documents (with focus purely on the consultation items) were also created as an easier read for stakeholders. In addition to displaying the consultation reports on the website, other options were made available (at the time) for circulation as follows:

- Consultation reports can be sent upon request to stakeholders who supply a current and functioning email address.
- Hard copies of the consultation reports can be circulated to stakeholders but a charge will be levied for the cost of postage. Stakeholders should contact the office of D&S IFCA so the charges can be clarified and then send a stamped addressed envelope of the correct size as specified.
- Hard copies of the consultation reports are available for collection at the D&S IFCA main office in Brixham.

The second phase consultation was not a detailed questionnaire or a multi-choice exercise. Stakeholders were given the freedom to respond to all of the identified items as they wished. A designated email was available to be used and stakeholders had other options to respond. It was explained that written responses would be collated, on-line survey forms were available (social media) and direct contact with the office of D&S IFCA with a view to arranging an appointment¹⁶ was also a possibility.

¹⁶ Telephone session, or personal interview with an officer

5. The Second Phase “Focussed” Consultation Items

It was explained in the consultation report that in order to introduce changes in the proposed management of more generalised potting activity, the Potting Permit Conditions had to be subjected to a re-drafting process. As a consequence of this re-drafting process and the legal advice taken during this exercise, the formatting of the permits was altered along with some of the wording and paragraph numbering. In an attempt to help stakeholders, appreciate what the changes consisted of and all the implications that they had, explanations (*in bold blue italics*) were provided for each of the items. The following information is transcribed from the consultation report¹⁷.

- ***Final Phase Consultation – Development Report, Focussed Consultation Items and Permit Condition Proposals*** (2nd Edition – 15th January 2018).

Permit Conditions Replacing a Reliance on the Deeming Clause

In order to replace the reliance on the deeming clause, the layout of the current permit conditions would need to be adjusted. As good practice, D&S IFCA has taken the view that it is appropriate wherever possible to improve and harmonise the format used in all of the permits that D&S IFCA issues. D&S IFCA has taken account of legal advice in the drafting process and in addition, the new format would be largely based on the newly developed Netting Permit Byelaw¹⁸ permit conditions.

A new catch restriction would be introduced that would link to the list of species that appears in the potting permits. The list of species would be amended slightly and it is anticipated that the amended relevant proposed potting permit conditions would take the following form:

Catch Restrictions

As provided by paragraph 24(a) of the Devon and Severn IFCA Potting Permit Byelaw 2014, the following permit conditions apply:

- 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.***

- 1.2 A permit holder or named representative is not authorised under this permit to remove from a fishery within the District:***
 - a) any ‘V’-notched or mutilated lobster;***
 - b) any berried lobster or berried edible crab;***
 - c) any part of an edible crab or lobster or spiny lobster which is detached from the carapace of the crab or lobster;***
 - d) any edible crab or lobster or spiny lobster that has recently cast its shell;***

¹⁷ For the purpose of this report, some of the images of the Annexes have been reduced in size.

¹⁸ Awaiting confirmation

1.3 A permit holder or named representative is not authorised under this permit to remove from a fishery within the District:

- a) a female edible crab less than 150mm measured across the broadest part of the carapace;**
- b) a male edible crab less than 160mm measured across the broadest part of the carapace;**
- c) a scallop less than 100mm measured across the broadest part of the flat shell;**
- d) a whelk less than 65mm measured along the length of the shell, except where paragraph 4.3 applies;**
- e) a lobster less than 90mm measured as the length of the carapace, parallel to the midline, from the back of either eye socket to the distal edge of the carapace;**
- f) a spider crab less than 130mm measured as the length of the carapace, along the midline, from the edge of the carapace between the rostrums to the posterior edge of the carapace;**
- g) a spiny lobster less than 110mm measured as the length of the carapace from the tip of the rostrum to the midpoint of the distal edge of the carapace;**
- h) a velvet swimming crab less than 65mm measured across the broadest part of the carapace;**
- i) a bass less than 42cm measured from the tip of the snout to the end of the tail fin;**

1.3.1 All such species falling within the above prohibitions in paragraphs 1.2 and 1.3 must be returned immediately to the sea without further injury.

1.3.2 The measurement of the size of a marine organism will take place in accordance with the provisions laid down in Annex XIII Article 18(1) of Council Regulation (EC) 850/98.

Explanation

The re-drafting of potting permit conditions includes the addition of Paragraph 1.1. which links to the species list and catch restrictions set out in the permit conditions. This does have some implications for fishers.

When a vessel is fishing within the District, the catch must conform to the sizes (or provisions in 1.2 and 1.3) 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 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.

Another key alteration above is the inclusion of paragraph 1.3.2. This permit condition does not place a new burden on fishers, rather it clarifies what the restrictions already are in regard to how different species should be measured to conform with minimum conservation reference sizes.

The revised formatting of the permit conditions will mean that the Authority does not need to rely on the deeming clause that is already inserted in the Potting Permit Byelaw. Background information relating to the deeming clause is included in Part 4 of the main report.

Protection of Spiny Lobster that has Recently Cast its Shell

This proposal involves a minor change to paragraph 1.2 and the species listed (a to d) in this section. It is anticipated that the amended relevant proposed potting permit conditions would take the following form:

- 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.*
- 1.2** *A permit holder or named representative is not authorised under this permit to remove from a fishery within the District:*
 - a) *any 'V'-notched or mutilated lobster;*
 - b) *any berried lobster or berried edible crab;*
 - c) *any part of an edible crab or lobster or spiny lobster which is detached from the carapace of the crab or lobster;*
 - d) *any edible crab or lobster or spiny lobster that has recently cast its shell;*
- 1.3.1** *All such species falling within the above prohibitions in paragraphs 1.2 and 1.3 must be returned immediately to the sea without further injury.*

Explanation

The words spiny lobster has been added to 1.2 (d) which has provided additional protection to spiny lobster that has recently cast its shell.

Stakeholders should also be aware that in regard to the protection of berried lobster or edible crab, the term lobster (as set out in interpretations – not shown) also includes spiny lobster and therefore berried spiny lobster remain protected.

Prohibition on the Removal of Spiny Lobster from MCZ Areas

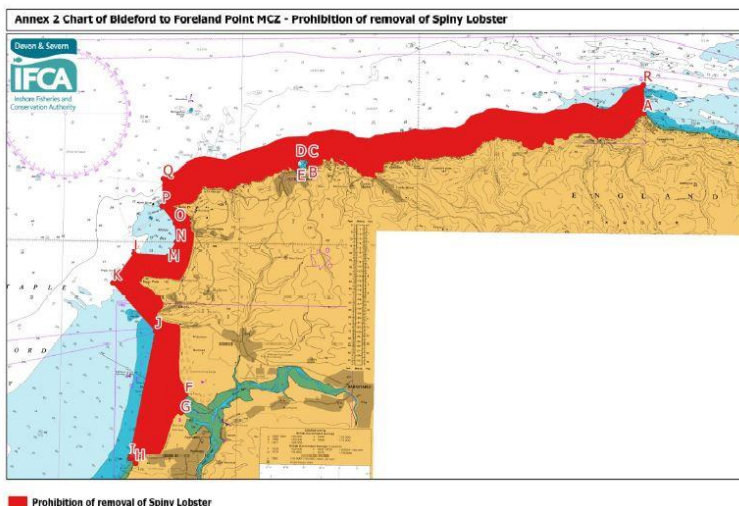
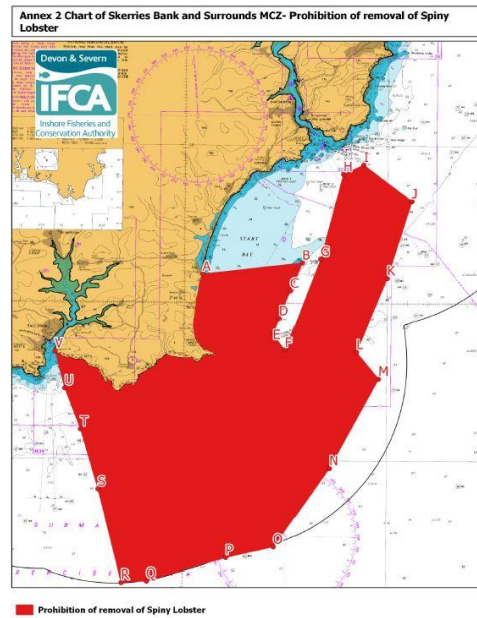
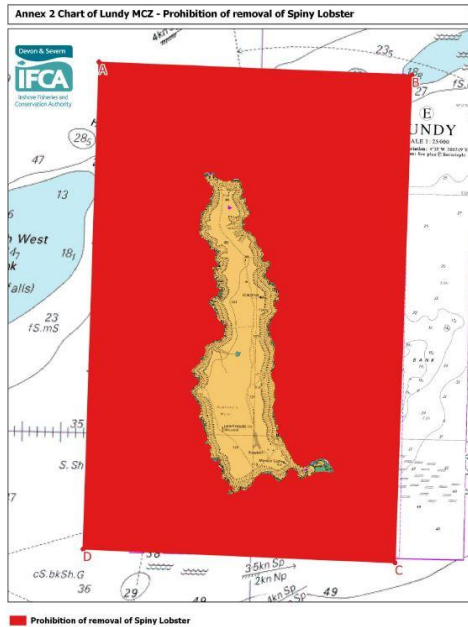
The current potting permit catch conditions already prohibit the removal of spiny lobster from both the Skerries Bank and Surrounds Marine Conservation Zone (MCZ) and also Lundy MCZ. The proposal is to apply this restriction to the Bideford to Foreland Point MCZ as spiny lobsters

have been identified as a protected species. In addition (for the purposes of formatting only) all three MCZ areas will be combined into a single annex (chart) with the restrictions listed in section 3 (spatial conditions). It is anticipated that the amended relevant proposed potting permit conditions would take the following form:

3.2 *In the areas as defined by the coordinates set out in the attached Annex 2 of this permit (Lundy, Skerries Bank and Surrounds, and Bideford to Foreland Point Marine Conservation Zones), a permit holder or named representative is not authorised to remove any spiny lobster.*

Explanation

The use of Annexes (charts) to accompany the permit conditions that D&S IFCA issues is intended to help fishers fully understand where boundaries or closing lines are. An example of the MCZ Annex 2 charts are shown below. Larger scale charts would accompany any permits that are issued with coordinates defining specific sites, boundaries or closing lines.



The Annex 2 chart (Bideford to Foreland Point MCZ) is a new restriction and displays the area where it is prohibited to remove spiny lobster.

The co-ordinates of this area are as follows:

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>		
A	51° 14.764' N	003° 47.203' W	B	51° 12.792' N 004° 06.128' W
C	51° 12.980' N	004° 06.125' W	D	51° 12.983' N 004° 06.777' W
E	51° 12.683' N	004° 06.777' W	F	51° 04.525' N 004° 12.923' W
G	51° 03.902' N	004° 13.150' W	H	51° 02.098' N 004° 15.684' W
I	51° 02.281' N	004° 15.999' W	J	51° 06.816' N 004° 14.666' W
K	51° 08.505' N	004° 17.134' W	L	51° 09.563' N 004° 15.965' W
M	51° 09.500' N	004° 14.013' W	N	51° 10.011' N 004° 13.569' W
O	51° 10.677' N	004° 13.653' W	P	51° 11.274' N 004° 14.425' W
Q	51° 12.250' N	004° 14.384' W	R	51° 15.825' N 003° 47.243' W

The landward boundary between points A and B, E and F, G and H, follows Ordnance Survey Mastermap Mean High Water and is therefore liable to change. Between point Q and point R the seaward boundary is 1 nautical mile seaward of Ordnance Survey Mastermap Mean High Water.

Gear Restrictions to Protect Populations of Otters in Estuaries

In order to protect populations of otters, the gear restrictions (section 2) of the potting permits would be amended with a new section inserted as shown. The new paragraph would link to the areas (estuary areas) labelled as an Annex to show where the restrictions would apply. The estuary areas would be enclosed by defined estuary closing lines. It is anticipated that the amended relevant proposed potting permit conditions would take the following form:

- 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.*

Explanation

The use of Annexes (charts) to accompany the permit conditions that D&S IFCA issues is intended to help fishers fully understand where boundaries or closing lines are. Examples of the estuary Annex 3 charts are shown below. Larger scale charts would accompany any permits that are issued with coordinates defining specific sites, boundaries or closing lines.

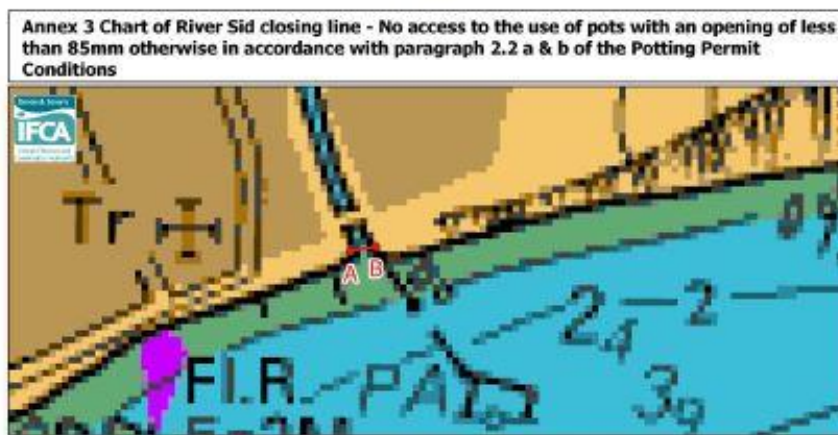
For formatting (in this report) the charts and positions displayed below are not necessarily shown in exactly the order that they will appear in the finalised permit condition Annexes if this restriction is introduced.



— Estuary Closing Line

River Axe closing line latitude and longitude positions:

Point	Latitude	Longitude
A	50° 42.133'N	003° 3.354'W
B	50° 42.133'N	003° 3.274'W



— Estuary Closing Line

River Sid closing line latitude and longitude positions:

Point	Latitude	Longitude
A	50° 40.726'N	003° 14.054'W
B	50° 40.733'N	003° 14.005'W

Annex 3 Chart of River Otter 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



— Estuary Closing Line

River Otter closing line latitude and longitude positions:

Point	Latitude	Longitude
A	50° 37.791'N	003° 18.676'W
B (Otterton Ledge)	50° 37.626'N	003° 18.399'W
C (Otterton Point)	50° 37.821'N	003° 18.143'W

Annex 3 Chart of River Exe 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



— Estuary Closing Line

River Exe closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Langstone Point)	50° 35.518'N	003° 26.629'W
B (Orcombe Point)	50° 36.421'N	003° 23.108'W

Annex 3 Chart of River Teign 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



— Estuary Closing Line

River Teign closing line latitude and longitude positions:

Point	Latitude	Longitude
A (The Ness)	50° 32.272'N	003° 29.743'W
B (Harbour Light)	50° 32.513'N	003° 29.743'W

Annex 3 Chart of River Dart 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



— Estuary Closing Line

River Dart closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Combe Point)	50° 19.634'N	003° 34.266'W
B (Inner Froward Point)	50° 20.141'N	003° 32.583'W

Annex 3 Chart of Salcombe Harbour 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



— Estuary Closing Line

Salcombe Harbour closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Splatcove Point)	50° 13.444'N	003° 46.915'W
B (Limebury Point)	50° 13.444'N	003° 46.402'W

Annex 3 Chart of River Avon 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



— Estuary Closing Line

River Avon closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Warren Point)	50° 17.077'N	003° 53.884'W
B (Herringcove Point)	50° 16.876'N	003° 54.049'W
C (Burgh Point)	50° 16.684'N	003° 54.018'W
D (Bantham Sand)	50° 16.684'N	003° 52.676'W

Annex 3 Chart of River Erme 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



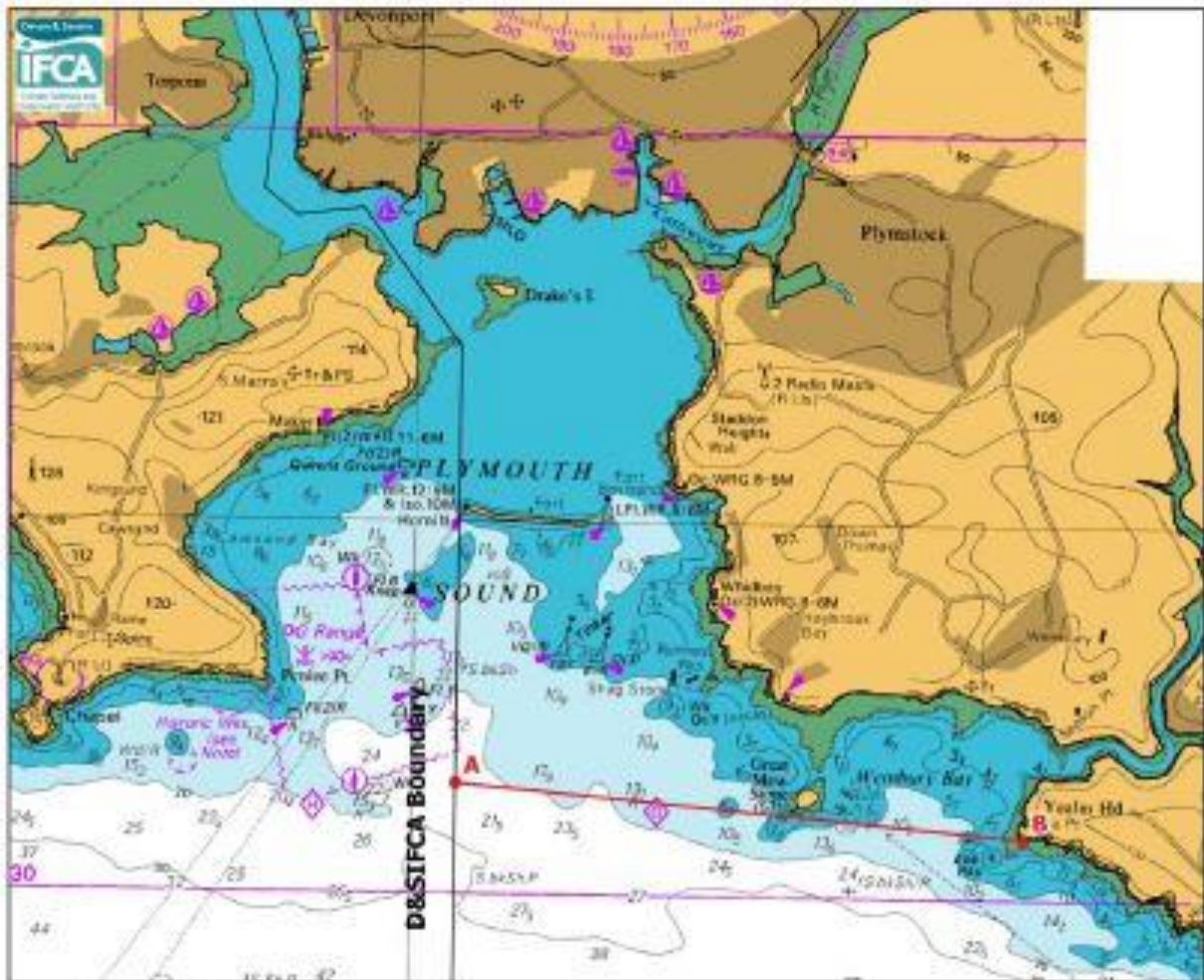
River Erme closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Battisborough Island)	50° 18.243'N	003° 57.834'W
B (Beacon Point)	50° 17.750'N	003° 56.657'W

River Lyn closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Landward end of Pier)	51° 13.900'N	003° 49.918'W
B	51° 13.900'N	003° 49.758'W

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



Plymouth Sound closing line latitude and longitude positions:

Point	Latitude	Longitude
A (DSIFCA Boundary)	50° 18.484'N	004° 09.600'W
B (Yealm Head)	50° 18.192'N	004° 04.458'W

Annex 3 Chart of River Taw and River Torridge 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

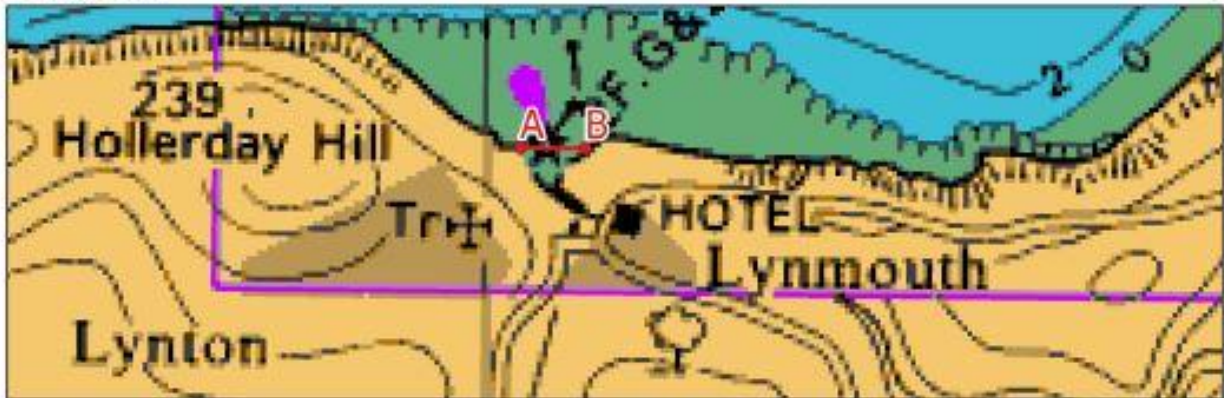


— Estuary Closing Line

River Taw and River Torridge closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Rock Nose)	51° 02.298'N	004° 15.396'W
B (Down End)	51° 07.331'N	004° 14.619'W

Annex 3 Chart of River Lyn 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

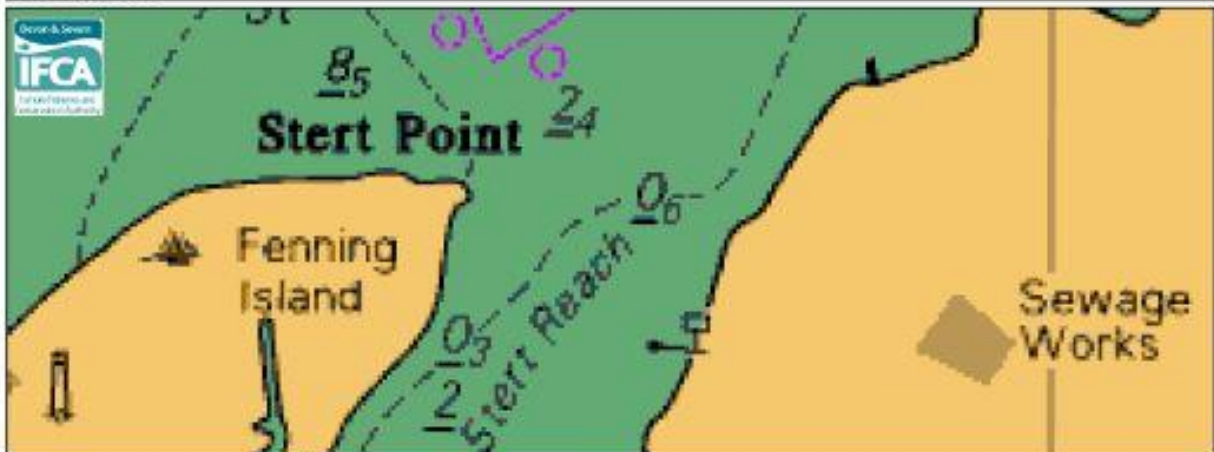


— Estuary Closing Line

River Lyn closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Landward end of Pier)	51° 13.900'N	003° 49.918'W
B	51° 13.900'N	003° 49.758'W

Annex 3 Chart of River Parrett 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



— Estuary Closing Line

River Parrett closing line latitude and longitude positions:

Point	Latitude	Longitude
A (Stert Point)	51° 13.106'N	003° 01.177'W
B (Beacon)	51° 13.061'N	003° 00.642'W

Annex 3 Chart of River Brue 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



River Brue closing line latitude and longitude positions:

Point	Latitude	Longitude
A	51° 13.528'N	003° 00.091'W
B (West of slipway)	51° 13.618'N	003° 00.091'W

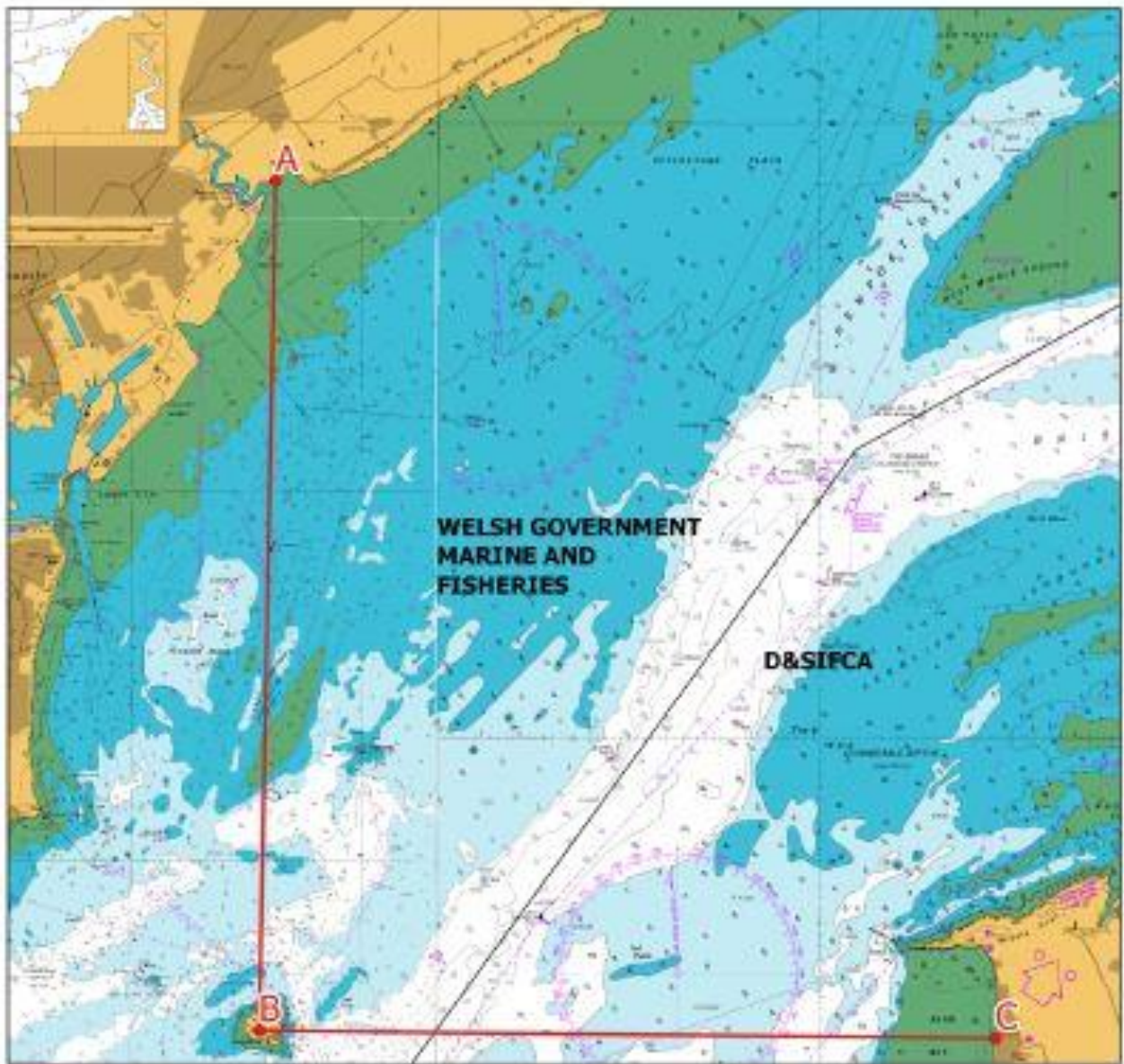
Annex 3 Chart of River Axe (Somerset) closing line - No access to the use of pots with an opening of less than 85mm otherwise in accordance with paragraph 2.2 a & b of the Potting Permit Conditions



River Axe (Somerset) closing line latitude and longitude positions:

Point	Latitude	Longitude
A	51° 19.450'N	003° 00.108'W
B	51° 19.417'N	002° 59.418'W

Annex 3 Chart of Severn Estuary 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



— Estuary closing line

Severn Estuary closing line latitude and longitude positions:

Point	Latitude	Longitude
A (East of Rhymney River mouth)	51° 29.333'N	003° 07.118'W
B (Flat Holm Lighthouse)	51° 22.617'N	003° 07.317'W
C (South of Beach Rd/ Sand Rd junction)	51° 22.352'N	002° 57.724'W

Explanation

This proposed permit condition is intended to protect populations of otters in estuaries.

It has been identified by the Environment Agency that Otters can force their way into pots (with an expandable entrance), get trapped and drown. The proposed management reflects similar measures already imposed by the Environment Agency to manage access to the freshwater crayfish fisheries

The ring can be made from any rigid material, but the important point is that it cannot expand. Evidence would suggest that traps placed in estuary areas present a higher risk to otters; however, it should be noted that whole of Plymouth Sound and the coastal area towards the River Yealm, would in this case be included as an “estuary”.

The use of Annexes (charts) to accompany the permit conditions that D&S IFCA issues are intended to help fishers fully understand where boundaries or closing lines are. Examples of the potting permit conditions Annex 3 charts (Estuary closing lines) are shown above. A collection of larger scale charts would accompany any potting permits that are issued and these would include coordinates defining specific sites, boundaries or closing lines.

This restriction will effect the use of some types of pot, normally set to target prawns or small fish but is not intended to restrict the use of common types of pots including parlours or inkwells targeting crab and lobster.

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The Inshore Potting Agreement Areas (IPA)

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.

It is proposed that the management of the IPA would be achieved by the use of mobile fishing permit conditions working in tandem with the current fishing vessel licences (schedules) that are issued by the MMO. The IPA is relevant to both the static gear and the mobile fishing sectors, although the potting permits will not contain any conditions of use relevant to these areas. The mobile fishing permit conditions (gear, spatial and time) would need to be combined to manage access to the IPA areas. Access areas for the IPA (charts/annexes) would be combined with Marine Protected Areas (MPA).

The established and recognised IPA chart would remain; however, the replication of the IPA restrictions set out in the mobile fishing permit Annexes (for the purposes of D&S IFCA management) would be set out differently and areas labelled in a different way. The IPA will be divided into separate charts with current Area 3 (near Berry Head), combined with the spatial restriction Annex (Chart) for the MPA in Torbay.

To manage access in the portion of the IPA (near Torbay) it is anticipated that the proposed relevant amended mobile fishing permits would take the following form:

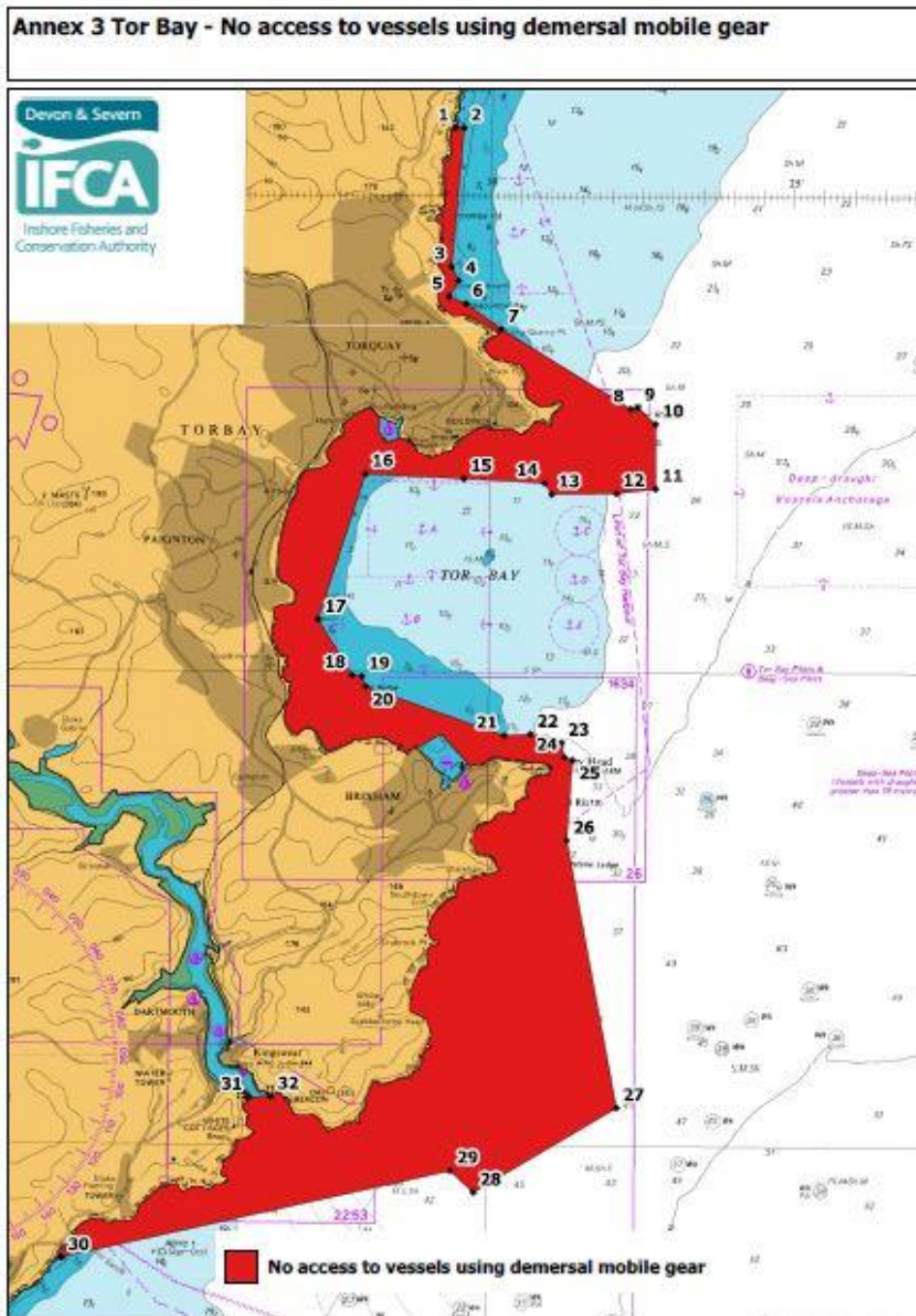
- 3.3** *In the areas as defined by the coordinates set out in the attached Annex 3 of this permit (which includes the Torbay section of the Lyme Bay and Torbay Site of Community Importance, the Torbay Marine Conservation Zone, and part of the South Devon Inshore Fishing Grounds known as the Inshore Potting Agreement Areas), a permit holder or named representative is not authorised to use demersal mobile fishing gear except where;*
- a) access is authorised for demersal trawl gear within Areas 1, 2, 3 and 4 as defined by the coordinates set out in the attached Annex 3a of this permit and the demersal trawl gear is used in accordance with paragraph 2.8 and 4.3.*
 - b) access is authorised for scallop gear within Area 4 as defined by the coordinates set out in the attached Annex 3b of this permit and the scallop gear is used in accordance with paragraph 2.8.*

This mobile fishing permit condition is linked to the gear restriction 2.8 shown below:

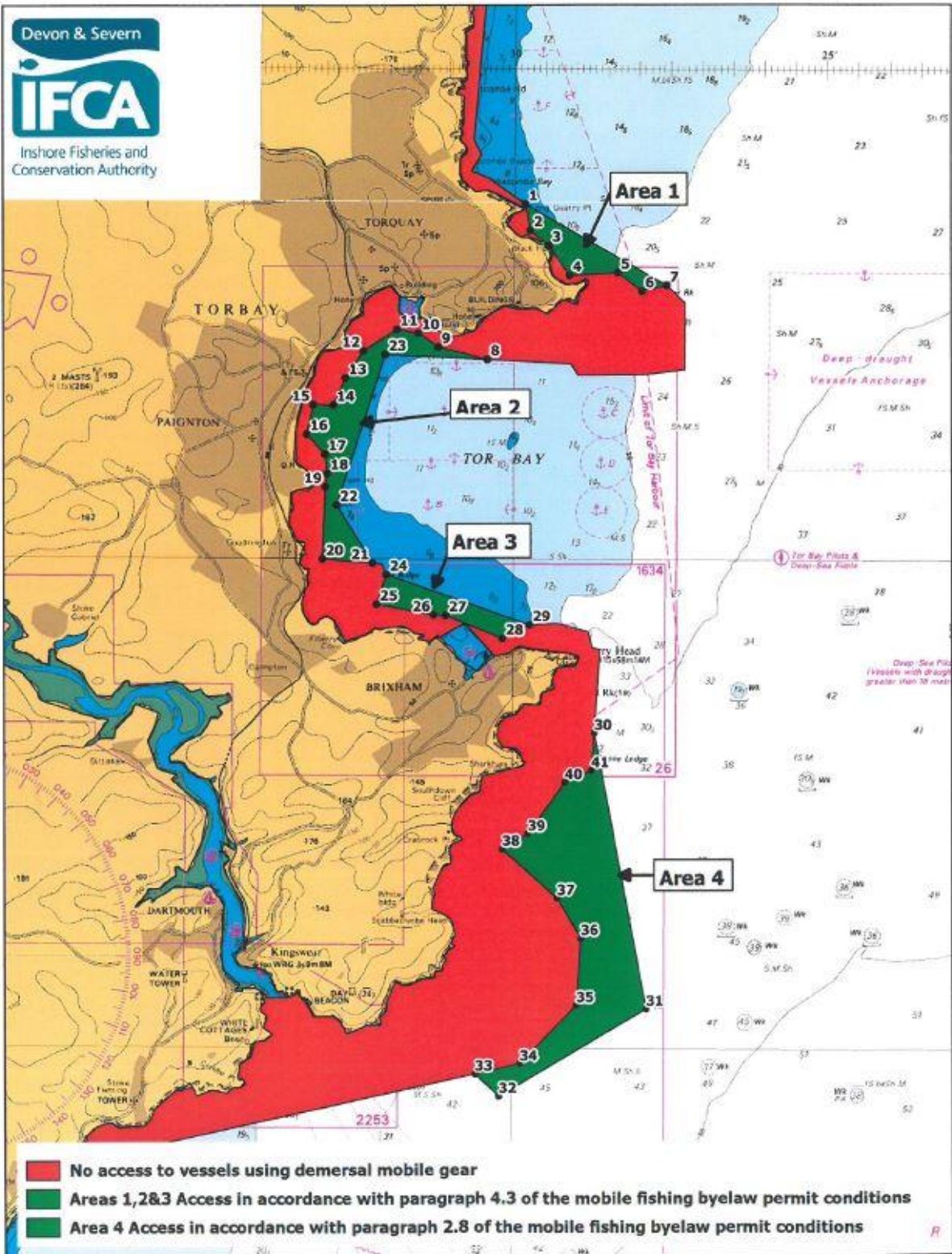
- 2.8** *Within the access Area 4 as defined by the coordinates set out in Annex 3a and 3b (part of the South Devon Inshore Fishing Grounds known as Inshore Potting Agreement Areas), a permit holder or named representative is not authorised under the permit to use demersal mobile fishing gear unless;*
- a) the vessel is rated at 100KW or less and;*
 - b) when using scallop dredges, the vessel uses no more than two tow bars, each tow bar does not exceed 2.6 metres in total length and there are no more than three dredges attached to each tow bar.*

Paragraph 3.3 (a) of the [mobile fishing permit condition](#) is linked to the time restriction 4.3 shown below:

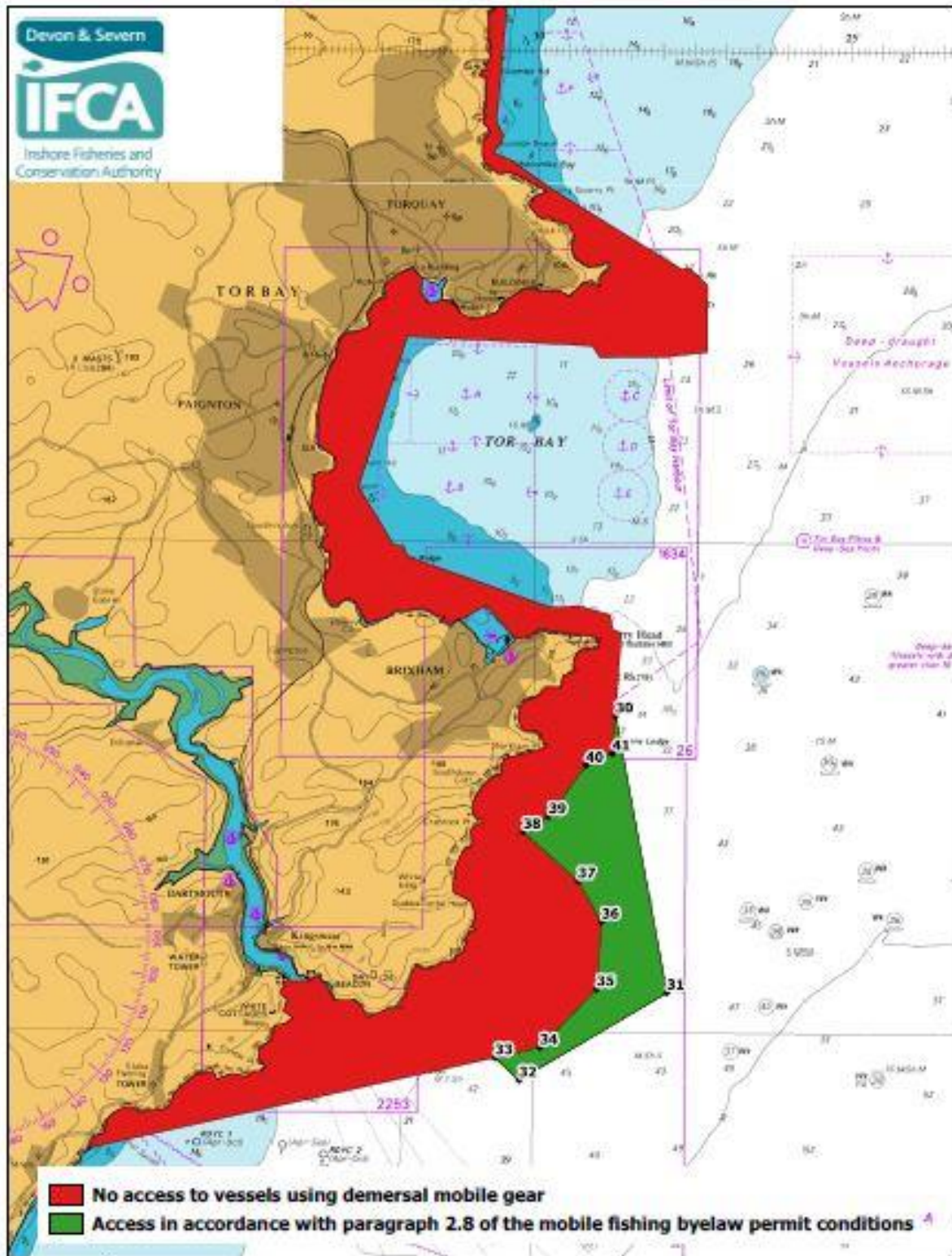
- 4.3 A permit holder or named representative is only authorised to use demersal trawl gear within the Areas 1, 2 and 3 as defined by the coordinates set out in the attached Annex 3a between 1st April and 30th June (inclusive).



Annex 3a Tor Bay - Access areas for vessels using demersal trawl gear in accordance with paragraphs 2.8 and 4.3 of the mobile fishing byelaw permit conditions



Annex 3b Tor Bay - Access areas for vessels using scallop gear in accordance with paragraph 2.8 of the mobile fishing byelaw permit conditions



Explanation

There are no new areas that will be closed to mobile fishing activity as part of this proposed change in the permit conditions.

Although closed to most demersal mobile fishing activities, limited access is provided in the permit conditions subject to certain restrictions. Annex 3a and 3b identifies which areas have limited access to mobile gear fishing vessels subject to gear, (for example 100 KW engine power) and the time restrictions (the dates for demersal trawl access in the Torbay MPA areas). Access is different for vessels engaged in demersal trawling and vessels engaged in scallop dredging as shown in Annex 3a and 3b. This change does not present any new restrictions that are not already in place at this time.

The use of Annexes (charts) to accompany the permit conditions that D&S IFCA issues are intended to help fishers fully understand where boundaries or closing lines are. A collection of larger scale charts will accompany any permits that are issued with coordinates defining specific sites, boundaries or closing lines. D&S IFCA is committed to an initiative to place all coordinates for the mobile fishing permit Annexes on electronic data memory sticks that will be compatible with three types of electronic chart plotters. (Olex, MaxSea & Sodena)

For the purposes of this consultation, stakeholders can contact D&S IFCA and request exact co-ordinates for all areas illustrated in the Annexes.

This proposal, if implemented, would present D&S IFCA with the opportunity to directly enforce the same restrictions (mobile fishing restrictions) in regard to the licence condition for the IPA in this area of the District.

The Remainder of the IPA

To manage access in the remaining portion of the IPA (Dartmouth to Plymouth) it is anticipated that the proposed relevant amended mobile fishing permits would take the following form:

- 3.5 In the areas as defined by the coordinates set out in the attached Annex 5 of this permit (part of Start Bay, Start Point to Plymouth Sound and Eddystone Site of Community Importance, part of the Skerries Bank and Surrounds Marine Conservation Zone and part of the South Devon Inshore Fishing Grounds known as the Inshore Potting Agreement Areas), a permit holder or named representative is not authorised to use demersal mobile fishing gear except where;**
- a) the demersal gear used within Area A as defined by the coordinates set out in the attached Annex 5a of this permit is used in accordance with paragraph 4.5, table 2.**
 - b) the demersal gear used within Area B as defined by the coordinates set out in the attached Annex 5a of this permit is used in accordance with paragraph 4.5, table 2.**

- c) *the demersal gear used within Area C as defined by the coordinates set out in the attached Annex 5a of this permit is used in accordance with paragraph 4.5, table 2.*
- d) *the demersal gear used within Area D as defined by the coordinates set out in the attached Annex 5a of this permit is used in accordance with paragraph 4.5, table 2.*

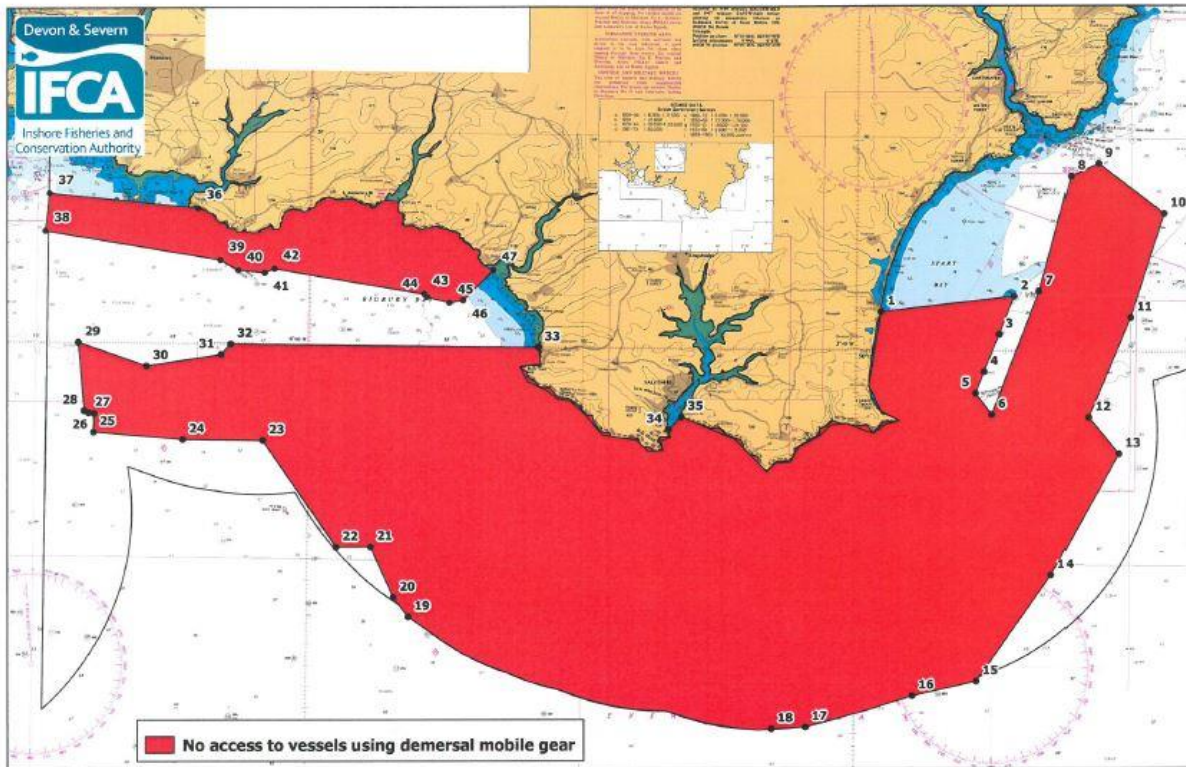
Paragraph 3.5 of the mobile fishing permit condition is linked to the time restriction 4.5 shown below which includes the Table 2 (dates):

4.5 *A permit holder or named representative is only authorised to use demersal mobile fishing gear within the Areas A, B, C and D as defined by the coordinates set out in the attached Annex 5a of this permit in accordance with the dates set out in Table 2 below:*

Table 2

Annex	Sub Area of Annex 5a	Access Dates
5a	Area A	1 st Jan to 31 st May inclusive
5a	Area B	1 st Jan to 31 st March inclusive
5a	Area C	1 st March to 31 st March inclusive
5a	Area D	1 st Feb to 31 st Aug inclusive

Annex 5 South of Salcombe - No access to vessels using demersal mobile gear



Explanation

There are no new areas that will be closed to mobile fishing activity as part of this proposed change in the permit conditions. Once again, the mobile permit conditions set out above can appear complicated as written; however, the charts that are issued with the mobile fishing permits simplify the issue. In this case, although closed to most demersal mobile fishing activities, limited access is provided in the permit conditions. Annex 5 (above) includes current closed areas (Start Bay, Start Point to Plymouth Sound and Eddystone Site of Community Importance, part of the Skerries Bank and Surrounds Marine Conservation Zone and part of the IPA).

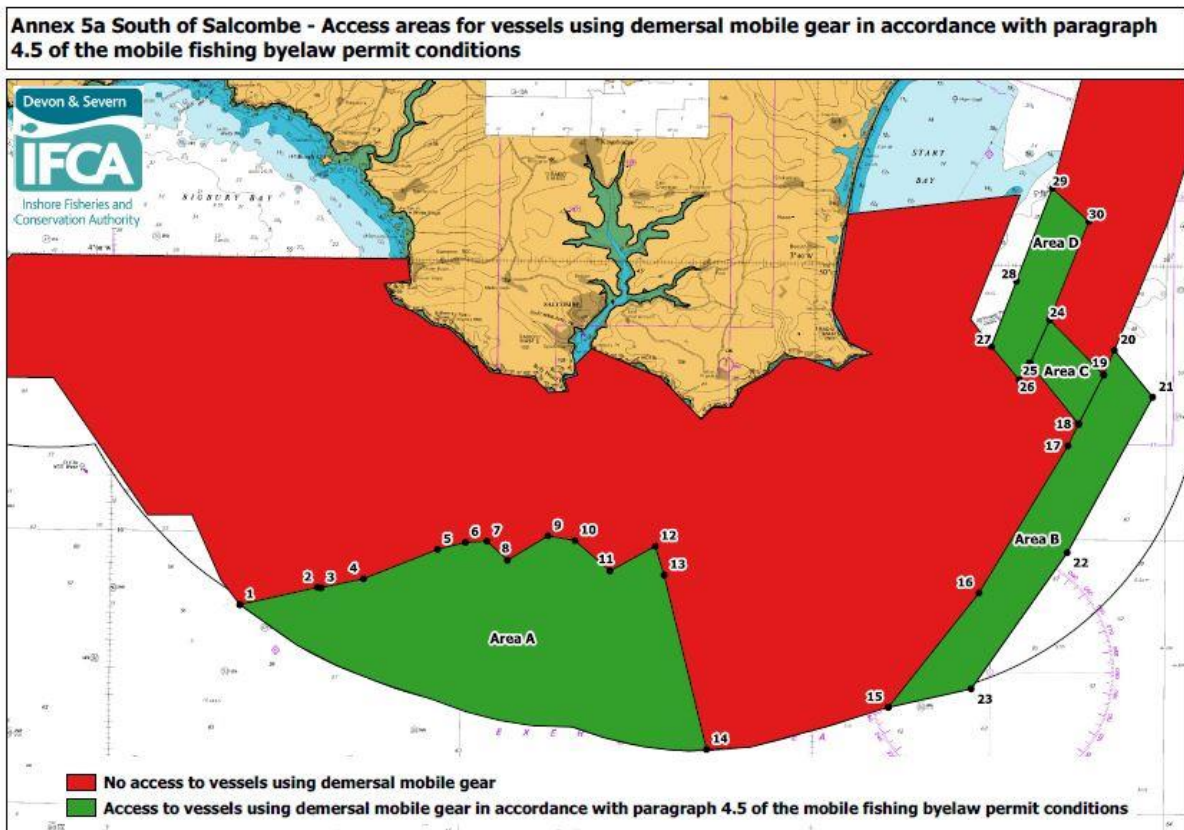
Annex 5a demonstrates the areas that have limited access subject to the dates that appear as part of the present IPA conditions, which have been replicated in the permit conditions set out in paragraph 4.5 (table 2).

Stakeholders should be aware that the extent of the closure in regard to the D&S IFCA mobile fishing permit conditions only includes areas within the 6-mile limit. Restricted access for areas of the IPA outside of 6 nautical miles is still regulated via licence conditions (variations) issued by the Marine Management Organisation.

This proposal, if implemented, would present D&S IFCA with the opportunity to directly enforce the same restrictions in regard to the licence condition for the IPA in this area of the District. A collection of larger scale charts would accompany any mobile fishing

permits that are issued with coordinates defining specific sites, boundaries or closing lines.

For the purposes of this consultation, stakeholders can contact D&S IFCA and request exact co-ordinates for all areas illustrated in the Annexes.



Managing the Whelk Fishery

Increase in size to 65mm (length)

The proposal would be to increase the size of a whelk from 45mm to 65mm. In recognition of the impact that this may have on fishers, a phased increase is being considered. The current species list (paragraph 1.2) of the current potting permit specifies a whelk size of 45mm. The paragraph numbering in the proposed permit conditions would alter and also specify 65mm, but importantly link this increased size to a time restriction (a table) within a separate section of the permit conditions. It is anticipated that the amended relevant proposed potting permit conditions would take the following form:

- 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.*

Table 1

Option 1

Date	Size
<i>May 2018</i>	<i>55mm</i>
<i>May 2020</i>	<i>65mm</i>

Option 2

Date	Size
<i>May 2018</i>	<i>50mm</i>
<i>May 2019</i>	<i>55mm</i>
<i>May 2020</i>	<i>60mm</i>
<i>May 2021</i>	<i>65mm</i>

Explanation

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 provide two options:

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

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

Height and width of a shell

D&S IFCA has taken the view that the introduction of a whelk width size (riddle) and an escape hole size for whelk pots, was not deemed suitable at this time for inclusion in permit conditions; however, it is recognised that further studies and consultation may help to formulate guidance to the industry to help promote compliance with the minimum conservation reference size.

Explanation

A riddle is basically a grid with evenly spaced gaps used to sort out undersized whelks from the catch. Studies to date indicate that there is a correlation between the width of a whelk and the length of a whelk. Whelks can be placed on a riddle and smaller (narrower) whelks will pass through the riddle and can then be returned to the sea. A riddle (used correctly) can help fishers sort their catch, although it is the length that remains as the permit restriction at this time. Continuing studies can help determine the most appropriate spacing for different sizes of whelks.

- *Would guidance be of benefit to you as a fisher?*
- *Would you prefer permit conditions to be utilised?*
- *Would you like to see a riddle size added to the permit conditions?*
- *If, so, when would it be suitable to become a permit condition?*

Escape gaps in whelk pots are also of potential benefit to fishers. Holes of specific sizes can allow smaller whelks to escape from pots before they are hauled.

- *Would guidance be of benefit to you as a fisher?*
- *Would you prefer permit conditions to be utilised?*
- *Would you like to see an escape hole size added as a permit condition?*
- *If, so, when would it be suitable to become a permit condition?*
- *How many holes would be appropriate and how should they be distributed on the pots?*

Further studies and the development of a Fully Documented Fishery

Although not a permit condition, Paragraph 17 of the Potting Permit Byelaw provides the Authority with a formal route for the collection of required data to inform its decision making. Data collection is vital to build the existing evidence base to manage the whelk fishery in the longer term. D&S IFCA has the intention to implement a Fully Documented Fishery. This approach has already been taken in regard to the Live Wrasse Pot Fishery. On-board whelk survey work, conducted by D&S IFCA Environment Officers, will be undertaken in due course. Fishers will be informed of their requirements at a later date.

Lundy Island - No Take Zone

The restrictions in this legacy Byelaw can be incorporated into the potting permit conditions. It is anticipated that the amended relevant proposed potting permit conditions would take the following form:

- 3.4** *In the areas as defined by the coordinates set out in the attached Annex 4 of this permit (Lundy Island No Take Zone), a permit holder or named representative is not authorised to remove any sea fisheries resources.*

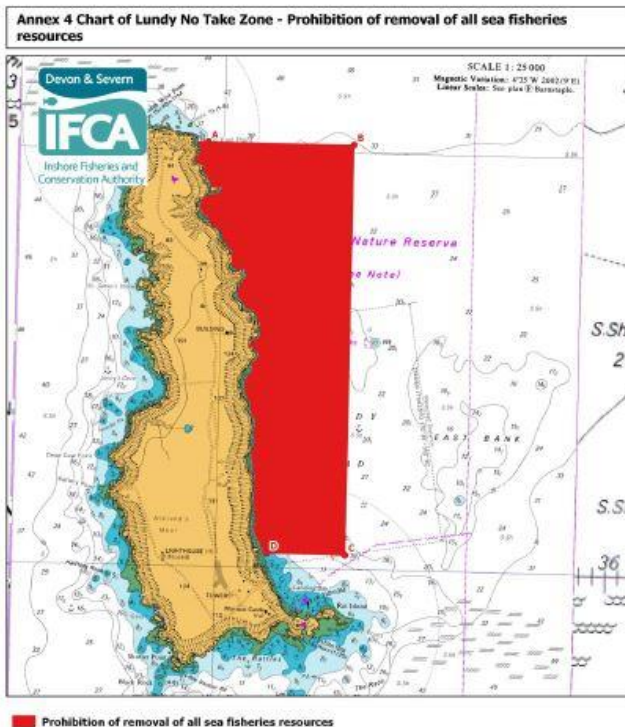
Explanation

The coordinates and the Annex 4 chart are shown below.

Annex 4 Lundy No Take Zone – Prohibition of removal of all sea fisheries resources

Latitude and Longitude positions

Point	Latitude	Longitude
A	51°12.040'N	004°40.120'W
B	51°12.040'N	004°39.000'W
C	51°10.070'N	004°39.000'W
D	51°10.070'N	004°36.600'W



Explanation

This addition to the potting permit conditions would not add an additional restriction to fishers as there is a legacy measure (Byelaw) still in place. The intention is purely to simplify restrictions for fishers by placing as much of the regulation in one place (the permit). The use of Annexes (charts) to accompany the permit conditions that D&S IFCA issue are intended to help fishers fully understand where boundaries or closing lines are. An example of the Annex 4 chart (Lundy No Take Zone) is shown below. Any Annexes that are issued will specify coordinates defining specific sites, boundaries or closing lines.

Category Two Restrictions

The first phase “open” consultation highlighted that additional clarity would be welcomed by some stakeholders in regard to some of the current Category Two permit conditions. The redrafting of permit condition process, has presented an opportunity to consider different wording in several of the paragraphs used. Category Two permit holders (recreational fishers) already have specific restrictions including those relating to gear. In addition, the current gear restriction 2.2 (gear marking) is applicable to all permit holders. No new restrictions are being proposed relevant to this section of the consultation, however revised wording in certain paragraphs has been introduced to clarify restrictions that are already in place. In regard to Category Two gear restrictions, it is anticipated that the amended relevant proposed potting permit conditions would take the following form:

2.6.3 *A Category Two permit holder or named representative is only authorised to use a named vessel within the District to haul pots with tags issued to the permit holder.*

2.6.4 *A Category Two permit holder is not authorised under this permit to use more than five pots at any one time within the District.*

Explanation

The above changes do not add new restrictions. Category Two permit holders must mark their gear with their own permit numbers and are already only permitted to use a maximum of 5 pots per permit holder, which must be fitted with tags. The intention of current permit conditions (now drafted as 2.3) has been to prohibit all permit holders hauling other fishers gear.

The purpose of 2.6.3 above is to help clarify the responsibilities of Category Two permit holders that may not have readily identified the restrictions as set out in 2.3.

6. The Second Phase “Focussed” Consultation Response

The information (consultation response for the second phase – 31st January to 14th March 2018) was collated and documented in a supplementary report which was presented to members of the D&S IFCA B&PSC in advance of their meeting on 12th April 2018.

The information relating to the received response that was presented in this second supplementary report (27th March 2018), including the officer comments, has been transcribed below. This section of the report demonstrates:

- **The information supplied by stakeholders (the summarised response) from the phase 2 consultation conducted between 31st January 2018 & 14th March 2018;**
- **The extent of the information considered by members including officer comments in April 2018.**

The Phase Two Consultation Response (Transcription of Supplement)

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 MCZ¹⁹ 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.

¹⁹ The section of the MCZ that is within the D&S IFCA District

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.

Gear Restrictions to Protect Populations of Otters in Estuaries

Aims and Requirements:

- To recognise the evidence²⁰ 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;*
- c)** *the entrance to the pot at its narrowest point is fitted with a ring constructed of a rigid material and;*
 - d)** *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.*

²⁰ Otter mortalities within fixed traps in Devon - R Hurrell – October 2017

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 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.

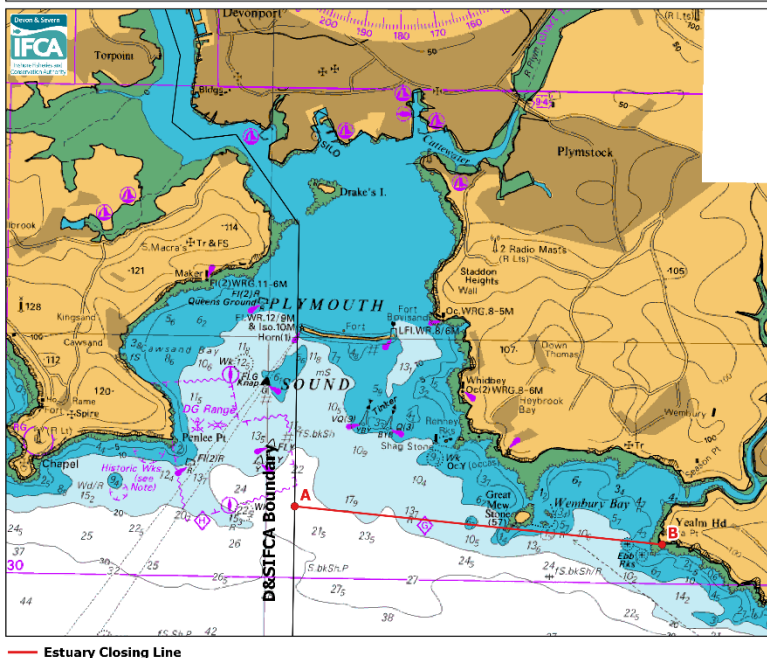
The report on otter mortalities within fixed traps in Devon (October 2017) by R. Hurrell (Environment Agency) is embedded (hyperlinked) below:

[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:

- 1.2 *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.*

- 1.4 *A permit holder or named representative is not authorised under this permit to remove from a fishery within the District:*
 - e) *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:

- 4.4 *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.

7. The Decision Making & Outcome of the Process

Minutes are taken of all D&S IFCA B&PSC Meetings. When agreed for accuracy (at the following meeting), the minutes are posted on the D&S IFCA website. On 12th April 2018 members of the D&S IFCA B&PSC unanimously agreed the following in regard to amendments to the Potting Permit Conditions:

- a. ***That D&S IFCA amend the Potting Permit Conditions as proposed to replace a reliance on the deeming clause***
- b. ***That D&S IFCA amend the Potting Permit Conditions as proposed for the protection of spiny lobster that has recently cast its shell***
- c. ***That D&S IFCA amend the Potting Permit Conditions as proposed to prohibit the removal of spiny lobster from MCZ areas.***
- d. ***That D&S IFCA amend the Potting Permit Conditions as proposed to protect populations of otters in estuaries***
- e. ***That D&S IFCA amend the Potting Permit Conditions as proposed to introduce a 65mm minimum conservation reference size for whelks combined with a phased in approach of 10mm increases over a two-year period***

Although not part of this more generalised consultation on the Potting Permit Conditions, members also agreed to implement changes in regard to the Live Wrasse Fishery. This consultation was conducted separately as it formed part of the Formal Review of the fishery and has been documented in a separate report.

Changes made to the Potting Permit Conditions include:

- a. ***That D&S IFCA amend the Potting Permit Conditions as proposed to amend the closed season to start on 1st May and end on 15th July***
- b. ***That D&S IFCA amend the potting permit conditions as proposed to amend the slot size for corkwing wrasse to be 140mm to 180mm***

Although not part of this more generalised consultation on the Potting Permit Conditions, members also agreed to implement changes in regard to the management of mobile fishing activity. This consultation was conducted separately as it related to changes to the Mobile Fishing Permit Conditions. Changes that have relevance to the potting sector include:

- a. ***That D&S IFCA amend the Mobile Fishing permit Conditions as proposed to manage the South Devon Inshore Fishing Grounds (known as the Inshore Potting Agreement Areas)***
- b. ***That D&S IFCA amend the Mobile Fishing Permit Conditions as proposed to introduce the use of Inshore Vessel Monitoring Systems.***

Legal Advice and Re-drafting of Potting Permit Conditions

Following the decision making by the B&PSC on 12th April 2018, legal advice was taken to refine several elements of documentation that are all relevant to the management of more generalised potting activity. Documentation subjected to refinement includes:

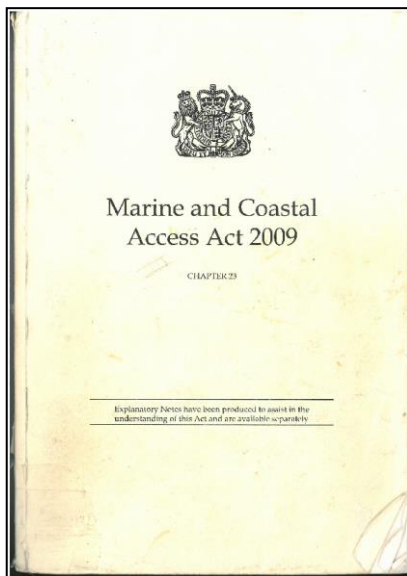
- Potting Permit Conditions;
- Application form to apply for a Potting Permit;
- Policy and clarification documentation for potting.

The Potting Permit Conditions have, wherever possible, been amended to reflect as closely as possible the proposals (and suggested amended Potting Permit Conditions) as set out in the consultation documentation. Any differences between the new Potting Permit Conditions that have been issued and those developed and set out in the consultation, have not gone beyond the scope of the proposed restrictions as set out in the consultation.

8. Background Information about D&S IFCA

The information in this section of this report was inserted into the previous reports and helps all stakeholders improve their understanding of D&S IFCA.

What is the D&S IFCA and what does it do?



The Marine and Coastal Access Act 2009 (MaCAA) introduced a new framework for managing the marine environment and providing greater access to it. This Act of Parliament replaced Sea Fisheries Committees with Inshore Fisheries and Conservation Authorities (IFCA's) and is fundamental to the work of D&S IFCA.

The D&S IFCA is the largest of the ten separate IFCA districts and has two separate coastlines. The area of the District is 4522km² and is defined in the Statutory Instrument (2010 No. 2212)²¹. The D&S IFCA District includes the areas of Devon, Somerset, Gloucestershire County Councils; Bristol City and Plymouth City Councils; North Somerset and South Gloucestershire Councils and all adjacent waters out to six nautical miles offshore or the median line with Wales.

“D&S IFCA will lead, champion and manage a sustainable marine environment and inshore fisheries, by successfully securing the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry”²²

²¹ The Devon and Severn Inshore Fisheries and Conservation Authority Order 2010

²² Mission statement for D&S IFCA

The Full Authority is comprised of 30 members drawn from relevant Local Authorities (Councillors), General Members (appointed to the Authority by the Marine Management Organisation (MMO) and Statutory Appointees representing the MMO, the Environment Agency (EA) and Natural England (NE). D&S IFCA is funded via several different funding Authorities (councils) with an additional contribution from central government. Officers are employed by D&S IFCA to conduct work on behalf of the Full Authority. D&S IFCA has ten full time officers and one part-time Office manager. The main office is situated in Brixham with one officer located in the Severn area of the district.

Core work undertaken

In meeting the main duties specified in MaCAA, the work of D&S IFCA is basically divided into different areas as follows:

Enforcement

These duties include enforcing the byelaws implemented by D&S IFCA and also the enforcement of EU and domestic legislation. D&S IFCA currently has one 6.4 metre rigid inflatable boat to conduct enforcement work at sea. D&S IFCA works closely with other organisations such as other IFCAs, the MMO, the EA and the Border Force (BF) with which it shares assets. D&S IFCA is committed to the use of new technologies for enforcement purposes, particularly remote technology.

Research

Research and survey work conducted by D&S IFCA informs evidence bases subsequently used to manage fishing activities via the introduction of local management measures that can include legislation in the form of Byelaws. D&S IFCA currently has an 8-metre survey vessel used for independent survey work at sea. D&S IFCA works in co-operation with other organisations to conduct research work and takes environmental advice from NE. D&S IFCA research and survey work (and external research and advice) also informs longer term management that can be achieved via the permitting byelaws that contain flexible permit conditions.

Byelaw work

The Byelaw work is often a lengthy and complex process. It requires specialised skills and background knowledge. This Authority has created a Sub-Committee to conduct the byelaw work. The Byelaw and Permitting Sub-Committee is formed by a number of Full Authority members, each offering a different set of skills or background knowledge that is utilised to complete the required work. Officers prepare the material used by the Sub-Committee for their deliberations (meetings) and the Sub-committee's recommendations are then presented to the Full Authority at key stages. It is the Full Authority members that make the final decisions²³.

There are a number of legacy byelaws in place that were inherited from Devon Sea Fisheries. All legacy byelaws must be reviewed. In addition to reviewing legacy measures, members of the Sub-Committee are also tasked with reviewing flexible permit conditions and providing recommendations to the Full Authority for potential changes to the permits.

²³ Delegated powers can be granted to the Sub-Committee for decision making

All of the separate elements of the byelaw work are a team effort. Although the officers prepare the majority of the material (reports) required for the process, the officers do not take decisions at any time.

Why does D&S IFCA manage potting activity?

D&S IFCA must manage this fishing activity. MaCAA sets out how the management of inshore fisheries must be conducted and by whom. D&S IFCA is the responsible body to manage inshore fisheries within this district and therefore must manage the exploitation of sea fisheries resources in the district.

MaCAA details the responsibilities of the D&S IFCA which includes important mandatory duties as follows:

Section 153 (2)

- a) **Seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way,**
- b) **Seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation,**
- c) **Take any other steps which in the authority's opinion are necessary or expedient for the purpose of making a contribution to the achievement of sustainable development, and**
- d) **Seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.**

In addition, D&S IFCA has a duty for the protection of marine conservation zones (MCZ). This is specified within the Act as follows:

Section 154

- 1) **The authority for an IFC district must seek to ensure that the conservation objectives of any MCZ in the district are furthered.**
- 2) **Nothing in section 153 (2) is to affect the performance of the duty imposed by this section.**

D&S IFCA would be failing in its duties if it did not manage fishing activities conducted within the district. Potting is conducted in the district and therefore must be managed appropriately.

How does D&S IFCA manage potting activity?

The D&S IFCA inherited legacy byelaws from its predecessor organisation the Devon Sea Fisheries Committee. Byelaws are local legislation used to manage different activities which include potting. There were several legacy byelaws that related to potting and D&S IFCA has had to consider its statutory duties and examine and review these legacy measures to see if they are fit for purpose. There is a separate guide²⁴ to explain how D&S IFCA is conducting the required review of these inherited byelaws.

²⁴ Displayed on the D&S IFCA website or available upon request.

Byelaws are not the only control measures used to manage fishing activities and, in this case, potting activity and the species taken. Other EU and domestic legislation also places restrictions on fishers. Byelaws are local measures which support this other legislation. Byelaws can impose greater restrictions to suit local circumstances but they cannot remove any restrictions imposed by UK or EU regulations.

In 2014 D&S IFCA introduced the Potting Permit Byelaw to manage potting activity. The introduction of the Potting Permit Byelaw (or any byelaw) is not necessarily to prevent fishing activity, but rather to manage the activity sustainably. Many of the current restrictions were based on the older legacy measures set out in individual byelaws. The introduction of the Potting Permit Byelaw enabled some of the legacy byelaws to be revoked.

Permits

The Potting Permit Byelaw differs from the older byelaw model. The Potting Permit Byelaw provides the D&S IFCA with the ability to issue permits which contain conditions of use for fishers and also enable different groups of fishers to be separated based on their specific needs. This is why permits are issued for commercial fishers (Category 1 permits) and recreational fishers (Category 2 permits). Different categories of permits can and do contain different conditions.

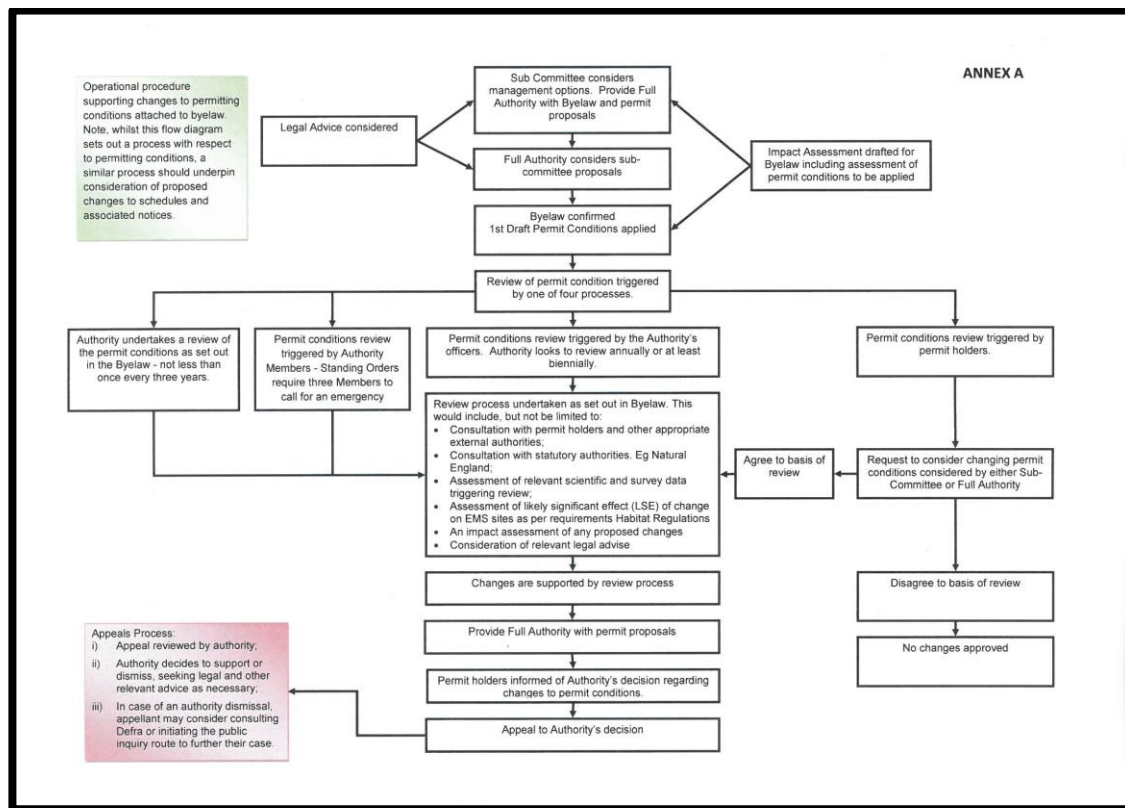
The permits that are issued include flexible conditions, which can be altered when there is a good reason for doing so. This flexibility enables D&S IFCA to react to changing circumstances far quicker than revoking a traditional style byelaw or introducing emergency measures via an emergency byelaw.

How are flexible permit conditions changed?

Changes are not considered or made just for the sake of change. There has to be good reason to change any of the flexible permit conditions and although there are occasions where D&S IFCA must take a pre-cautionary stance, it is quality evidence (rather than quantity) that strongly influences potential changes.

Section 27 to 29 of the Potting Permit Byelaw explains the review procedure to make any changes to the flexible permit conditions. There are several ways in which a review of permit conditions can be triggered, although a review of the flexible permit conditions must be conducted not less than once every three years.

Annex A table – Flowchart of review process



How is the review of flexible permit condition conducted?

Section 28 of the Potting Permit Byelaw details how the review of flexible permit conditions must be conducted. This is a thorough and robust process which includes consultation with permit holders. Information (evidence) is collected during consultation as detailed in Section 29 of the Potting Permit Byelaw. The evidence collected then informs the decision-making process.

The evidence that you provide is collated and will be presented to members of the Byelaw and Permitting Sub-Committee. There are four scheduled meetings of the Byelaw and Permitting Sub-Committee each year and additional meetings can be arranged when required. This three-year review will involve two separate phases of consultation. The first phase will be an “open” consultation where any stakeholder can respond with any issue relating to the Potting Permit Byelaw flexible permit conditions. The information provided in the consultation will be collated and discussed by the Byelaw and Permitting Sub-Committee. A second period of consultation will also take place but will be focussed on key issues relating to potential permit changes, if any.

9. Further Information

Imbedded Information (Hyperlinks to the D&S IFCA website)

Evidence base (imbedded information also available on the D&S IFCA website)

- [D&S IFCA Whelk Reports for 2015 & 2016](#)
- [Environment Agency – Otter mortalities within fixed traps in Devon by Robert Hurrell](#)

Other External Information

- Sustainable Management Measures for the Welsh Whelk Fishery (Oct 2017)

Notes:

The D&S IFCA (Publications Scheme) documents the extent of the information that is available for stakeholders to read and in most cases this information is posted on the D&S IFCA website.

New Potting Permit Conditions (August 2018) and the associated Annexes will be posted on the D&S IFCA website.

Data Protection - how we used your information?

D&S IFCA has a privacy policy which can be found at www.devonandsevernifca.gov.uk

The information provided for this three-year review of the Potting Permit Conditions has assisted the B&PSC in its decision making. All personal data submitted will be held securely at all times and used only by the Authority. All personal data has been anonymised and summarised for insertion into this report. Personal data will not be held for longer than necessary. We may disclose your information if required by law.

End of report.