



Mobile Fishing Permit Byelaw

Development report for additional changes to
permit conditions



2nd edition

1st September 2017

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Version Control History			
Author	Date	Comment	Edition
Neil Townsend, Mat Mander	July 2017	Draft developed for discussion by the D&S IFCA Byelaw & Permitting Sub-Committee.	1
Neil Townsend	September 2017	Refined at the request of the D&S IFCA Byelaw and Permitting Sub-Committee for consultation	2

Introduction and background

1. Aim of the development report & timetable of events

The aim of this report is to help all stakeholders develop a better understanding of Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA), what the organisation does, why it manages mobile fishing activity and why there is a need to review the permit conditions that provide the restrictions to those that conduct mobile fishing activity.

This report will fully document the process and progress of D&S IFCA's further development of permit conditions for the Mobile Fishing Permit Byelaw and will help all stakeholders understand how they can influence decision making by engaging in the consultation. With the approval of members of the Byelaw and Permitting Sub-Committee, the report will be displayed on the D&S IFCA website throughout the process with different editions created and published in due course.

This report will be developed at key stages and document all relevant evidence and information that will be used for deliberations by the D&S IFCA Byelaw & Permitting Sub-Committee and where appropriate the Full Authority. This report will document all actions, deliberations and decisions taken during the process.

In the event that permit conditions are amended as a result of this process, this report will act as the overarching reference document and be used in conjunction with other stand-alone documents.

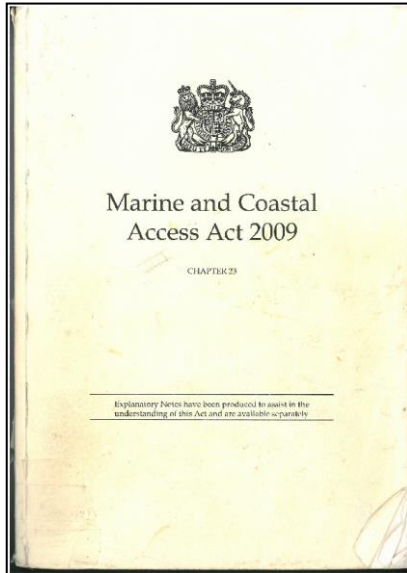
A time table of events has been established (as a guide) which will be amended with more detail during the process:

Table 1 – Initial timetable of events

Date	Action/event	Comments
<i>July 2017</i>	<i>Creation of draft Development Report (1st edition)</i>	
<i>Aug 2017</i>	<i>Meeting of B&P Sub-Committee</i>	<i>Discussions of foundation report & decisions taken how to proceed. Officers to seek approval to publish the revised edition on the D&S IFCA website</i>
<i>11th Sept to 23rd Oct</i>	<i>Officers conduct a six week consultation actioned by B&P Sub-Committee</i>	<i>Development report updated (2nd edition) to be used for consultation and published on the D&S IFCA website. 3rd edition of development report prepared to document findings of the consultation</i>
<i>Sept 2017</i>	<i>Meeting of Full Authority</i>	<i>Update provided to members</i>
<i>Nov 2017</i>	<i>Meeting of B&P Sub-Committee</i>	<i>Members consider consultation findings and deliberate potential permit changes</i>

Due to the potential large volumes of other documentation that may be used throughout the process, annexes (some with hyperlinks) may be used to link all editions of this report to any relevant additional material.

2. 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)¹. 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 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”²

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.

Basic work undertaken

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

a) 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

¹ The Devon and Severn Inshore Fisheries and Conservation Authority Order 2010

² Mission statement for D&S IFCA

organisations such as other IFCA's, 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.

b) 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 (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.

c) 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 decisions³.

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.

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.

3. Why does D&S IFCA manage mobile fishing 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. D&S IFCA 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**

³ Delegated powers can be granted to the Sub-Committee for decision making

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. Mobile fishing methods are conducted in the district and therefore must be managed appropriately.

4. How does D&S IFCA manage mobile fishing activity?

The D&S IFCA inherited legacy byelaws from its predecessor organisation the Devon Sea Fisheries Committee. Byelaws are local restrictions used to manage different activities which do include mobile fishing activities. Mobile fishing is defined within the Mobile Fishing Permit Byelaw with trawling and scallop dredging the main methods of fishing managed by the Byelaw. There were several legacy byelaws that related to mobile fishing 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 guide⁴ to explain how D&S IFCA is conducting the required review of these inherited byelaws.

Byelaws are not the only control measures used to manage fishing activities. Other EU and domestic legislation also places restrictions on mobile fishing activity. 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.

The introduction of the Mobile Fishing Permit Byelaw (or any byelaw) is not necessarily to prevent fishing activity, but 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 Mobile Fishing Permit Byelaw enabled some of the legacy byelaws to be revoked.

5. Permits and the review of permit conditions process

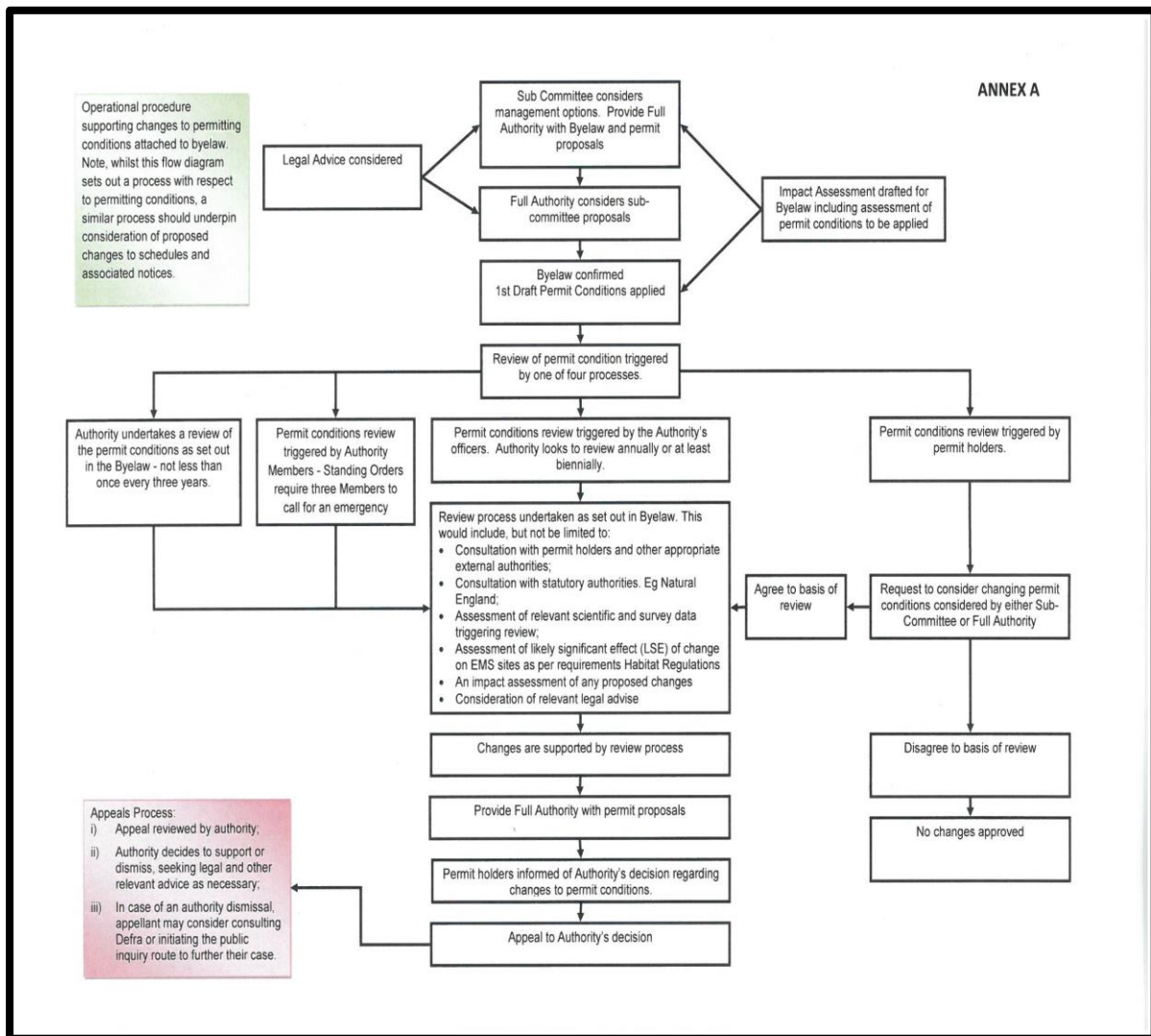
The Mobile Fishing Permit Byelaw differs from the older byelaw model. The Byelaw provides the D&S IFCA with the ability to issue permits which contain conditions of use for fishers and also enable different groups of fishers to be separated based on their specific needs. This is

⁴ Displayed on the D&S IFCA website or available upon request.

why permits are issued for use “at sea” (Category 1 permits) and “estuaries” (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. Section 25 of the Mobile Fishing 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 the Byelaw. The evidence collected then informs the decision making process.

The Annex A diagram below demonstrates the permit review 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. The information provided in the consultation will be collated and discussed by the Byelaw and Permitting Sub-Committee.

6. Why change the Mobile Fishing Permits?

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.

The flexible permit mechanism provides D&S IFCA with the ability to adapt management of the fishing activity when required. Alteration of permit conditions when required represents a far more structured and precise management system whilst also providing a more cost effective option, rather than the revocation and re-making of newly made (within five years) byelaws.

Since the implementation of the Mobile Fishing Permit Byelaw the value of a flexible mechanism (with a clear and robust review process) has been demonstrated, in particular through the three year review of permit conditions, which included mandatory consultation with permit holders. The three year review of permit conditions produced permit changes to improve management of fishing activity and demonstrated the benefit for permit holders (in this case commercial fishermen) of engaging in the process. In this case the mobile fishing permits have been amended to provide seasonal access for trawling for cuttlefish in the Torbay MCZ areas.

Why consider more changes at this time and not in the recent three-year review?

D&S IFCA must follow the process outlined in the Mobile Fishing Permit Byelaw. The first step is to outline management measures that are potentially appropriate to amend and explain the rationale for change. Situations change, legal advice changes, technology improves, environmental concerns and other factors present themselves at different times. Well-managed and focussed consultations allow suitable time for each issue to be addressed in detail. D&S IFCA uses the best available evidence and must be prepared to take a precautionary approach when evidence is incomplete.

The consultation items

7. The introduction of Inshore Vessel Monitoring Systems (I-VMS)

With all vessels, issued with a mobile fishing permit, required to have an operational I-VMS unit fitted, it will mean that all vessels operating within the district will be monitored remotely for the first time. Currently all fishing vessels with an overall length of 12 metres or more and less than 15 metres are required to have a functioning VMS+ unit fitted on board. Fishing vessels with an overall length of 15 metres or more are required to operate with a functioning VMS unit and Automatic Identification System (AIS) unit on board.

Development of IVMS – Brief History

D&S IFCA has been supporting the development of (I-VMS) since 2011. Although significantly delayed, the introduction of an I-VMS has always been seen by D&S IFCA as an important development in the management of the mobile fishing sector. During the winter of 2015, D&S IFCA and Common Seas worked together with 30 vessel owners to implement I-VMS in the District. The project in 2015 was initially designed to include all vessels permitted to use mobile fishing gear. The project was stopped to enable the Marine Management Organisation (MMO) time to complete a Type Approval process. The Type Approval process

created industry standards to ensure the hardware and software being fitted on vessels are fit for purpose. The development of these standards enables new suppliers to enter the market with a product that works effectively alongside existing equipment.

How can D&S IFCA introduce a new restriction for IVMS?

The Mobile Fishing Permit Byelaw provides D&S IFCA with the legislative means to introduce the requirement to have a functioning I-VMS unit on board all mobile gear vessels operating in the District. The implementation of I-VMS should not present a surprise to any permit holder with the potential requirement clearly specified in section 17 and 18 of the Mobile Fishing Permit Byelaw. In addition, as part of the development of this Byelaw an impact assessment was developed and publicised in preparation for the formal objection phase. The rationale and policy objectives of introducing the Byelaw and elements of it, including the use of I-VMS, was clearly set out in the impact assessment and key financial costs were recognised.

What are the positives of having IVMS fitted?

There are significant benefits with the introduction of a reliable I-VMS system to both regulators and fishers. Effective monitoring of all mobile fishing vessels will help safeguard Marine Protected Areas (MPA) that are closed to all types of demersal mobile fishing to protect designated habitats and features. Conversely, I-VMS provides greater potential for mobile fishing vessels to gain greater access to less sensitive areas adjacent to closed areas.

What is the current situation?

- Three suppliers of I-VMS have now been approved – Succorfish, Eco Marine and AST.

Common Seas will continue to act as the project manager and administrator. The project (if implemented) will offer vessel owners the opportunity to select their preferred supplier. The choice of units (comparison chart) will be publicised and contact information for Common Seas made available.

What will the introduction of I-VMS cost?

There will be a qualifying period for units to be installed and activated at no cost to the vessel owner. D&SIFCA has secured sufficient money through a successful application to the European Maritime and Fisheries Fund to purchase and install up to 89 I-VMS units. The cost to the vessel owner will be the airtime cost (believed to be in the region of £120-£180 per year and the cost of any warranty package taken out with the unit supplier.

What is the next step?

The Byelaw and Permitting Sub-Committee will discuss the responses to the consultation on the introduction of I-VMS units for vessels between 7 metres and 12 metres in length, which are permitted to use mobile fishing gear in the District at the meeting to be held on 13th November 2017. Permit conditions would need to be amended to formally introduce the legal requirement to operate a fully functioning I-VMS unit when using the mobile gear permit⁵.

⁵ D&S IFCA are also involved in the development of national policy in regard to the use of I-VMS

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

The Mobile Fishing Permit Byelaw was the first “activity” based permit byelaw to be introduced by D&S IFCA. The implementation of this permit Byelaw was a significant change from the more traditional byelaw model. As with many new initiatives, development was challenging and produced mixed legal opinions about elements of the framework, content and review of conditions process.

Why was a deeming clause introduced?

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

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

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

The Mobile Fishing 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 Byelaw⁶ 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.

9. Introducing a size for scallops (*Pecten maximus*) as a permit condition

Although the Mobile Fishing Permit Byelaw was introduced in 2014 and removed reliance on several legacy measures, others were not revoked at this time. The reason is that the legacy measures apply to any person due to the wording used “*No person shall*”. The measures contained in several legacy byelaws are relevant for multiple fishing methods and until a complete suite of activity based permitting byelaws are in place, revocation of these legacy provisions will be delayed.

⁶ Awaiting confirmation by the Secretary of State at the time of writing

MMO jointly host an annual meeting with representatives from both the potting and mobile gear commercial sectors to facilitate potential changes to the IPA.

Management is completely industry led and changes to licence conditions occur only when and where the two sectors agree. It is recognised that both commercial sectors would be strongly in support of maintaining the identity of the management as the IPA, the composition of the charts used and the decision making process.

Who has enforced the legislation and who is now?

The IPA has often demanded the use of floating assets to monitor and regulate the complicated restrictions and numerous divisions of fishing grounds that exist. Due to the assets operated by D&S IFCA (and formally Devon Sea Fisheries Committee) the majority of the enforcement work has been conducted by these organisations on behalf of, or in conjunction with, the MMO. It is often a perception by many commercial fishermen that the enforcement of this legislation is the priority of D&S IFCA, even though it is not managed via a byelaw. Failure to direct significant effort into investigating reported non-compliance in these areas has potential to cause reputational damage to D&S IFCA.

Can the IPA be managed differently?

The IPA can generally be managed via the permit conditions issued under the Mobile Fishing Permit Byelaw. There is a small section of the IPA (south of Start Point) that is beyond six nautical miles (outside of the Authority's district) and this section of the IPA can't be managed by D&S IFCA using permit conditions. If the Mobile Fishing Permit Byelaw was used to manage the IPA, an additional permit annex can be produced for fishers and issued to permit holders. D&S IFCA have discussed a change in management with the MMO and are awaiting a formal response. The area of the IPA beyond six nautical miles would have to be managed via a licence condition, an MMO Byelaw, a gentleman's agreement or have no management at all.

11. Managing access for ring netting activity within estuaries

Ring netting is a fishing activity that falls under the definition of mobile fishing. There are several interpretations used within the Mobile Fishing Permit Byelaw but the following has particular significance in relation to ring netting.

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

In the creation of the Mobile Fishing Permit Byelaw, ring netting is legally determined to be a “similar device” that is designed to be towed. The vessel plays an active part in the fishing operation. This ring netting activity can therefore be fully managed via the Mobile Fishing Permit Byelaw and the permits that are issued under it (including the annexes/charts that are issued).

The Mobile Fishing Byelaw (the overarching Byelaw) has defined the closing lines for many estuaries, but does not specify the rivers Tamar and Plym (the Plymouth estuaries).

Annexes (charts) are issued to clarify where mobile fishing (in particular demersal mobile gear vessels) can operate. The “at sea” permit (Annex 4 – Plymouth Sound and Estuaries)

prevents demersal mobile fishing being conducted within Plymouth Sound but this does not prevent ring netting from being conducted within Plymouth Sound. Annex 4 does not currently specify an “inside” closing line for the rivers Plym and Tamar.

Currently, legacy byelaw 19 prohibits any netting activity within the river Tamar (and its subsidiary estuaries), the river Plym and the river Yealm. This prohibition includes “any net” with a few exceptions. This legacy Byelaw prevents ring netting activity from taking place in these rivers. In order to prepare for future revocation of this byelaw, the restrictions imposed by this legacy Byelaw need to be incorporated into the permit conditions in other permit byelaws. The proposed Netting Permit Byelaw (when implemented) will prohibit all fixed and drift netting⁷ in all the estuaries within the district.

In summary D&S IFCA is not proposing that ring netting is excluded from Plymouth Sound. The “at sea” permit (Annex 4 – Plymouth Sound and Estuaries) can be amended to include a new closing line for the rivers Plym and Tamar. This potential amendment will in reality not add any additional restriction to fishers operating ring nets; however an amended Annex 4 chart will simplify the situation for all stakeholders and allow legacy Byelaw 19 to be revoked in due course.

Other information

12. Consultation considerations and communication

D&S IFCA is developing a new communication strategy⁸. A wide-ranging consultation will be conducted using different communication methods, including the D&S IFCA website. All permit holders will also be contacted directly. The email contact addresses provided by permit holders are of significant benefit for consultation work and will be utilized. On the 17th August 2017 members of the Devon and Severn Inshore Fisheries and Conservation Authority agreed to action officers to begin a six-week consultation on the items listed in this report.

The six-week consultation

The consultation will begin on 11th September 2017 and end on 23rd October 2017. The findings of the consultation will be added to this development report.

Further Information/recommended reading

- [Mobile Fishing Permit Byelaw](#)
- [Annex 4 – Plymouth Sound and Estuaries \(included in “at sea” mobile fishing permit annexes 1-6\)](#)
- [D&S IFCA communication strategy \(available upon request\)](#)

⁷ Except for a 20 metre seine net used for the capture of sand eels

⁸ Available upon request from D&S IFCA