

Title: Devon and Severn IFCA Diving Permit Byelaw IA No: IA No: D&SIFCA 003 Lead department or agency: Devon and Severn Inshore Fisheries and Conservation Authority Other departments or agencies:	Impact Assessment (IA)
	Date: 10th December 2014
	Stage: Confirmation
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
	Contact for enquiries: M Mander Deputy Chief Officer, D&S IFCA, m.mander@devonandsevernifca.gov.uk 01803 854648
Summary: Intervention and Options	RPC Opinion: N/A

Cost of Preferred (or more likely) Option					
Total Net Present Value £m ¹	Business Net Present Value £ ²	Net cost to business per year (EANCB on 2009 prices) NA ³	In scope of One-In, Two-Out? No	Measure qualifies as NA	
<p>What is the problem under consideration?</p> <p>Diving for shellfish is undertaken by both the commercial and recreational sectors in the District. Devon and Severn Inshore Fisheries and Conservation Authority (D&SIFCA) believes that the local, regulatory approach to managing some of the most important shellfisheries in the district needs to be improved to better reflect the different commercial and non-commercial interests. Diving has been subject to restrictions through byelaws including prohibiting the removal of scallop during the summer months but there is no mechanism in place to restrict the level of catch taken by of non-commercial diving activity. Lack of reliable, relevant fisheries effort data, highlighted in this document, needs to be addressed.</p> <p>The species listed in the Byelaw are all high value species and without regulation to restrict catches this may, due to unscrupulous individuals posing as pursuing a recreational activity whilst in practice pursuing a commercial operation, lead to unfair competition in the market and greater effort exerted against the stock, adding further pressure to crab and lobster stocks that are at or just below Maximum Sustainable Yield.</p> <p>There is a lack of medium to long-term engagement with many of the fishers affected by the management measures. Currently the only opportunity for all those directly affected by the management measures is to engage in the consultation phase of byelaw making process.</p> <p>Why is government intervention necessary?</p> <p>Diving can be an effective means of fishing for some of the key shellfish species in the district. The species listed in the Byelaw are all high value species and without regulation to restrict catches this may lead to unfair competition in the market. Without managing the activity the amount of shellfish taken by this method may be too selective and potentially creates imbalance in the natural population by targeting the larger fish. D&SIFCA has a duty under section 153(1) of the Marine and</p>					

¹ To be documented in £ms and calculated for 10 years from implementation of byelaw

² To be documented in £ms and calculated for 10 years from implementation of byelaw – costs and benefits to business only.

³ As these IAs are not in scope of one in two out this does not need to be completed

Coastal Access Act 2009 (MaCAA) to manage the exploitation of sea fisheries resources in the district. Section 153(2) of MaCAA, sets out what steps it must take when carrying out its management duty.

What are the policy objectives and the intended effects?

- To introduce a flexible management approach.
- To introduce two types of permits for diving activity to differentiate between the needs of the commercial and recreational interests.
- To provide a mechanism by which stakeholders can actively influence the management of fisheries within the district.
- To simplify the legislation and help make all fishers more aware of their responsibilities by making activity based byelaws.
- To achieve and support the sustainable exploitation of important shellfish stocks in the district.
- To introduce a byelaw that meets potential future needs with particular reference to required management for Marine Protected Areas (MPAs) in the district.
- To limit the need to use emergency byelaws.
- To provide the Authority with improved diving effort data to improve future management decisions and the experience of stakeholders.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

0. Do nothing: option was considered inappropriate. D&SIFCA is required to review the Byelaws that it inherited. Byelaws apply to all persons and as such represent the best legislative tool to manage coastal waters that are accessible to all fishers.
1. Create a diving permit byelaw, introducing a flexible, adaptive approach to management.
2. Review and remake byelaws using current model leading to the creation of a rigid byelaws which are unsuited to dealing promptly with future management needs.
3. Management of activity through Statutory Instruments or Defra fishing licence, similar to traditional byelaws, this approach to management is too rigid. It would also mean that D&SIFCA is not meeting its vision and Annual Plan commitments or its duties under s153 MaCAA.
4. Voluntary measures: due to the opposition to current restrictions by a sector of the diving community it is unlikely that there will be voluntary compliance with the restrictive measures necessary to achieve the outcomes required by D&SIFCA.

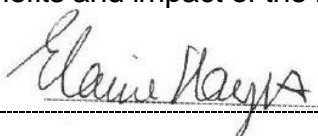
All options are compared to Option 0, the preferred option is Option 1.

Will the policy be reviewed? Yes. If applicable, set review date: Permit conditions are to be reviewed no later than three years after the Byelaw comes into force and the Byelaw no later than five years after the Byelaw comes into force.

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Chair of D&SIFCA:

 Date: December 2014

Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years <i>10⁴</i>	Net Benefit (Present Value (PV)) (£m ⁵)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition ⁶ (Constant Price) Years	Average Annual ⁷ (excluding transition) (Constant Price)	Total Cost ⁸ (Present Value)
Low	0.005	0.001	0.006
High	0.006	0.002	0.008
Best Estimate	0.005	0.001	0.006

Description and scale of key monetised costs by 'main affected groups'

The proposed permitting Byelaw would require all persons that dive and retain crab, lobster or scallop to conduct such diving operations under a permit issued by D&SIFCA. The biennial cost of a permit is set at £20. The cost of the permit is to cover administration costs incurred by D&SIFCA. This does not cover the cost to D&SIFCA from resourcing the continual review of permit conditions.

The small number of known shore based commercial diving operations will need to be permitted. In order to continue to fish commercially they would need to operate from a registered vessel under a D&SIFCA permit. To be registered on Part II of The Registry of Shipping and Seaman a vessel needs to be power driven. The application fee for registering a vessel is £124. There is an additional cost of £430 to carry out a registration inspection (for vessels less than 7m in length) to obtain a Seafish certificate to complete the registration application.

D&SIFCA operates a risk based approach to enforcement and enforcement of the new Byelaw will be met within the current budget. Operating on a fixed budget the Authority will continue its risk based approach to enforcement and consequently cover on other fishing activities may be reduced to meet the required enforcement of the Byelaw. It is envisaged that a greater enforcement presence will be required initially to support the new restrictions on non-commercial activities.

The budget for 2015/16 is £701,600 of which ~ 44% (£313,755) is provided as new burdens⁹ money from Defra. If budgetary pressures continue to rise, the enforcement work required to support this byelaw maybe compromised.

⁴ The standard timeframe for analysis is 10 years unless the situation requires a different amount of time for example the benefits will occur over a much longer period. If there is deviation from the standard 10 years this must be clearly explained in the main evidence section.

⁵ Net Benefit - value of the total monetised benefits minus the total monetised costs. All monetised costs and benefits should be expressed in £m. In order to compare options you need to adjust the estimates by discounting the impacts to the same point in time, to estimate the Present Value (PV) of the impacts (see main evidence section for explanation).

⁶ Transient, or one-off costs or benefits that occur, which normally relate to the implementation of the measure. Non-quantified transient or one-off costs should be documented in the non-monetised section

⁷ Average Annual, These are the costs and benefits that will reoccur in every year while the policy measure remains in force (although the scale of the impact may change over time) and so should not include transition costs. These are expressed as an annual average (over the life of the policy). i.e. undiscounted.

⁸ i.e. discounted as with NPV

⁹ <http://archive.defra.gov.uk/foodfarm/fisheries/documents/fisheries/ifca-factsheet.pdf>

Estimating the cost of communicating this change in management is difficult but will involve developing and siting signage at strategic locations throughout the district, placing press releases in the commercial and recreational diving media, formally advertising the Byelaw and further development of the Authority's website. It is expected that the Byelaw will be confirmed during January 2015. The Byelaw will be in force on 1st March 2015 providing around a two months lead in period to publicise the new management approach. There will be a requirement to maintain and update the signage and website. The cost of the initial work is estimated at £5,000 and annual maintenance at £1,000. The funding for this work will be found from savings in the existing budget.

Other key non-monetised costs by 'main affected groups'

The introduction of the deeming clause in the Byelaw may lead to a small number of divers having to change their fishing pattern to remain compliant with local management measures. This change in operation has not been fully evaluated but it is not envisaged to be significant. Officers have discussed the proposal with some of the divers operating in South Devon and no opposition to the measure was raised.

Persons fishing recreationally will need to adjust to having catch limitations applied to their activities.

D&SIFCA works closely with other organisations both research and enforcement to meet its duties. On enforcement work D&SIFCA issue warrants to all 13 EA fisheries enforcement officers including formally seconding two of these officers that work on the North coast on a part-time basis. D&SIFCA also have agreements with EA to operate two of their vessels.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

No monetised figures are available for the benefits of the recommended management approach. However significant potential benefits are described below.

Other key non-monetised benefits by 'main affected groups'

The new Byelaw reflects better the needs of the different sectors taking key shellfish resources by regulating the amount of shellfish that can be taken from the non-commercial sector. The Byelaw introduces the ability to restrict the commercial divers in a similar way, if required. Reducing the competition from other sources will help to support the local shellfish retail economy in the district. Most inshore commercial vessel operators rely heavily on shellfish stocks to maintain a viable living from their profession.

The recreational diving sector will benefit from being able to catch scallops all year round although individuals will be restricted to a daily catch.

Operating the permit scheme will give D&SIFCA far greater knowledge of the level of diving for shellfish occurring in the district and the amount of shellfish being taken. This data will be used to inform future management. The permit schemes will also allow D&SIFCA to communicate directly with divers to increase understanding and awareness of the management but also allow permit holders to actively participate in shaping future management. This reflects strongly Government's Big Society and Localism agendas by encouraging local people to participate in the decision

making process.

In the context of sustaining shellfish stocks the Byelaw provides flexible spatial control of diving activity that was previously lacking. This measure maybe important to meet management recommendations following assessment of diving in MPAs. It allows for management to be introduced more quickly if protection from the activity is needed.

The Byelaw is designed to be flexible enough to deal with future management needs. This in turn reduces the cost associated with developing, consulting and introducing new legislation. And reduces the regulatory burden on both the IFCA and stakeholders.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

Cefas reported in 2011 that the lobster¹⁰ and crab¹¹ stock in the South West were believed to be at, or near to, maximum sustainable yield. The shellfish taken by non-commercial activities were not considered in the report but *ipso facto* can only add further pressure to these stocks.

The proposed byelaw would restrict non-commercial activities to a daily maximum catch that would help support Cefas' assessment of the stock, while at the same time providing a reasonable quantity for personal consumption.

Initially there is a strong likelihood that there will be significant non-compliance with the new management measures. This will be through a combination of resistance to change, lack of awareness and a continuing will to profit from the illegal selling of shellfish.

Removal of new burdens money may lead to insufficient funding for D&SIFCA to successfully undertake its duties.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A ¹²	No	N/A

¹⁰ <http://www.cefas.defra.gov.uk/media/580130/lobster%20south%20west%202011.pdf>

¹¹ <http://www.cefas.defra.gov.uk/media/580170/crab%20western%20eastern%20channel%202011.pdf>

¹² Linked to ENCB

Evidence base

1. Introduction

Inshore Fisheries and Conservation Authorities have been established as the lead regulator for the sustainable management of inshore fisheries. As such, D&SIFCA is the most appropriate Authority to implement, manage and enforce fisheries management measures within 6 nautical miles.

The Inshore Fisheries and Conservation Authorities have a nationally agreed high level objective of completing a review of all legacy byelaws by April 2015. As a result of the review, some byelaws will be remade, some will be amended, others will be amalgamated and those that are irrelevant or no longer needed will be revoked.

D&SIFCA believe that the review provides the opportunity to introduce a new approach to inshore fisheries and conservation management. Through permitting byelaws D&SIFCA will introduce greater flexibility in the way it manages the coastal and estuarine waters in the district. The marine environment is a dynamic system, there is high natural variation in some fish and shellfish stocks and fishing gear technology and practices continue to evolve. Inherited byelaws have been identified as being too rigid to fit this ever changing situation. Those affected by the new legislation will be safeguarded by the creation of an open and inclusive management review and decision making process. The Byelaw describes the process by which changes to permit conditions will be made.

One of the outcomes delivered by the new byelaw will be the ability of D&SIFCA to collect detailed fishing data enabling it to understand more about diving in the district. Where good data is unavailable, the new byelaw mitigates the risk of creating unintended consequences by having an extremely flexible approach to management.

European Marine Sites (EMSs) are designated to protect habitats and species in line with the EU Habitats Directive and Birds Directive. To bring fisheries into line with other activities, the Department for Environment, Food and Rural Affairs (Defra) announced on the 14th August 2012 a new approach to manage fishing activities within EMSs. This change in approach will promote sustainable fisheries while conserving the marine environment and resources, securing a sustainable future for both.

Defra produced a risk activity matrix and as a result D&SIFCA, as the competent authority, must assess identified fishing activities within European Marine Sites (EMSs) by the end of 2016. Diving has been designated as a medium risk on certain features including, reefs and seagrass. The design of the new byelaw allows for management measures to be introduced if identified through the assessment process.

The first tranche of Marine Conservation Zone (MCZs) were designated on 21st November 2013 Impacts from diving on the designated habitats is unlikely to be assessed immediately. However it is proposed in the new Byelaw to prohibit the removal of Spiny Lobster, a Feature of Conservation Importance, in the Lundy MCZ and Skerries and Surrounds MCZ and to maintain other restrictions on diving currently in place within Lundy MCZ.

2. Rationale for intervention

Inshore Fisheries and Conservation Authorities (IFCAs) have duties to ensure that fish stocks are exploited in a sustainable manner, and that any impacts from that exploitation in

the marine environment, particularly where protected by designation, are reduced or suitably mitigated, by implementing appropriate management measures (e.g. this byelaw). Implementing this byelaw will help ensure that fishing activities are conducted in a sustainable manner and that the marine environment is suitably protected.

Fishing activities can potentially cause negative outcomes as a result of 'market failures'. These failures can be described as:

- Public goods and services – A number of goods and services provided by the marine environment such as biological diversity are 'public goods' (no-one can be excluded from benefiting from them, but use of the goods does not diminish the goods being available to others). The characteristics of public goods, being available to all but belonging to no-one, mean that individuals do not necessarily have an incentive to voluntarily ensure the continued existence of these goods which can lead to under-protection/provision.

D&SIFCA must seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way.

- Negative externalities – Negative externalities occur when the cost of damage to the marine environment is not fully borne by the users causing the damage. In many cases no monetary value is attached to the goods and services provided by the marine environment and this can lead to more damage occurring than would occur if the users had to pay the price of damage. Even for those marine harvestable goods that are traded (such as wild fish), market prices often do not reflect the full economic cost of the exploitation or of any damage caused to the environment by that exploitation.

D&SIFCA must 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 the recovery from, the effect of such exploitation.

- Common goods - A number of goods and services provided by the marine environment such as populations of wild fish are 'common goods' (no-one can be excluded from benefiting from those goods however consumption of the goods *does* diminish that available to others). The characteristics of common goods (being available but belonging to no-one, and of a diminishing quantity), mean that individuals do not necessarily have an individual economic incentive to ensure the long term existence of these goods which can lead, in fisheries terms, to potential overfishing. Furthermore, it is in the interest of each individual to catch as much as possible as quickly as possible so that competitors do not take all the benefits. This can lead to an inefficient amount of effort and unsustainable exploitation.

D&SIFCA must seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district

In summary, the Byelaw aims to redress these sources of market failure in the marine environment through the following:

- Management measures designed to conserve designated features of EMSs and MCZs will ensure negative externalities are reduced or suitably mitigated.
- Management measures will support continued existence of public goods in the marine environment, by restricting the catch taken.

- Management measures will also support continued existence of common goods in the marine environment by reflecting the needs of the commercial and recreational sectors.

3. Policy objectives and intended effect

IFCAs were established under the MaCAA 2009 to 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. It is intended that the Byelaw supports D&SIFCA by delivering the following objectives.

The Byelaw continues the process by which the Authority intends to replace all its inherited byelaws with activity based byelaws where possible.

The introduction of the Byelaw's permit conditions will enable D&SIFCA to flexibly manage fishing activity using a number of the measures summarised below;

- catch restrictions,
- gear restrictions,
- spatial restrictions,
- time restriction.

The Byelaw creates two categories of permits with differing management conditions designed to balance the needs of all users and to maintain a viable local commercial industry. D&SIFCA's guiding principles of the byelaw review include the aim to create a culture where the selling of fish or shellfish other than from commercial fishing activities is not acceptable to the general public.

The Byelaw creates a localised system of management by which those affected (permit holders) have a real opportunity to participate in continuing management decision process. Permit holders will be contacted directly and provided with the information that underpins the proposed changes to permit conditions. Permit holders will be invited to comment on and suggest alternatives to the management proposals. This helps the permit holders to understand the reasons for the proposed changes and allows the permit holders to express their opinions more freely than is sometimes possible in public meetings. D&SIFCA in turn is better informed and improves its decision making. Continued engagement with stakeholders reduces the likelihood that emergency measures (byelaw/ Statutory Instrument) need to be used to deal with unforeseen issues.

All the local restrictions applicable to diving activity directed at shellfish can be found in one document. Permit conditions can be more readily translated into plain English helping the diver to understand more easily fisheries legislation that is inherently complicated.

The Byelaw is designed to accommodate future management needs therefore reducing the cost associated with developing new legislation to deal with emerging issues.

In future D&SIFCA will be able to effectively capture relevant data to better inform decision making through permit conditions.

4. Background

In 2013 the Authority formally consulted on the Potting and Shellfish Permit Byelaw. As a result of that process the Authority decided to split the two activities, potting and diving, and restructure the Byelaw to reflect lessons learnt from the successful introduction of the Mobile Fishing Permit Byelaw on 17th December 2013. The basic management intentions remain the same but are more targeted towards the specific user group and all management is now contained in the permit conditions making all the management measures easily reviewable and amendable. Any changes in permit conditions would have to follow the procedure outlined in the body of the Byelaw. (Review of Flexible Permit Requirements) and in the process map (Annex A).

In addition to the requirement to review inherited byelaws, in August 2012 Defra undertook a review into the management of fisheries within EMSs. The review looked to identify future management required to ensure site features are maintained at favourable condition. This resulted in a revised approach¹³ to management of fishing in EMS.

The revised approach is being implemented using an evidence based, risk-prioritised, and phased basis. Risk prioritisation is informed by a matrix¹⁴ which categorises the risks from interactions between fishing activity and ecological features. Activity/feature interactions have been categorised as red, amber, green, or blue. Those classified as red have been prioritised for the implementation of management measures by the end of 2013 (regardless of the actual level of activity) to avoid the deterioration of Annex I features, in line with obligations under Article 6(2) of the Habitats Directive.

Interactions which are categorised as amber require a site-level assessment to determine whether management of an activity is required to protect features. Where there is doubt as to whether conservation objectives for a feature (or sub-feature) will be achieved because of its vulnerability to a type of fishing, in all EMSs where that feature occurs, the effect of that activity or activities on such features will need to be assessed in detail at a site specific level. Appropriate management action should then be taken based on that assessment.

Interactions which are categorised as green also require site-level assessment if there are “in-combination” effects. A categorisation of blue indicates that there is no feasible interaction, and as such no further assessment is required¹⁵.

Paragraphs 6(1) and 6(2) of the Habitats Directive require that, within Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), member states:

- establish the necessary conservation measures which correspond to the ecological requirements of the Annex I natural habitat types and the Annex II species present on the sites;
- take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated.

Regulation 8(1) of the Conservation of Habitats and Species Regulations 2010 defines an EMS as any (among others) SAC, SPA and SCI. Part 6 of these regulations lay out the

¹³ Fisheries in EMS policy document: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/policy_and_delivery.pdf

¹⁴ See Matrix: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/populated_matrix3.xls

¹⁵ Centre for Environment, Fisheries and Aquaculture Science (CEFAS) review of matrix and supporting evidence: http://www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/cefaf_matrix_review.pdf

management requirements for EMS, in line with articles 6(2), 6(3) and 6(4) of the Habitats Directive.

Diving activity on certain designated features within the EMSs in D&SIFCA's district have been categorised as amber.

The Byelaw will apply to the whole of the D&SIFCA district although diving is limited generally to the north and south coasts of Devon.

Environmental Impact

Impacts of diving on reef features designated under MPAs

Cefas reported in 2011 that the crab and lobster stocks were believed to be at, or close to, maximum sustainable yield. The permit conditions can restrict the effort of both commercial and recreational divers.

Spiny lobsters are a Feature of Conservation Importance in two MCZs and are vulnerable to capture by diving. The low capture rates reported by commercial potting vessels are likely to be indicative of very low populations in the two MCZs so the removal of only a few individuals may have a significant impact on the stock.

There are a number of sectors affected by this proposal specifically:

Diving Sector:

It is unclear how many divers operate in the district but it is likely that the number is significant, since diving is both a popular local and tourist activity within the district. To reduce the number of divers affected by the Byelaw, only divers that remove crab, lobster or scallop are required to operate under a permit.

The requirement to have a permit will start to remove the uncertainties in the levels of diving for these species.

Shore based commercial diving operations will need to be permitted. In order to be permitted such operators will require a registered vessel. This requirement imposes an additional cost but allows for this activity to be managed through this Byelaw. Divers spending the money required to obtain a Category One permit would demonstrate their intention to genuinely undertake a commercial operation.

Local economies and society:

One of D&SIFCA's guiding principles of the byelaw review aims to create a culture where the selling of fish or shellfish other than from commercial fishing activities is not acceptable to the general public.

Supporting the local commercial fishing sector in turn supports local tourism. Both fishing and tourism are key sectors of the economy in D&SIFCA district.

Enforcement bodies:

The lead responsibility of enforcing any measures in the area would fall to D&SIFCA and therefore the additional enforcement cost would impact on D&SIFCA. Many of the objectors to the byelaw and the UK diving association raised concerns that the Authority did not have the means to effectively enforce the new legislation.

The Authority recognises that it has a duty to ensure that the legislation it introduces is enforceable. The Authority operates a risk based approach to enforcement. The byelaw is designed (including deeming clause), in part, to make enforcement of the management measures more effective. Using information provided by divers or members of the public (an out office number is available 07740 175479 to report any suspicious fishing activity) the Authority will undertake planned enforcement operations.

The options

In determining the most appropriate form of management following the better Regulation Principles¹⁶, D&SIFCA must consider voluntary measures before proceeding with a statutory measure such as a byelaw¹⁷.

Option 0: 'Do Nothing'

D&SIFCA have a duty to review inherited byelaws by the end of 2015.

Recommended option

Option 1 A D&SIFCA 'Diving permit byelaw'

The recommended option reflects D&SIFCA's aim to introduce a new approach to inshore fisheries and conservation management. The permitting byelaw will encourage active participation in management decisions.

This option is recommended because D&SIFCA is viewed as the appropriate statutory organisation to lead on the sustainable management of inshore fisheries and protection of the marine environment. A permitting byelaw is the preferred approach due to the flexibility associated with permit conditions.

There is also the potential for further measures to be introduced to regulate catch restrictions and reporting, gear construction, spatial and time restrictions.

This option mitigates the risk of imposing inappropriate permanent restrictions based on limited available evidence. Management is required for the reasons set out in the IA but care should be taken to ensure decisions are reversible in light of better evidence.

The ability to change management requirements though varying permit conditions is likely to be less expensive than creating separate voluntary agreements. Where voluntary agreements are created by other initiatives. D&SIFCA has the ability to support the management approach by introducing permit conditions if required. It is also noted that the

¹⁶ Link to BRPs <https://www.gov.uk/government/publications/better-regulation-framework-manual>

¹⁷ This is only the case if voluntary measures are cheaper than other options. A full description of the voluntary measures envisaged and how effective these will be in terms of risk mitigation.

Ministry of Defence, in 2001, was obliged to introduce secondary legislation under the Protection of Military Remains Act 1986 to protect military remains from looting by recreational divers as informal agreements with that sector having failed to control such activity.¹⁸.

Option 2 D&SIFCA to revoke byelaws and create individual byelaws

This option would involve remaking byelaws using the traditional, inherited model, leading to the continuation of a management approach that is less able to adapt to change within an appropriate timeframe.

Under this option should further measures be required in the future for shellfish management then a new byelaw would be required or the existing byelaw would have to be amended. The byelaw making process is expensive and time consuming. More importantly the need to formally consult on the new byelaw will lead to extended periods of time where the management approach is not fit for purpose.

Option 3 MMO management measure – permanent byelaw or fishing licence condition

IFCAs have been established as the responsible lead statutory organisation for the sustainable management of inshore fisheries and conservation. D&SIFCA's structure is in recognition of the role it has in dealing with fisheries and conservation management at a local level.

Option 4 Voluntary agreement

D&SIFCA has considered this option in light of Better Regulation Principles. However, due to the recorded non-compliance with existing legislation, particularly landing of scallops during the closed season the incentive to catch and sell shellfish, the number of divers, the area of sea and the length of coastline within D&SIFCA district, it is believed that a voluntary agreement would be poorly adhered to and poses unacceptable risk to the fisheries and possibly the wider environment.

If a voluntary approach was adopted for the recreational sector some of the issues set out above would equally apply. A code of conduct approach would not dissuade some recreational divers to refrain from their current catching practices which are in conflict with the Authority's opinion of what a recreational activity should be.

In addition the Authority would be unlikely to obtain the same level of data from this sector than can be achieved by the permitting approach. The permitting approach also creates direct communication links with fishers actively undertaking the activity. Through better communication the Authority and the permit holder will improve their understanding of the diving sector and provides an opportunity for both sectors to be properly represented in the Authority's management decisions.

In their response to the formal consultation the UK diving organisation welcomed the fact that the Authority had recognised the sector through the permitting approach.

Williams, M. ¹⁸War Graves and Salvage: Murky waters? International Maritime Law (2000) 7(5), pp.151-158 Williams,; M. Protecting Maritime Military Remains: A New Regime for the United Kingdom International Maritime Law (2001) 8(9) pp.288-298

Analysis of costs and benefits

The analysis of costs and benefits is based on comparing Option 1 to Option 0. The Authority accepts that precise data is not available for all aspects of the management covered by the Byelaw. In such circumstances the Authority has proceeded on the best available evidence, being mindful of the fact that, where possible, as increased survey data and user evidence becomes available the permitting system will provide a flexible and responsive mechanism. This ensures that timely adjustments can be made in the light of better evidence.

The Authority's management approach is to encourage fishers to participate in the management of the fisheries. The management of the fishery should benefit from the experiences of the fishers. It also means that management can be innovative and explore different ways of working.

Information used in this section has been taken from:

- The responses received to the formal consultation on D&SIFCA's Potting and Shellfish Permit Byelaw July-August 2013.
- Meetings with recreational divers prior to formal consultation on Diving Permit Byelaw.
- Vessel data from MMO and D&SIFCA records.
- D&SIFCA's Members and Officers' knowledge and expertise.
- The responses received to the formal consultation of the Diving Permit Byelaw Oct – Nov 2014.

Analysis of fisheries costs

All persons diving for crab, lobster and scallops will require a permit issued under the Byelaw. D&SIFCA has no reliable data to help determine the number of divers that may be affected by the Byelaw. One of the immediate benefits of introducing the permits scheme is that the numbers of divers becomes more readily identifiable.

Although the Authority has the ability to restrict the number of permits issued this is not the way that it believes effort should be restricted and the number of permits issued will be unlimited.

Permits

Fishing effort management by way of licences is already undertaken at a national level. Local restricted licencing permit schemes can bring additional benefits to those fishers within the scheme, such as greater access to stock, limited competition from other fishers, an increased sense of ownership and reward for adopting good fishing practices. Many contributors¹⁹ to the fisheries management debate support the use of such an approach. However among the many risks it is highly likely that a restrictive permit scheme becomes a valuable, tradeable document (even when every action is taken to prevent this from happening), it limits opportunity for new entrants to the fishery and may lead to increased effort as fishers believe that a track record of fishing may qualify them for a permit in the first instance. A restrictive scheme would also significantly increase the administrative burden on

¹⁹ Including Stage Two Report of Project Inshore,
http://www.seafish.org/media/921067/2013.07.23_project_inshore_s2_v5.pdf

the Authority, the current budget and staff resource would not be able to deliver this approach.

The cost of the permit will be £20 and will be valid for up to a maximum of 24 months. The cost of the permit is set out in the Byelaw and can only change when the Byelaw is reviewed. The charge is based solely upon the administrative cost in terms of staff hours. Inevitably this means that the same hours are incurred irrespective of whether the applicant is a commercial or recreational user.

D&SIFCA believes that a charge of £20 for a permit, where the conditions of use maybe varied without cost to the permit holders during that period, does not impose an excessive financial or regulatory burden upon any of its stakeholders, especially considering the overall cost of recreational diving in terms of training and equipment. In addition the value of the shellfish (maximum amount) that can be removed in one day would easily exceed the cost of the permit.

Deeming

The deeming clause will potentially affect persons that dive both inside and outside the district. The deeming clause sets out that whilst diving²⁰ in the district the catch on board is deemed to have been caught in the district.

Byelaws only apply within the district, normally six nautical miles from the coast or in places on the north coast of the D&SIFCA district, the median line with Wales. Proving where vessels have been fishing is an inherent and significant weakness of byelaws. It reduces the ability to enforce the legislation and consequently the effectiveness of the management measures. The deeming clause goes a significant way in addressing this weakness. It is incumbent on D&SIFCA to support the majority of law abiding fishers (example supporting the measure to return berried lobsters) to introduce effective and enforceable legislation.

Catch Restrictions

Nationally, commercial vessels, using pots or nets, that do not have shellfish fishing entitlements on the vessel's general commercial licence are restricted to a maximum of five lobsters and 25 crabs per calendar day.

The Byelaw restricts the daily catch of recreational divers to two lobsters, three crabs and 15 scallops per person per calendar day. Recreational potters are similarly limited in the number of crab and lobster they may take. The Authority believes it has achieved a fair balance between the divergent interests of commercial and recreational fishers. Different groups of fishers raise different management challenges. Treating these groups differently is not adverse discrimination. Rather it simply reflects these different management challenges presented and the differing motivations and intentions of these groups. For non-commercial divers the Authority believes that it has set limits which are entirely appropriate and proportionate to personal consumption. In their responses to the formal consultation the UK diving associations were supportive of the management approach to restrict catches made by divers.

The summer closure in July, August and September of the scallop fisheries in the entire district will continue for the commercial sector (including commercial divers) to support the

²⁰ Diving as defined in the D&SIFCA Diving Byelaw

protection of the scallop stocks during the spawning period. Indeed the previous derogation for vessel trawling to land up to 120 scallops per day has been revoked.

The protection of the stock needs to be balanced with the needs of the different user groups and it is likely that most leisure divers will dive mainly during the summer months and taking scallops at this time might therefore represent their only real opportunity to do so. Reservations about allowing divers to recover scallops during this period were expressed by the UK diving organisations, who were concerned as to the effect on the conservation of scallop stocks but the Authority believes that if the catch limit is set at a low enough level the impact on the stocks, even at a very local level, should be acceptable. On that basis the Authority is content to extend this concession to recreational divers, notwithstanding the concerns raised by the UK diving organisations.

Recreational divers will also not be limited to fishing between 0700 - 1900hrs as is the case for the commercial operators.

The catch limits and seasonal closures are both applied through the permit conditions and can be changed following evidence gathering and consultation.

The daily limit on the number of lobsters taken was increased following D&SIFCA's considerations of the 14 objections received during the consultation on the Potting and Shellfish Permit Byelaw. Two of the objections received referred to the restrictions being placed on hand gathering of shellfish at low water. The Byelaw does not include such activities. It is proposed that intertidal hand gathering activities will be considered by D&SIFCA at a later stage.

Applying bag limits to persons undertaking a recreational activity is not setting a new precedent. Other IFCA's have inherited byelaws that contain catch restrictions and these are summarised in Annex B. At a national level in Northern Ireland catch and gear restrictions have been applied to recreational potters²¹.

Minimum sizes of a number of key shellfish are included in the permit conditions. Although minimum sizes do not change frequently, having that ability to change restrictions is important. D&SIFCA propose to increase the minimum size of female edible crab to 150mm in line with Cornwall IFCA. Discussions with the commercial fleet on the south coast of Devon would indicate widespread support for the increase in the size of edible crab. D&SIFCA also propose to increase female spider crab to 130mm and spiny lobster to 110mm again in line with Cornwall IFCA's restriction. Consistency of management is one of the guiding principles of D&SIFCA's review of byelaws.

Spiny lobsters are a Feature of Conservation Importance in two designated MCZs within the D&SIFCA district. The number of spiny lobsters reported caught in the Lundy MCZ and the Skerries and Surrounds MCZ by commercial potters is very low. The low capture rates are likely to be indicative of very low populations in the two MCZs so the removal of only a few individuals may have a significant impact on the stock.

Gear restrictions

The Byelaw prohibits the use of store pots by recreational fishers. This measure helps significantly with the ability to enforce the daily catch restrictions. Similarly, commercial

²¹ The Unlicensed Fishing for Crabs and Lobster Regulations (Northern Ireland) 2008

operators operating without a shellfish fishing entitlement need to apply for a dispensation from the MMO if they wish to store pot their catch.

5. One In Two Out (OITO)

OITO is not applicable for byelaws as they are local government byelaws introducing local regulation and therefore not subject to central government processes.

The Byelaw will introduce new restrictions on diving activities. These additional restrictions are important for D&SIFCA to meet its duties under section 153 (2) of the Marine and Coastal Access Act 2009.

6. Small firms impact test and competition assessment

The proposals will benefit the commercial fishing sector by reducing the amount of shellfish finding its way into the market from recreational diving activities. Although it is impossible to determine the scale of the issue, commercial fishermen operating small boats believe it poses a significant threat to their small businesses.

No divers fishing for crab, lobster and scallops are exempt from this byelaw.

7. Conclusion

The D&SIFCA has statutory responsibilities that it believes it meets by introducing the Diving Permit Byelaw.

The Byelaw is designed to meet the Authority's conservation responsibilities but at the same time minimising the socio-economic impact from these restrictions. The Byelaw also provides the flexibility to manage fishing activities in a timely, effective way and provides the framework to consider developing new fisheries. The approach reduces the need for further byelaws to deal with diving and as such delivers significant saving to the public purse.

The purpose of this byelaw is to provide the Authority with the ability to balance the needs of persons diving and taking shellfish and other forms of fishing for shellfish. The Byelaw will provide the ability to manage effort directed towards the shellfisheries and support the development of sustainable fisheries.

A post implementation review will be undertaken no later than five years after the Byelaw is confirmed. It is the Authority's intention to review the management measures contained in the flexible permit conditions annually. It is possible that flexible permit conditions can be reviewed more frequently if needed and sufficient data is available. Social and economic data will be considered along with other evidence when considering if changes should be made. An impact assessment will be undertaken if management changes are proposed.

The permit scheme allows D&SIFCA to communicate directly with users to increase understanding and awareness of the management but also allows permit holders to actively participate in shaping future management. This reflects strongly Government's Big Society and Localism agendas to encourage local people to actively participate in the decision making process.