

Title: Devon and Severn IFCA Potting Permit Byelaw IA No: IA No: D&SIFCA 002 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
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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	

What is the problem under consideration?

Potting is a key fishing activity undertaken by both the commercial and recreational sector 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 sectors' interests. There is no mechanism in place to restrict the fishing effort of non-commercial potting. Lack of reliable, relevant fisheries effort data, highlighted in this document, needs to be addressed. 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.

Why is government intervention necessary?

In the 2011 Cefas reports it is stated that fishing pressure is such that the lobster⁴ and crab⁵ stock in the South West were believed to be at, or near to, maximum sustainable yield. While there is a lack of comprehensive data relating to shellfish taken by non commercial activities it is considered likely to be adding further pressure to these stocks.

Given this pressure and the evidentiary lacuna management intervention is required to redress market failure in the marine environment by implementing appropriate management measures (this Byelaw) to conserve features, to ensure negative externalities are reduced or suitably mitigated. Implementing this byelaw will support continued provision of public goods⁶ in the marine environment. D&SIFCA has a duty under section 153(1) of the Marine and 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

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

⁴ <http://www.cefas.defra.gov.uk/media/580130/lobster%20south%20west%202011.pdf>

⁵ <http://www.cefas.defra.gov.uk/media/580170/crab%20western%20eastern%20channel%202011.pdf>

⁶ As defined on page 7 of the Impact Assessment

What are the policy objectives and the intended effects?

- To introduce a flexible management approach.
- To introduce two types of permits for potting activity to differentiate between the needs of the commercial and recreational potting interests.
- To provide a mechanism by which stakeholders can actively influence the management of fisheries within the district.
- To produce legislation that is easily accessible and comprehensible 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 local potting effort data to improve future management decisions.

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 potting 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 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 number of fishers affected by the management proposals it is unlikely that there will be sufficient 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: _____

Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years <i>10⁷</i>	Net Benefit (Present Value (PV)) (£m ⁸)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition ⁹ (Constant Price) Years	Average Annual ¹⁰ (excluding transition) (Constant Price)	Total Cost ¹¹ (Present Value)
Low	0.085	0.001	0.086
High	0.090	0.002	0.092
Best Estimate	0.085	0.001	0.086

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

The proposed permitting Byelaw would require all persons that use pots to operate 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 estimated administration costs incurred by D&SIFCA. This does not cover the cost to D&SIFCA from resourcing the continual review of permit conditions.

D&SIFCA operates a risk based approach to enforcement. 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, at least initially, to support the new restrictions on non-commercial activities.

The budget for 2014/15 is £701,600 of which ~ 44% (£313,755) is provided as new burdens¹² money from Defra. If budgetary pressures continue to rise, the enforcement and research work required to support this Byelaw maybe compromised.

D&SIFCA has commissioned a PhD student to assess the impact of potting on features within European Marine Sites (EMSs). The four year project is in its third year and will cost approximately £75,000 -£80,000 (excluding sea time on board D&SIFCA's survey vessel).

D&SIFCA are looking to introduce better ways of monitoring and control and believe that remotely accessed monitoring devices will play a key part in the future. Although not required initially, the Byelaw has the ability to require potting vessels to fit a remotely accessed monitoring device. This is most likely to be required if potting activities need to be spatially restricted to meet the conservation objectives of the Marine Protected Areas. Purchasing of units and installation of

⁷ 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.

⁸ 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).

⁹ 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

¹⁰ 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.

¹¹ i.e. discounted as with NPV

¹² <http://archive.defra.gov.uk/foodfarm/fisheries/documents/fisheries/ifca-factsheet.pdf>

units is likely to be approximately £1,000 with additional average airtime cost of between £150 and £200 per annum. It is envisaged that the specification of the units if required under the Byelaw will be compatible with units already required for towed gear vessels over 12m and under 15m in length. Commercial vessels should be able to access funding to assist with the purchase of the units. Funding of 40% has already been secured in advance of the requirement for vessels using mobile gear to operate IVMS.

Estimating the cost of communicating this change in management is difficult but will involve developing and siting signage at strategic locations throughout the district, formally advertising the Byelaw, placing of a press release with local media, information flyers and further development of the Authority's website. It is expected that the Byelaw will be confirmed during December 2014. 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 £10,000 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 will lead to a small number of commercial vessels having to change their fishing pattern to remain compliant with local management measures. This change in operation has been discussed with fishermen from both North and South Devon but has not been fully evaluated. From the discussions, the impact on the larger vessels is not envisaged to be significant.

Persons fishing recreationally will need to adjust to having effort restrictions placed on their activities and will need to adjust to the catch and pot limitations.

D&SIFCA works closely with other organisations both research and enforcement to meet its duties. On enforcement work D&SIFCA issues 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 has agreements with the 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 better reflects the needs of the different sectors taking key shellfish resources by limiting the level of effort and the amount of shellfish that can be taken from the non-commercial sector. The Byelaw also allows for commercial effort to be restricted in a similar way. 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.

At the same time the D&SIFCA believes that these catch limits on the non commercial sector are entirely reasonable and proportional to personal consumption and that both sectors will benefit

from the sustainability of shellfish stock brought about by this Byelaw.

Operating the permit scheme will give D&SIFCA far greater knowledge of the level of potting occurring and the amount of shellfish being taken in the district to inform future management. The permit schemes will also allow D&SIFCA to communicate directly with users 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.

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

Marking of gear will be greatly improved. This will allow better monitoring of potting effort. It helps to ensure that recreational potting effort is effectively managed and helps prevent the tampering with or unauthorised use of other persons' gear.

The Byelaw is designed to be flexible enough to deal with future management needs within an appropriate timeframe. This in turn reduces the cost associated with developing, consulting and introducing new legislation.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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Cefas reported in 2011 that the lobster¹³ and crab¹⁴ 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 the D&SIFCA believes is entirely reasonable and proportional to personal consumption. This will help support Cefas' assessment of the stock and benefit both sectors by enhancing stock levels.

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 Measure qualifies
Costs: N/A	Benefits: N/A	Net: N/A ¹⁵	OITO?	as
			No	N/A

¹³ <http://www.cefas.defra.gov.uk/media/580130/lobster%20south%20west%202011.pdf>

¹⁴ <http://www.cefas.defra.gov.uk/media/580170/crab%20western%20eastern%20channel%202011.pdf>

¹⁵ Linked to ENCB

Evidence base

1. Introduction

Inshore Fisheries and Conservation Authorities (IFCAs) 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.

IFCAs 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 system. 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 potting in the district. Where good data is unavailable, the new Byelaw mitigates the risk of creating unintended consequences by having a flexible approach to management.

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 EMSs by the end of 2016. The use of potting gear has been designated as a medium risk and assessment of the activity is already underway. The design of the new Byelaw allows for new management measures to be introduced in an appropriate timeframe if the need for these is identified through this assessment process.

The first tranche of Marine Conservation Zone (MCZs) were designated on 21st November 2013. Impacts from potting 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 two of the MCZs and to maintain other restrictions on potting currently in place within Lundy MCZ.

2. Rationale for intervention

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, particular 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 controlling 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 will support 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 permit 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 and design,
- 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 making 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 potting activity can be found in one document. Permit conditions can be more readily translated into plain English helping the fisher 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 collect relevant data to better inform its 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 measures required to ensure site features are maintained in a favourable condition. This resulted in a revised approach¹⁶ to management of fishing in EMSs.

The revised approach is being implemented using an evidence based, risk-prioritised, and phased basis. Risk prioritisation is informed by a matrix¹⁷ 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 required¹⁸.

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.

¹⁶ Fisheries in EMS policy document: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/policy_and_delivery.pdf

¹⁷ See Matrix: www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/populated_matrix3.xls

¹⁸ Centre for Environment, Fisheries and Aquaculture Science (CEFAS) review of matrix and supporting evidence: http://www.marinemanagement.org.uk/protecting/conservation/documents/ems_fisheries/cefass_matrix_review.pdf

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

Potting activity on designated features within the EMSs in D&SIFCA's district have been categorised as amber. D&SIFCA has identified potting as a 'high priority amber' due to the known high levels of potting activity (if not entirely accurately quantified at present). D&SIFCA's assessment of the activity is planned for 2014-16.

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

Environmental Impact

Impacts of potting gear on reef features designated under MPAs

It is due to the uncertainties of the impacts of potting on reef features in the EMSs that the activity is categorised as amber. D&SIFCA has commissioned a PhD student to assess the impact of potting on features within EMSs. The four year project is presently in its third year and will cost approximately £75,000 (excluding sea time on board D&SIFCA's survey vessel).

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 potters.

D&SIFCA has also embarked on a survey with all commercial potting and netting operators to get a better understanding of the level of potting activity throughout the district and has asked, among other things, whether commercial operators believe that potting effort should be restricted.

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

Fishing Sector:

From MMO and D&SIFCA records it is believed that up to 400 commercial fishing vessels may be potting in the district. The level of recreational potting is far more difficult to quantify as similar records are not available but best current estimate is that between 100-150 vessels may be participating in the fishery.

Any person using pots within the D&SIFCA district will be affected as they would need to operate under a permit byelaw. The requirement to have a permit will start to remove the uncertainties in quantifying the levels of potting activity, thus better informing the decision making process.

Local economies and society:

Public awareness of the importance of the potting sector and how it operates will improve through the introduction of the Byelaw.

One of D&SIFCA's guiding principles of the byelaw review includes 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.

Supporting the local commercial potting 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 for enforcing any measures in the area would fall to D&SIFCA and therefore the additional enforcement cost would impact on D&SIFCA.

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 potters 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 Principles¹⁹, D&SIFCA must consider voluntary measures before proceeding with a statutory measure such as a byelaw²⁰.

Option 0: 'Do Nothing'

The fishing pressure from potting effort in the district is believed to be such that not regulating the activity would lead to unacceptable risk of the important shellfisheries being over exploited and collapsing.

Recommended option

Option 1 A D&SIFCA 'Potting 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 speedily to regulate catch restrictions and reporting, gear construction, spatial and time restrictions and the fitting of specified equipment to vessels.

¹⁹ Link to BRPs <https://www.gov.uk/government/publications/better-regulation-framework-manual>

²⁰ 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.

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 or changing circumstances in an appropriate timeframe.

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. Fishermen working with Blue Marine Foundation have developed a code of practice in Lyme Bay for static gear activities and have called on the IFCAs to bring in management measures to support the agreement.

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.

Under this option should further measures be required in the future for potting and 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 any 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. D&SIFCA intends to work closely with the MMO and adjacent IFCAs so that where possible management is consistent across the South West and between organisations.

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, the incentive to catch and sell high value shellfish, the number of fishers, 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 an 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 potters 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 potting sector and provides an opportunity for both sectors to be properly represented in the Authority's management decisions.

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 and in such circumstances the Authority has proceeded on the best available evidence and has applied the precautionary principle where data is unavailable. The Authority is entitled to proceed upon this evidentiary and precautionary basis. The Byelaw provides the opportunity to introduce a mechanism to gather more precise evidence to inform future management decisions by requiring all permit holders to provide records of their fishing activity. This requirement is set out in the Byelaw in, paragraph 17 '*The permit holder shall provide any relevant fisheries information required by the Authority for the discharge of its functions*'. The Authority is 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 for timely adjustments to be made in the light of this increased evidence base. This could include a revision upwards in the catch limitations if the evidence justifies such an adjustment.

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 commercial fishermen during the consultation on D&SIFCA's Potting and Shellfish Permit Byelaw.
- Vessel data from MMO and D&SIFCA records.
- D&SIFCA's Members and Officers' knowledge and expertise.
- D&SIFCA's Potting and Netting questionnaire with commercial vessels.
- The responses received to the formal consultation of the Potting Permit Byelaw Oct – Nov2014.

Analysis of fisheries costs

All persons fishing with pots in the district will require a permit issued under the byelaw. MMO and D&SIFCA records would indicate that up to 400 commercial vessels may be potting in the district at any one time. The number of recreational potters is unknown but it is estimated that there may be in the region of 100-150 vessels. One of the immediate benefits of introducing the permits scheme is that the numbers of fishers using pots becomes more readily identifiable. This will better inform the management decision making process.

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 contributors²¹ 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 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 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 estimated 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. However to reflect the requirement for recreational fishers to attach tags to their pots the initial charge for tags (up to five per permit holder) will be met by the Authority.

D&SIFCA believes that a charge of £20 for up to a two year permit, where the conditions of use may be varied without cost to the permit holders during that period, does not impose an excessive financial or regulatory burden upon any of its stakeholders. 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 fish both inside and outside the district. Through discussions with representatives of the commercial fleet in north and south Devon the number of vessels affected is likely to be low. Nevertheless fishermen from Ilfracombe felt that the deeming clause may affect their autumn offshore lobster fishery where a significant proportion of the catch is berried. Vessels fish pots inside and outside of the district during this period of the year. Recognising this fishing pattern, the deeming clause does not prevent the carriage of the catch caught offshore through the district. The deeming clause sets out that whilst a vessel is engaged in the act of fishing²² in the district the catch on board is deemed to have been caught in the area. For example this still allows fishermen to fish inside the district and then outside the district and retain on board berried lobster if they then transit through the district to land. However if a vessel fishes outside of the district and catches berried lobsters and then engages in fishing inside the district those berried lobsters will be deemed to have been caught in the district if inspected at sea.

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.

²¹ Including Stage Two Report of Project Inshore,
http://www.seafish.org/media/921067/2013.07.23_project_inshore_s2_v5.pdf

²² Fishing as defined in the D&SIFCA Potting Byelaw

Catch Restrictions

All potters, except persons operating with shellfish entitlements on the vessel's general commercial licence, will be restricted in the number of shellfish that can be caught in any one calendar day. The Byelaw provides the mechanism by which commercial operators could be restricted by the Authority but this is likely to be in support of national or European initiatives.

Nationally, commercial vessels, using pots or nets, that do not have shellfish entitlements are restricted to a maximum of five lobsters and 25 crabs per calendar day. All five objections received to the formal consultation of this Byelaw claimed that the Byelaw was disproportionate in that the Authority was only imposing catch and gear restrictions on the recreational sector in the first instance. To reflect these concerns the same restrictions, five lobsters and 25 crabs per calendar day will apply through the permit conditions to this sector of the commercial potting fleet. The additional benefit of this approach is that this catch limit for these commercial vessels is directly enforceable by the Authority's enforcement officers.

The Byelaw restricts the daily catch of recreational potters to two lobsters and three crabs per calendar day per person. 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 present and the differing motivations and intentions of these groups. For non-commercial fishers the Authority believes that it has set limits which are reasonable and appropriate to personal consumption.

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 potters²³

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 have undertaken a year long study to assess the size at which whelks reach sexual maturity. D&SIFCA are considering increasing the minimum size following the research and whether to introduce a minimum width for this species rather than a minimum length. D&SIFCA also 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 minimum size of edible crab. D&SIFCA also propose to increase female spider crab to 130mm and spiny lobsters from 95mm to 110mm in line with Cornwall IFCA's restriction. Consistency of management is another of D&SIFCA's guiding principles of its review of the inherited byelaws.

²³ The Unlicensed Fishing for Crabs and Lobster Regulations (Northern Ireland) 2008

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 total number of commercial boats working in the two MCZs is believed to be 15. Although the commercial value of spiny lobsters is high, ranging between £40 and £60 per fish the number caught would suggest that by prohibiting the removal of spiny lobsters from these two areas is likely to cost the whole fleet around £1,500. 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.

The byelaw prohibits the use of edible crab as bait whilst targeting crab and lobster. Although edible crab is used elsewhere in the country to target lobster it is thought to be used on a very small scale currently within the district. At this stage insufficient information is available to fully assess the implications for the whelk fishery if the ban on the use of edible crab as bait was extended. During consultation on the Potting and Shellfish Byelaw, fishermen from North Devon expressed considerable concern if this measure was introduced. However all edible crab used as bait must meet the minimum sizes that apply in the district. This may restrict where fishermen source bait from as other areas have smaller minimum sizes but it also prevents fishermen taking undersize crab from any fishery within the district and having the defence that the bait has been bought in. This approach should help to satisfy a significant proportion of commercial crab and lobster fishers that would like to see the complete ban on the use of edible crab as bait.

The flexibility in controlling the use of bait means that species could be added in support of developing the recreational sea angling sector if deemed appropriate at a later stage.

Gear restrictions

The Byelaw continues the use of escape gaps in parlour pots and other pot designs that have 'soft eye'²⁴ entrances. Since the introduction of the escape gap restriction, commercial fishermen have generally supported the measure as the escape gap lets juvenile crab and lobster leave the pot and prevents damage to undersize shellfish through fighting with larger individuals. The measure also reduces the time needed by the fishermen to clear the pots of undersize shellfish. One of the unintended consequences of the escape gap legislation was to remove the ability of pots with soft eyes to effectively target the velvet crab fishery. Although not a large fishery the fishery would help support a number of the small inshore vessels during the early spring months when edible crab and particularly lobster are not active on the ground due to the reduced water temperature. Consultation on the proposal to relax the requirement for escape gaps during January, February and March will be undertaken with the commercial sector.

The Byelaw prohibits the use of store pots by recreational potters. This measure helps significantly with the ability to enforce the daily catch restrictions. Similarly, commercial operators operating without a shellfish fishing entitlement need to apply for a dispensation from the MMO if they wish to store pot their catch.

The proposal is to limit the number of pots operated by the recreational sector to five per permit issued. A number of the objections to the Potting and Shellfish Permit Byelaw believed that the limit on the number of pots was too low. D&SIFCA's Byelaw and Permitting

²⁴ 'soft eye' as defined in the permit conditions of the draft D&SIFCA Potting Byelaw

Sub-Committee considered increasing the limit to ten but on balance decided to maintain the level at five in the first instance.

The Byelaw provides the mechanism by which commercial operators could be restricted by the Authority. As part of the current potting and netting questionnaire commercial fishermen are asked for their views on whether a restriction on the number of pots operated by them is needed.

Surface markers, buoys or dhans, attached to potting gear need to be marked with either the commercial vessels' Port Letters and Numbers or the permit number. This will assist greatly in monitoring of fishing activity and help identify persons responsible for the gear. Determining ownership of gear is difficult at present and has resulted in seized gear relating to minor offences being sold rather than being returned where the owner has not come forward. Better marking of gear will also help when members of the public report suspicious activity in relation to static gear. Commonly potting gear is mistaken for nets. In the case of recreational gear, in addition to the requirement to mark gear, each pot needs to be tagged with tags issued by D&SIFCA. In the first instance up to five tags will be issued for free to the permit holder. The use of tags will enable the restriction on pot numbers to be enforced.

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.

However the new Byelaw will replace two inherited byelaws that relate to potting and shellfish. The Byelaw will also introduce new restrictions on unlicensed, non-commercial fishing 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 unlicensed vessel 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.

Small businesses' ability to innovate may no longer be restricted due to rigid fisheries legislation. For example the escape gap restriction may be adapted to reflect seasonal opportunities for small businesses to exploit the velvet crab fishery.

No fishers are exempt from this Byelaw as it applies to all persons operating pots.

7. Conclusion

The D&SIFCA has statutory responsibilities that it believes it meets by introducing the Potting 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 removes the need for further byelaws to deal with potting management 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 differing needs of persons using pots and taking shellfish. The Byelaw will provide the ability to manage effort directed towards the shellfisheries and support the development of sustainable fisheries.

All persons, other than those operating registered fishing vessel with a shellfish fishing entitlement, set out in section 3 of the vessel's general fishing licence, will be limited to a daily catch limit of certain species.

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.