

Amendments to the Current Category One Permit Conditions - Mobile Fishing Permit Byelaw

Officers' Recommendation

That current Category One Mobile Fishing Permit Conditions are amended to include the agreed management measures for Salcombe Harbour scallop fishery.

1. Background

The small-scale dredge fishery for scallops (*Pecten maximus*) in Salcombe Harbour has operated for many decades and has been mainly unchanged since 1998 when it was managed via a Devon Sea Fisheries Byelaw. It has been managed by D&S IFCA through measures set out in the Category 2 permit conditions under the Mobile Fishing Permit Byelaw since 2014. These measures include vessel size, gear, time and spatial restrictions; the spatial restrictions, in particular, include the limit to the extent of the fishery and prohibition of dredging in sensitive seagrass areas. The Salcombe scallop fishery is a small-scale fishery. Between 2013 and 2023 there was an average of three vessels taking part, with a minimum of two vessels and a maximum of five vessels.

Between 25th November 2022 and 20th January 2023, D&S IFCA advertised the proposed amended Mobile Fishing Permit Byelaw and consulted on changes to Category 2 permit conditions.

The proposed changes to the Category 2 permit conditions included the proposal to reduce the width of the scallop dredges used in the Salcombe Harbour fishery from 1.0 metre to 0.85 metres. The Impact Assessment that accompanied the consultation on the changes noted that through officers' discussions with the relevant permit holders, those that operated in the Salcombe Harbour fishery had already made the necessary alterations to their dredges to meet the proposed amendment to the permit conditions.

The change in the width of the dredges was considered necessary to align the width of the dredges used in Salcombe Harbour with the maximum width of scallop dredges set out in The Scallop Fishing (England) Order 2012.

The Scallop Fishing (England) Order 2012 requires all types of dredges used for the purpose of fishing for scallops to meet the requirements set out in the legislation. The table in Annex A to this paper sets out the requirements for scallop dredges under the Order and applied to the scallop dredge fleet operating at sea within D&S IFCA's District, the Salcombe Harbour scallop fishery and Fal Oyster fishery in Cornwall.

The table highlights the differences in scallop dredge design set out in The Scallop Fishing (England) Order 2012 and the two dredge fisheries that operate in the estuaries. The reason for not formally consulting on further changes was because officers were of the opinion that the proposed reduction of the dredge width combined with the other existing permit measures created a more restrictive fishery in Salcombe Harbour than would be the case if the dredge specifications contained in the Order were applied.

The Salcombe Harbour scallop dredge fishery and the Fal Oyster fishery are similar in that fishing effort is restricted by prohibiting the use of winches to haul the dredges. This results in the dredges being towed becoming much lighter than the dredges used at sea. The use of

the lighter framed dredges and the reduced weight from not having a spring-loaded toothed bar results in the dredges penetrating the top layer of the seabed less and having far less impact to the habitat.

If the requirements of The Scallop Fishing (England) Order 2012 were applied this would lead to heavier, stronger dredges being required. This would also increase the likelihood of having to allow for mechanical hauling of the dredges and risk the sustainability of the fishery and increased damage to the benthic habitat.

The scallop fishery in the Salcombe Harbour, has been undertaken for several decades and in the full knowledge of Natural England and the Duchy of Cornwall. In 2017, D&S IFCA, after engagement with the fishers operating in the Salcombe Scallop fishery, developed a proposal to extend the fishery further up the Salcombe and Kingsbridge Estuary SSSI into an area known as The Bag, which has been closed to scallop dredging since 1998. D&S IFCA undertook an assessment of the potential impacts of this extension, and this was discussed at the B&PSC in January 2017. The assessment was submitted for formal advice to Natural England, who at the time was not supportive of this extension. but did not use this opportunity to raise any concerns regarding the existing scallop fishery in the Salcombe Estuary. Natural England, at the time, did state in their written formal advice that they understand the desire from D&S IFCA to seek the correct balance between conservation interests and the interests of local fishermen, and were keen to find a solution to maximise the opportunities of the fishermen without having a detrimental impact on the SSSI.

The Impact Assessment for The Scallop Fishing (England) Order 2012, set out the following policy objectives and the intended effects;

The objective is to create a sustainable fishery, on both a local and national level, with access to healthy stocks all year round, for both the small-scale fleet and larger 'nomadic' vessels. This can be achieved by providing protection for the smaller scale fleet; better safeguarding scallop stocks by reducing catching capacity in certain areas; improving the enforceability of existing fishery management measures; and putting English waters on a similar footing to devolved waters, reducing the impact of displacement of scalloping activity between areas. A parallel objective, achievable through the same means, is to reduce gear conflict between different sized scalloping vessels, and conflict between non scalloper (primarily static gear fishermen) and scalloping vessels.

The introduction of all the scallop dredge specifications set out in the Order would mean that the policy objectives and intention of the legislation would not be met.

2. Change to Category One Permit Conditions

The Mobile Fishing Permit Byelaw separates the management of mobile gear within the District by defining the waters within estuaries on the face of the Byelaw. The Byelaw creates two types of permits that can be issued. Category 1 Permits contain all the management measures that relate to fishing activities undertaken 'at sea' and Category 2 permits contain all the management measures that relate to fishing activities undertaken in 'estuaries'.

Officers have discovered that the positions used to define the closing line for Salcombe Harbour (estuary) within the Byelaw are incorrect. The closing line is incorrectly set above the most northerly extent of waters in Salcombe Harbour.

Officers have sought legal advice on the impact of this error. When errors in legislation are discovered, a test, known as the 'blue pencil' is applied to determine the degree to which the legislation becomes unenforceable. Officers have been advised the Byelaw remains

enforceable. However, the error means that the waters in Salcombe Harbour are part of the 'at sea' area of D&S IFCA's District

Officers therefore intend to move the management measures that relate to Salcombe Harbour contained in the current Category 2 permit conditions to the Category 1 permit conditions and amend the maximum width of the scallop dredge to 0.85 metres as agreed following formal consultation in 2023.

Six permit holders will be issued with Category 1 permits free of charge and will be valid until the expiry date recorded in their existing Category 2 permits.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers

- B&PSC - Officers' papers and minutes of meetings – [Section B of D&S IFCA website Resource Library](#).
- [Impact Assessment \(proposed Mobile Fishing Permit Byelaw 2022\)](#).
- Scallop Fishing (England) Order 2012 ([Specification of scallop dredges](#)) & ([Explanatory Memorandum](#))
- Annex A - Table of Comparison between Dredges used in Different Fisheries

End.