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STATUTORY INSTRUMENTS

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**1992 No. 2957**

**SEA FISHERIES**

**SHELLFISH**

**The River Roach Oyster Fishery Order 1992**

*Made* - - - - *19th November 1992*  
*Laid before Parliament* *8th December 1992*  
*Coming into force* - - *29th December 1992*

Whereas an application for an Order under section 1 of the Sea Fisheries (Shellfish) Act 1967(1) was made to the Minister of Agriculture, Fisheries and Food by the local fisheries committee for the Kent and Essex Sea Fisheries District;

And whereas the Minister prepared a draft Order and served a copy of it on the said committee in accordance with paragraph 1 of Schedule 1 to the said Act;

And whereas the committee caused printed copies of the draft Order to be published and circulated, and gave notice of the application, in accordance with paragraph 2 of the said schedule;

And whereas all objections made to the said Minister under paragraph 3 of the said schedule have since been withdrawn;

Now, therefore, the said Minister, in exercise of the powers conferred on him by section 1 and of all other powers enabling him in that behalf, and with the consent of the Crown Estate Commissioners, hereby makes the following Order:

**Title, commencement, duration and interpretation**

1.—(1) This Order may be cited as the River Roach Oyster Fishery Order 1992.

(2) This Order shall come into force on 29th December 1992 and shall remain in force for 20 years.

(3) In this Order—

“the Committee” means the local fisheries committee for the Kent and Essex Sea Fisheries District established under section 1(1) of the Sea Fisheries Regulation Act 1966(2);

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(1) 1967 c. 83; section 1 was amended by section 15(2) of the Sea Fisheries Act 1968 (c. 77) and paragraph 15 of Schedule 2 to the Fishery Limits Act 1976 (c. 86) and is to be read with section 15(3) to (5) of the Sea Fisheries Act 1968; Schedule 1 was amended by section 15(7) of the Sea Fisheries Act 1968; section 22(1) contains a definition of “the Minister”.

(2) 1966 c. 38; section 1(1) was amended by section 272 of, and Schedule 30 to, the Local Government Act 1972 (c. 70) and by section 16 of, and paragraph 19 of Schedule 8 to, the Local Government Act 1985 (c. 51).

“the definitive map” means the map sealed in duplicate by the Minister and marked “Map referred to in the River Roach Oyster Fishery Order 1992”, one copy of which is in the possession of the Committee and the other copy of which is in the possession of the Minister; “the fishery” has the meaning assigned to it by article 2(1).

(4) A reference in this Order to a numbered article shall be construed as a reference to the article bearing that number in this Order.

### **Right of several fishery**

2.—(1) Subject to the following provisions of this Order, there is hereby conferred on the Committee for a period of 20 years the right of several fishery for oysters with respect to such part of the River Roach in the County of Essex as lies below the line of mean low water springs and is shown coloured pink on the definitive map.

(2) The Committee is hereby constituted a body corporate for the purposes of this Order.

(3) The right of several fishery hereby conferred shall not be exercised by the Committee in its corporate capacity.

### **Marking of limits of the fishery**

3. The Committee shall mark the limits of the fishery in such manner as the Minister may from time to time approve and the Committee shall maintain the marks in position and in good repair.

### **Taking of samples for the purpose of disease control**

4. The Committee shall permit any person authorised in that behalf by the Minister to do the following things for any purpose connected with preventing the spread of disease—

- (a) at any reasonable time to obtain samples of any oyster found within the fishery and to remove them from the fishery provided they have been marked, labelled or otherwise made capable of identification;
- (b) when the purpose for which any such sample was taken has been satisfied, to dispose of it as he may determine.

### **Power to grant leases**

5.—(1) The following provisions of this article shall apply in relation to the leasing by the Committee to any person of the right of several fishery for oysters with respect to any part of the several fishery.

(2) Without the written consent of the Minister the Committee shall not grant to any person a lease of the right of several fishery if—

- (a) the total area in respect of which that person would be entitled to that right would exceed 2.5 hectares; or
- (b) the period in respect of which that person would be so entitled in respect of any area would end more than seven years after he first became so entitled in respect of that area.

(3) Any lease shall forbid the making of an assignment thereof or the grant of, or assignment of, a sub-lease without the consent of the Committee and the Committee shall not unreasonably withhold such consent.

(4) The Committee shall not without the written consent of the Minister give its consent for the purposes of paragraph (3) above if it appears to the Committee that in consequence of the assignment or sub-lease—

- (a) the total area in respect of which the assignee or sub-lessee would be entitled to the right of several fishery would exceed 2.5 hectares; or
  - (b) the period in respect of which that person would be so entitled in respect of any area would end more than seven years after he first became so entitled in respect of that area.
- (5) In determining whether a person is entitled to a right of several fishery for the purposes of paragraphs (2), (3) and (4) above—
- (a) references to a person's being so entitled include references to his being—
    - (i) entitled by virtue of the assignment of a lease or the grant or assignment of a sub-lease, or
    - (ii) beneficially entitled under the terms of one or more trusts; and
  - (b) the following shall be treated as one person—
    - (i) any two or more persons carrying on a business of shellfish cultivation in partnership;
    - (ii) the person having control of any company and all the companies controlled by that person;
    - (iii) spouses;
    - (iv) parents and children.
- (6) Any lease shall prohibit the lessee or his assignee or sub-lessee from entering into any agreement with any other person having an interest in any part of the fishery for the common management of their respective businesses or the common exploitation of their respective layings without the consent of the Committee and the Committee shall not unreasonably withhold such consent.
- (7) The Committee shall not without the written consent of the Minister give its consent for the purposes of paragraph (6) above if it appears to the Committee that in consequence of the agreement—
- (a) the total area of layings under the common management or exploitation of the parties to the agreement would exceed 2.5 hectares; or
  - (b) the period in respect of which any party to the agreement would be concerned in the management or exploitation of any laying would end more than seven years after he first became entitled to the right of several fishery in any part of the area subject to the agreement.
- (8) Any lease shall require the lessee to permit any person authorised in that behalf by the Minister to do the things mentioned in article 4 for a purpose of the kind mentioned in that article.
- (9) Any lease shall provide that it may be determined by the Committee in the event that the lessee, or his assignee or sub-lessee, is in breach of any provision of the lease inserted therein pursuant to the requirements of this article and the Committee shall take all reasonable steps to monitor compliance with such provisions.
- (10) The Committee shall mark or cause to be marked all layings in the fishery in such manner as the Minister may from time to time approve.
- (11) The marks defining the limits of each laying in the fishery shall be maintained in position and in good repair by the Committee or, if so stipulated in the lease, by the lessee.
- (12) In paragraphs (6), (7), (10) and (11) above “laying” means any part of the fishery with respect to which the right of several fishery for oysters is comprised in a lease granted by the Committee.

### **Control of deposits**

6.—(1) The grantees shall not without the written consent of the Minister deposit within the limits of that part of the fishery within which their right is exercisable any oysters of the species

*Ostrea edulis* and shall comply with any condition subject to which the Minister gives his consent to the deposit of any such oyster.

(2) In this article “grantees” means any person for the time being entitled to a right of several fishery over any part of the fishery.

#### **Accounts of income and expenditure and other information**

7. The Committee shall render to the Minister annual accounts of its income and expenditure under this Order, shall furnish to the Minister all other information required by him with reference to this Order in such form and at such times as he may require, shall allow any person authorised by the Minister in that behalf to inspect the fishery and all books of account and other documents in the possession of the Committee relating to this Order and to the fishery and shall give to such person any information relating thereto as he may require.

#### **Rights of the Crown**

8. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular nothing herein contained shall authorise the Committee to take, use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, hereditament, subject or right of whatever description belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners.

#### **Rights of various persons and bodies**

9.—(1) Nothing in this Order shall affect prejudicially the exercise of any statutory power or authority from time to time vested in or exercisable by any person carrying on an undertaking falling within paragraph (2) below.

(2) The following are the undertakings which fall within paragraph (1) above—

- (a) the undertaking of any water undertaker or sewage undertaker;
- (b) any undertaking consisting in the running of a telecommunications code system, within the meaning of Schedule 4 to the Telecommunications Act 1984<sup>(3)</sup>;
- (c) the undertaking of any public gas supplier within the meaning of Part I of the Gas Act 1986<sup>(4)</sup>;
- (d) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989<sup>(5)</sup> to generate, transmit or supply electricity.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on

L.S.

19th November 1992.

*John Selwyn Gummer*  
Minister of Agriculture, Fisheries and Food

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(3) 1984 c. 12.  
(4) 1986 c. 44.  
(5) 1989 c. 29.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order confers on the Kent and Essex Sea Fisheries Committee (“the Committee”) the right of several fishery for oysters in part of the River Roach, Essex.

The situation and extent of the several fishery are shown on the definitive map described in article 1(3) of the Order, which may be inspected (subject to prior appointment) during office hours at the offices of the Committee at County Hall, Maidstone, Kent ME14 1XQ and at the offices of the Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR.