
STATUTORY INSTRUMENTS

1996 No. 828

SEA FISHERIES

SHELLFISH

The Solent Oyster Fishery (Variation) (Clams) Order 1996

<i>Made</i>	- - - -	<i>18th March 1996</i>
<i>Laid before Parliament</i>		<i>18th March 1996</i>
<i>Coming into force</i>	- -	<i>12th April 1996</i>

Whereas an application for an Order under section 1 of the Sea Fisheries (Shellfish) Act 1967(1) to vary the Solent Oyster Fishery Order 1980(2) was made to the Minister of Agriculture, Fisheries and Food by the local fisheries committee for the Southern Sea Fisheries District (hereinafter referred to as “the Committee”);

And whereas the said Minister prepared a draft Order and served a copy of it on the 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 objections were received by the said Minister under paragraph 3 of the said Schedule;

And whereas the said Minister considered the said objections to be frivolous or irrelevant;

And whereas the said Minister thinks it expedient to make the Order;

Now, therefore, the said Minister, in exercise of the powers conferred on him by the said 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 and interpretation

1.—(1) This Order may be cited as the Solent Oyster Fishery (Variation) (Clams) Order 1996 and shall come into force on 12th April 1996.

(2) In this Order “the principal Order” means the Solent Oyster Fishery Order 1980.

(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 and S.I. 1987/218; Schedule 1 was amended by section 15(7) of the Sea Fisheries Act 1968; section 22(1) contains a definition of “the Minister”.

(2) S.I. 1980/1373.

Variation of the principal Order

2. The principal Order shall be varied in accordance with articles 3 to 10 of this Order and any reference in those provisions to any specified provision shall, unless the context requires otherwise, be taken to be a reference to the provision so specified of the principal Order.

3. In article 3(1)—

- (a) for the address of the Committee there shall be substituted “64 Ashley Road, Parkstone, Poole, Dorset, BH14 9BN”;
- (b) after the word “oysters” there shall be inserted the words “and clams”.

4. For article 4 there shall be substituted the following new article—

“Limits of fishery

4. The area to which this Order relates (hereinafter called “the fishery”) comprises so much of the bed of the Solent as lies below the line of mean high water springs as the same is shown coloured pink on the definitive map prepared in duplicate, sealed with the official seal of the Minister and marked “Solent Oyster Fishery Order 1980 as varied by the Solent Oyster Fishery (Variation) (Clams) Order 1996—Definitive map showing the situation and extent of the fishery”, one copy of which has been deposited and is available for inspection at the offices of the Committee at 64 Ashley Road, Parkstone, Poole, Dorset BH14 9BN and the other at the offices of the Ministry of Agriculture, Fisheries and Food at Nobel House, 17 Smith Square, London SW1P 3JR.”.

5. In article 5—

- (a) in paragraph (1), after the word “oysters” wherever it occurs there shall be inserted the words “and clams”;
- (b) in paragraph (2), the words “and confirmation” shall be omitted.

6. In article 6—

(a) for paragraph (1) there shall be substituted the following two paragraphs—

“(1) Subject to the provisions of paragraph (1A) below, no person shall dredge, fish for or take oysters within the limits of the fishery except under the authority and in accordance with the conditions of a licence issued in that behalf by the Committee.

(1A) The prohibition in paragraph (1) above shall not apply to the activity of picking oysters by hand from the shore.”;

(b) in paragraph (7)(ii) the words from “that is to say” to “the Sea Fisheries Regulation Act 1966,” shall be omitted.

(c) after paragraph (7) there shall be inserted the following paragraph—

“(8) For the purposes of this article a relevant offence is—

(a) an offence either—

(i) under section 3(3) of the Sea Fisheries (Shellfish) Act 1967, or

(ii) under a byelaw made under section 5(1)(d) of the Sea Fisheries Regulation Act 1966

which was committed since the coming into force of this Order; or

(b) an offence under a byelaw made under section 5(1)(a) or (b) of the Sea Fisheries Regulation Act 1966 which relates to fishing for oysters and which was committed on or after 12th April 1996.”.

7. After article 6 there shall be inserted the following article—

“Licensing of fishing for clams

6A.—(1) Subject to paragraph (2) below, no person shall dredge, fish for or take clams within the limits of the fishery except under the authority and in accordance with the conditions of a licence issued in that behalf by the Committee.

(2) The prohibition in paragraph (1) above shall not apply to the activity of picking clams by hand from the shore.

(3) Subject to the directions of the Minister and the provisions of paragraph (8) of this article, licences may be issued by the Committee in such numbers and to such persons, and may authorise the dredging, fishing for or taking of clams at such times, in such manner and to such extent as the Committee may determine.

(4) A licence shall be used only by the person named therein or by a person nominated by him therein as his deputy.

(5) A licence shall be valid for the period not exceeding twelve months specified therein.

(6) No vessel may be used for dredging, fishing for or taking clams within the fishery except under the authority of a licence in which it is so named.

(7) Any person dredging, fishing for or taking clams under the authority of a licence issued under this Order shall, when required by any officer authorised by the Committee and after production by that officer of written evidence of his authority if so required, produce such licence and shall desist from dredging, fishing for or taking clams until the same is produced.

(8) Any fisherman engaged in dredging, fishing for or taking clams within the fishery as a commercial activity or as part of a commercial activity in the fishing season immediately prior to 21st April 1995 shall be entitled to a licence in respect of the first fishing season after the coming into force of this Order and thereafter any such fisherman who has held a licence at any time within the period of 24 months immediately preceding the date of his application to the Committee for a new licence shall be entitled to have a new licence issued to him unless either—

(i) a licence held by him has within the period of 24 months been cancelled by the Committee under section 4(7) of the Sea Fisheries (Shellfish) Act 1967, or

(ii) he has on at least two separate occasions been convicted of a relevant offence which was committed on or after 12th April 1996

in which case the Committee shall have absolute discretion to refuse to grant him a new licence.

(9) For the purpose of this article a relevant offence is an offence under—

(a) section 3(3) of the Sea Fisheries (Shellfish) Act 1967, or

(b) a byelaw made under section 5(1)(a) or (b) of the Sea Fisheries Regulation Act 1966 which relates to fishing for clams, or

(c) a byelaw made under section 5(1)(d) of the Sea Fisheries Regulation Act 1966.”.

8. In article 7—

(a) in paragraph (1), at the end of the paragraph there shall be inserted the words “and any person licensed under the provisions of article 6A of this Order to dredge, fish for or take clams within the limits of the fishery shall pay to the Committee before or on receipt of the licence a toll of £30”;

(b) in paragraph (2), for the word “toll” there shall be substituted the word “tolls”.

9. In article 9, after the words “oysters” there shall be inserted the words “or clams”.

10. In article 10(1), after the word “oysters” wherever it occurs there shall be inserted the words “or clams”.

11. After article 18 there shall be inserted the following articles—

“Rights of navigation bodies

19. 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 the undertaking of any navigation, harbour, general lighthouse or conservancy authority.

Exemptions for scientific purposes

20. The Committee may, by authority given in writing, exempt any person who is dredging, fishing for or taking oysters or clams for scientific purposes from any provision of this Order or from any restriction imposed or regulation made under this Order.”.

18th March 1996

Tony Baldry
Minister of State, Ministry of Agriculture,
Fisheries and Food

EXPLANATORY NOTE

(This note is not part of the Order)

This Order varies the Solent Oyster Fishery Order 1980 by conferring on the local fisheries committee for the Southern Sea Fisheries District (“the Committee”) the right additionally to regulate a fishery for clams (article 3).

The Order also makes the following variations of substance—

- (a) the area of the fishery is amended by reference to a new definitive map (article 4);
- (b) the requirement to possess a licence when handpicking oysters from the shore is removed (article 6);
- (c) a new article relating to the issue and use of licences for clams is inserted (article 7);
- (d) a toll of £30.00 for the issue of a licence to take clams is introduced (article 8); and
- (e) provisions have been introduced to preserve the rights of navigation bodies and to enable the Committee to grant exemptions to persons who wish to dredge, fish for or take oysters or clams for scientific purposes (article 11).