

1992 No. 3038

SEA FISHERIES

SHELLFISH

The Wash Fishery Order 1992

Made - - - - - *30th November 1992*
Laid before Parliament *11th December 1992*
Coming into force - *4th January 1993*

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

And whereas the said 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 said 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whereas the only objection that was made to the said Minister under paragraph 3 of the said schedule was subsequently withdrawn;

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 consents of the Crown Estate Commissioners and the Chancellor of the Duchy of Lancaster, hereby makes the following Order:

Title, commencement and interpretation

1.—(1) This Order may be cited as the Wash Fishery Order 1992 and shall come into force on 4th January 1993.

(2) In this Order—

“the Committee” means the local fisheries committee for the Eastern Sea Fisheries District established under section 1(1) of the Sea Fisheries Regulation Act 1966(b);

“the definitive map” means the map sealed in duplicate by the Minister and marked “Map referred to in the Wash 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” means that part of the Wash in the Counties of Norfolk and

(a) 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”.

(b) 1966 c.38; section (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).

Lincolnshire which lies below the line of mean high water and is shown coloured pink on the definitive map;

“the prescribed species” are oysters, mussels, cockles, clams, scallops and queens;

“the regulated fishery” means all parts of the fishery that are not for the time being specified under article 3(1) of this Order;

“the several fishery” means such parts of the fishery as are for the time being specified under article 3(1) of this Order;

“vermin” means an organism injurious to any of the prescribed species.

The Committee

2. The Committee shall continue in being as a body corporate for the purposes of this Order.

Right of several fishery

3.—(1) There is hereby conferred on the Committee for a period of 30 years the right of several fishery for the prescribed species with respect to such parts of the fishery as the Committee shall from time to time, with the consent of the Minister, determine.

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

Right of regulating a fishery

4. There is hereby conferred on the Committee for a period of 30 years the right(a) of regulating a fishery for the prescribed species with respect to the regulated fishery.

Taking of samples for the purpose of disease control

5. 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 of the prescribed species found within the fishery and to take them away provided that 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

6.—(1) The Committee may lease to any person the right of several fishery for any of the prescribed species within such part of the several fishery (hereinafter referred to as a “laying”) as it may think fit and upon such terms and for such period as may be agreed with that person and the following provisions of this article shall apply in relation to such leasing.

(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 10 hectares; or
- (b) the period in respect of which that person would be so entitled in respect of any area would end more than ten 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

(a) This is to be read in the light of the duties conferred on local fisheries committees by the Sea Fisheries (Wildlife Conservation) Act 1992 (c.36.)

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 10 hectares; or
- (b) the period in respect of which that person would be so entitled in respect of any area would end more than ten 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) 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 10 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 ten 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 5 of this Order 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, on ground which at the time of marking is not set with any of the prescribed species or the brood thereof, all layings in the several fishery in such manner as the Minister may from time to time approve.

(11) The marks defining the limits of each laying in the several fishery shall be maintained in position and in good repair by the Committee or, if so stipulated in the lease, by the lessee.

Power to impose restrictions and make regulations

7.—(1) The Committee may, with the consent of the Minister, from time to time impose restrictions on, and make regulations respecting, the dredging, fishing for and taking of any of the prescribed species within the whole or any specified part of the regulated fishery.

(2) Without prejudice to the generality of paragraph (1) above, regulations may be made under that paragraph for the purpose of—

- (a) determining the size below which or above which it shall be unlawful to take any of the prescribed species from the regulated fishery or to remove them from one part of the fishery to another; and
- (b) determining the size or description of vessels, dredges and fishing instruments to be used in dredging, fishing for or taking any of the prescribed species; and
- (c) regulating the disposal of such vermin as may be dredged or otherwise taken in dredging, fishing for or taking any of the prescribed species.

(3) The production of a copy of any regulation purporting to be certified by any officer authorised by the Minister of Agriculture, Fisheries and Food shall be conclusive evidence of the existence of the regulation and of the due making of it.

Licensing of fishing

8.—(1) No person shall dredge, fish for or take any of the prescribed species within the regulated fishery except under the authority of a licence issued in that behalf, on application, by the Committee.

(2) No person shall use a vessel for dredging, fishing for or taking any of the prescribed species within the regulated fishery except under the authority of a licence issued under paragraph (1) above in which the vessel is named.

(3) Subject to paragraph (9) below, a licence for dredging, fishing for or taking any of the prescribed species from a vessel shall be issued jointly to the applicant, who shall be the owner of the vessel, and his representative and shall be used only by those persons or, with the written authority of the Committee and in accordance with any conditions contained in that authority, by a deputy nominated by them.

(4) A licence shall be valid for the period not exceeding 12 months specified therein.

(5) Subject to any directions given by the Minister and the provisions of this article, licences may be issued by the Committee under paragraph (1) above in such numbers and to such persons, and may authorise the dredging, fishing for or taking of the prescribed species at such times, in such manner and in such parts of the regulated fishery as the Committee may determine.

(6) The Committee may, after consultation with such organisations as appear to it to be representative of interests likely to be substantially affected by a limitation on the number of licences issued, and such other persons as the Committee thinks fit, place a limitation on the number of licences issued in any one year having particular regard to scientific advice on the desirability of limiting the level of exploitation.

(7) Any person dredging, fishing for or taking any of the prescribed species under the authority of a licence issued under paragraph (1) above shall, when so requested by any officer authorised by the Committee and after production by that officer of written evidence of his authority if so required, produce the licence and shall desist from dredging, fishing for or taking any of those species until it is produced.

(8) Subject to paragraphs (6) above and (9) below, an applicant for a licence shall be entitled to have a licence issued to him if—

- (a) in respect of licences for the first fishing year after the coming into force of this Order, he was engaged in dredging, fishing for or taking any of the prescribed species within the regulated fishery as a commercial activity or as part of a commercial activity in the fishing season immediately prior to the date of advertisement of this Order, or
- (b) in respect of licences for all subsequent fishing years, he held a licence at any time within the period of 24 months immediately preceding the date of application for the licence.

(9) At the Committee's discretion—

- (a) no person may be named on a licence in accordance with paragraph (3) above as the representative of an applicant if on at least two separate occasions within the period specified in paragraph (8)(b) above that person has been convicted of a relevant offence, and
- (b) the entitlement described in paragraph (8) above shall not apply if on at least

two separate occasions within the period specified in paragraph (8)(b) above the applicant has been convicted of a relevant offence.

(10) In this regulation “relevant offence” means either an offence under section 3(3) of the Sea Fisheries (Shellfish) Act 1967 or an offence under section 11(5) of the Sea Fisheries Regulation Act 1966 in so far as that offence relates to the contravention of a byelaw made under the powers contained in section 5(1)(d) of that Act.

Tolls and fees payable for fishing

9.—(1) Any person to whom the Committee proposes to issue a licence under the provisions of article 8 of this Order shall pay to the Committee before or upon receipt of the licence a toll in respect of a combined licence which authorises the dredging, fishing for and taking of cockles and mussels of either £200 per annum or £30 per month.

(2) The Committee may from time to time with the consent of the Minister vary the toll payable under paragraph (1) above and introduce separate tolls in respect of each of the prescribed species for which dredging, fishing for or taking is authorised.

Power to create reserves

10. The Committee may from time to time designate and mark out as reserves such parts of the regulated fishery as it thinks necessary for—

- (a) experimental, management or scientific purposes, including the control of pests or diseases of any of the prescribed species;
- (b) cleansing and subsequent restocking with any of the prescribed species and the protection of stock introduced;
- (c) the collection of spat of any of the prescribed species; or
- (d) the deposit or re-laying of any of the prescribed species for the purposes of cleansing before their removal from the fishery

and may use such reserves for their designated purposes and prohibit their use for any other purpose connected with or ancillary to fishing for any of the prescribed species.

Restriction on removal of culch

11.—(1) Except with the prior consent in writing of the Committee, no person shall remove any culch or other material for the reception of spat from the fishery or from one part of the fishery to another.

(2) Any person lifting any culch or other such material within the regulated fishery, whether in the course of fishing or dredging or otherwise, shall replace it forthwith as nearly as possible in the place from which it was lifted.

(3) Paragraphs (1) and (2) above shall not apply to a removal or lifting effected by raising an anchor or other mooring device for the purpose of navigation.

Power to remove brood of any of prescribed species

12. For the purpose of cultivating the regulated fishery any person authorised by the Committee may remove any spat or small oysters, mussels, cockles, clams, scallops or queens from the regulated fishery or from one part of the fishery to any other part at such times and in such quantities as the Committee may direct.

Exemptions for scientific purposes

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

Accounts of income and expenditure and other information

14. 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 and to the fishery 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

15. Nothing in this Order or in any restriction imposed or regulation made by the Committee shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular nothing therein 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 or belonging to Her Majesty in right of Her Majesty's Duchy of Lancaster.

Rights of various persons and bodies

16.—(1) Nothing in this Order shall affect prejudicially—

- (a) 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;
 - (b) any right, power or privilege of Hamon le Strange of Hunstanton in the County of Norfolk or his executors, administrators or assigns and in a like manner nothing herein contained shall be deemed to be a consent to or be construed to recognise or admit on behalf of the Committee the existence of any right, power or privilege of the said Hamon le Strange, his executors, administrators or assigns.
- (2) The following are the undertakings which fall within paragraph (1)(a) 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(a);
 - (c) the undertaking of any public gas supplier within the meaning of Part I of the Gas Act 1986(b);
 - (d) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989(c) to generate, transmit or supply electricity;
 - (e) the undertaking of any navigation, harbour, general lighthouse or conservancy authority.

Revocation

17. The River Nene Fishery Order 1986(d) is hereby revoked.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 30th November 1992.



John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

(a) 1984 c.12.
(b) 1986 c.44.
(c) 1989 c.29.
(d) S.I. 1986/1896.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on the Eastern Sea Fisheries Joint Committee (“the Committee”) rights of several fishery and regulating a fishery for oysters, mussels, cockles, clams, scallops and queens in the Wash for a period of 30 years, the Boston Deeps Fishery Order 1870, the Boston Fishery Order 1902, the Lynn Deeps Fishery Order 1932 and the Lynn Fishery Order 1932, which conferred similar rights on that Committee, having expired.

The situation and extent of the area within which the rights are conferred are shown on the definitive map which is described in article 1(2) of the Order. The definitive map is available for inspection by prior appointment during office hours at the offices of the Committee at 10 Tuesday Market Place, King’s Lynn PE30 1LD and at the offices of the Minister of Agriculture, Fisheries and Food at Nobel House, 17 Smith Square, London SW1P 3JR.

The Order revokes the River Nene Fishery Order 1986.

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