

2013 No. 1979

SEA FISHERIES, ENGLAND

SHELLFISH

The River Roach Oyster Fishery Order 2013

<i>Made</i> - - - -	<i>7th August 2013</i>
<i>Laid before Parliament</i>	<i>9th August 2013</i>
<i>Coming into force</i> - -	<i>31st August 2013</i>

The Kent and Essex Inshore Fisheries and Conservation Authority has made an application to the Secretary of State(a) in accordance with section 1(2) of the Sea Fisheries (Shellfish) Act 1967(b) (“the Act”) for an order conferring a right of several fishery under section 1 of the Act.

The Secretary of State has prepared a draft Order and served a copy of it on the applicant in accordance with paragraph 1 of Schedule 1 to the Act.

The applicant has caused printed copies of the draft Order to be published and circulated, and has given notice of the application, in accordance with paragraph 2 of that Schedule.

The Secretary of State has considered representations received, in accordance with paragraphs 3 to 6 of that Schedule, and considers that it is expedient to make this Order.

The Secretary of State has had regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961(c), in accordance with paragraph 6(2) of that Schedule.

The Secretary of State makes the following Order in exercise of the powers conferred by section 1 of the Act.

Title, commencement, extent and interpretation

1.—(1) This Order—

- (a) may be cited as the River Roach Oyster Fishery Order 2013;

(a) By virtue of article 2 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), the functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State.

(b) 1967 c.83; section 1(1) was amended by the Fishery Limits Act 1976 (c.86), section 9(1) and Schedule 2, paragraph 15; the Marine and Coastal Access Act 2009 (c.23) (“the 2009 Act”), section 202(1) and (2); and S.I. 1999/1820. Section 1(4) was repealed by the 2009 Act, sections 202 and 321 and Schedule 22, Part 5(A). Section 1(6) was substituted by the 2009 Act, section 203. Schedule 1 was amended by the 2009 Act, sections 202, 214, 321 and Schedule 22, Part 5(A). See section 22(1) for definition of “the appropriate Minister” for the purposes of section 1.

(c) 1961 c.55.

- (b) comes into force on 31st August 2013; and
- (c) extends to England and Wales.

(2) In this Order—

“the Authority” means the Kent and Essex Inshore Fisheries and Conservation Authority for the Kent and Essex Inshore Fisheries and Conservation District established under section 149(1) of the Marine and Coastal Access Act 2009(a);

“the fishery area” has the meaning given by article 2(2);

“the fishery right” means the right of several fishery for oysters;

“laying” means a part of the fishery area with respect to which the fishery right is conferred by a lease;

“lease” means a lease of the fishery right granted by the Authority;

“lessee”, in relation to a lease, means the person to whom that lease is granted;

“oyster” (except in the common name of a species) means an oyster of the species—

(a) *Ostrea edulis* (Native oyster); or

(b) *Crassostrea gigas* (Pacific oyster); and

“sub-lease” means a sub-lease derived (directly or indirectly) from a lease.

The fishery right

2.—(1) The Secretary of State confers on the Authority the fishery right with respect to the fishery area for a period of 10 years commencing on 31st August 2013.

(2) The fishery area is the part of the River Roach in the County of Essex which lies within a boundary line drawn between co-ordinates as follows—

From 51° 35.286'N 0° 48.479'E to 51° 35.310'N 0° 48.416'E; then to 51° 35.330'N 0° 48.455'E; then to 51° 35.364'N 0° 48.414'E; then to 51° 35.472'N 0° 48.562'E; then to 51° 35.448'N 0° 48.613'E; then to 51° 35.647'N 0° 48.919'E; then to 51° 35.674'N 0° 48.863'E; then to 51° 35.734'N 0° 48.961'E; then to 51° 35.818'N 0° 49.150'E; then to 51° 35.879'N 0° 49.300'E; then to 51° 35.877'n 0° 49.384'E; then to 51° 35.889'N 0° 49.629'E; then to 51° 35.891'N 0° 49.786'E; then to 51° 35.840'N 0° 50.337'E; then to 51° 35.830'N 0° 50.482'E; then to 51° 35.789'N 0° 50.722'E; then to 51° 35.658'N 0° 50.754'E; then to 51° 35.698'N 0° 50.504'E; then to 51° 35.707'N 0° 50.404'E; then to 51° 35.704'N 0° 50.325'E; then to 51° 35.693'N 0° 50.278'E; then to 51° 35.680'N 0° 50.257'E; then to 51° 35.693'N 0° 50.185'E; then to 51° 35.714'N 0° 50.207'E; then to 51° 35.725'N 0° 50.232'E; then to 51° 35.740'N 0° 50.232'E; then to 51° 35.757'N 0° 50.183'E; then to 51° 35.801'N 0° 49.857'E; then to 51° 35.802'N 0° 49.612'E; then to 51° 35.787'N 0° 49.374'E; then to 51° 35.767'N 0° 49.301'E; then to 51° 35.779'N 0° 49.291'E; then to 51° 35.743'N 0° 49.161'E; then to 51° 35.686'N 0° 49.036'E; then to 51° 35.429'N 0° 48.645'E; then to 51° 35.286'N 0° 48.479'E.

Marking of limits of the fishery area

3. The Authority must mark out the limits of the fishery area in such manner as the Secretary of State may from time to time approve and must maintain those marks in position and in good repair.

Marking of layings

4.—(1) The Authority must mark or cause to be marked all layings in the fishery area in such manner as the Secretary of State may from time to time approve.

(a) 2009 c.23. S.I. 2010/2190 establishes the Kent and Essex Inshore Fisheries and Conservation District. The Kent and Essex Inshore Fisheries and Conservation Authority is the inshore fisheries and conservation authority for that district by virtue of section 150 of the Marine and Coastal Access Act 2009 (c.23).

(2) The marks defining the limits of each laying in the fishery area must be maintained in position and in good repair by the Authority or, if so stipulated in a lease, by the lessee.

Annual management plan

5.—(1) The Authority must each calendar year before 1st April publish a management plan setting out how in the period of twelve months beginning on 1st April in that year the Authority intends to manage fishery activities that are carried out within the fishery area pursuant to any lease.

(2) The Authority must before publishing a management plan under paragraph (1)—

- (a) seek advice from Natural England in relation to the proposed plan; and
- (b) consider any such advice given by Natural England.

(3) In this article, “fishery activities” includes—

- (a) depositing, propagating, dredging, fishing for and taking oysters, and
- (b) activities which by virtue of section 2(1)(a) to (c) of the Sea Fisheries (Shellfish) Act 1967(a) may be carried out by persons for the time being entitled to the fishery right.

Restrictions on leases

6.—(1) The following provisions of this article apply in relation to any lease granted or to be granted with respect to any part of the fishery area.

(2) The Authority may not without the written consent of the Secretary of State grant a lease to any person if—

- (a) the total area with respect to which that person would have an entitlement would exceed 2.5 hectares; or
- (b) the total period of that person’s entitlement would exceed seven years.

(3) Any lease may not be capable of being assigned or being made subject to the grant of, or assignment of, a sub-lease without the consent of the Authority.

(4) The Authority’s consent under paragraph (3) may not be unreasonably withheld, but may not be given without the written consent of the Secretary of State if it appears to the Authority that in consequence of the assignment or sub-lease in question—

- (a) the total area with respect to which the assignee or sub-lessee would have an entitlement would exceed 2.5 hectares; or
- (b) the total period of entitlement would exceed seven years.

(5) In determining whether a person has an entitlement of a kind mentioned in paragraph (2) or (4), each of the following groups of persons is to be treated as one person—

- (a) any two or more persons carrying on a business of shellfish cultivation in partnership;
- (b) a company, any person having control of that company, and any other company controlled by that person;
- (c) a person and that person’s spouse or civil partner.

(6) A lease must prohibit the person to whom that lease is granted or assigned from entering into any agreement with any other person having an interest in the operation of the fishery for the common management of their respective businesses or the common exploitation of their respective layings without the consent of the Authority.

(7) The Authority’s consent under paragraph (6) may not be unreasonably withheld, and may not be given without the written consent of the Secretary of State if it appears to the Authority that in consequence of the agreement—

(a) 1967 c.83.

- (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 exceed seven years.

(8) A lease must require the person to whom the lease is granted or assigned to comply with such requirements as are necessary to ensure the management of the laying to which the lease relates in accordance with any annual management plan which is published pursuant to article 5 and which applies to that laying.

(9) A lease must provide that the lease may be determined by the Authority in the event that the lessee, or any person to whom the lease is assigned or to whom a sub-lease is granted, is in breach of any provision of this article, or of any provision of the lease or sub-lease (as the case may be) required by this article, and the Authority must take all reasonable steps to monitor compliance with such provisions.

(10) In this article—

- (a) “civil partner” has the meaning given by section 1 of the Civil Partnership Act 2004(a);
- (b) in paragraphs (2)(a) and (b) and (4)(a) and (b), “entitlement” means entitlement to a fishery right with respect to any part of the fishery area by virtue of a lease and any other lease or sub-lease, taken together, and includes any beneficial entitlement under the terms of one or more trusts; and
- (c) in paragraphs (3), (6), (8) and (9), “lease” includes a sub-lease.

Lawful activities of statutory undertakers

7.—(1) Nothing in this Order or in any restriction imposed under it adversely affects the lawful activities of any statutory undertaker in exercising their statutory functions or authority.

(2) In this article, “statutory undertaker” means—

- (a) any company licensed as a water supplier under section 17A of the Water Industry Act 1991(b) or appointed as a water or sewerage undertaker under section 6 of that Act;
- (b) any person providing an electronic communications network or service or associated facility within the meaning of section 32 of the Communications Act 2003(c);
- (c) any person running a telecommunications code system within the meaning of Schedule 4 to the Telecommunications Act 1984(d);
- (d) any person licensed under Part 1 of the Gas Act 1986(e) to act as a gas transporter, gas supplier, gas shipper, or participant in the operation of a gas interconnector; and
- (e) any person licensed under section 6 of the Electricity Act 1989(f).

Revocation

8. The River Roach Oyster Fishery Order 1992(g) is revoked.

Richard Benyon

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

7th August 2013

(a) 2004 c.33.
 (b) 1991 c.56; section 17A was inserted by the Water Act 2003 (c.37), Schedule 4, paragraphs 1 and 2.
 (c) 2003 c. 21. Section 32 was amended by S.I. 2011/1210.
 (d) 1984 c.12.
 (e) 1986 c.44.
 (f) 1989 c.29; section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and was amended by the Energy Act 2004 (c.20), sections 89(3), 136, 143, 145 and Schedule 19, paragraph 5 and Schedule 23, paragraph 1; the Climate Change Act 2008 (c.27), Schedule 8, paragraph 2; and S.I. 2011/2704.
 (g) S.I. 1992/2957.

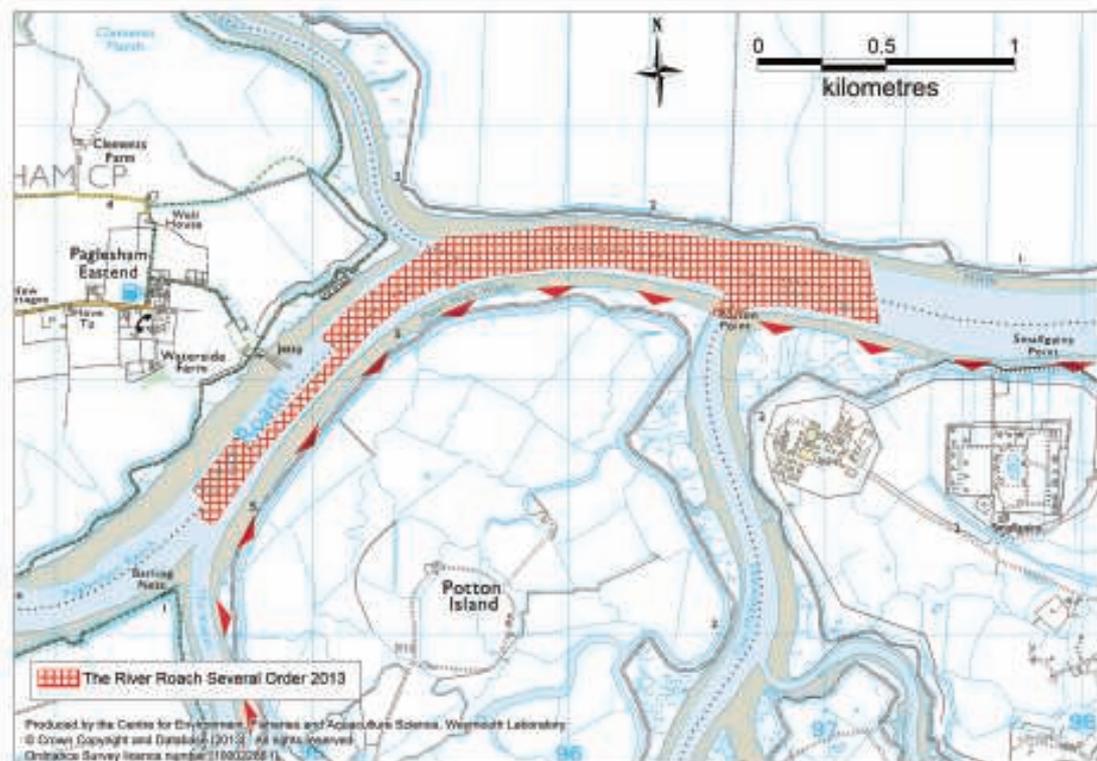
EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on the Kent and Essex Inshore Fisheries and Conservation Authority a right of several fishery for oysters (*Ostrea edulis* and *Crassostrea gigas*) for a period of 10 years commencing on 31st August 2013. The area within which the right is conferred (“the fishery area”) is, for illustrative purposes only, shown hatched on the map below.

Article 3 provides for the marking of the limits of the fishery area and article 4 for the marking of the layings (the part of the fishery area with respect to which the fishery right is conferred by a lease). Article 5 requires the Authority to publish an annual management plan regarding the management of fishery activities carried out within the fishery area. Article 6 sets out restrictions on leases, sub-leases and assignment of leases and sub-leases of the right of several fishery. Article 7 preserves the power of certain persons to exercise statutory functions.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.



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