STATUTORY INSTRUMENTS

# 2016 No. 716

# SEA FISHERIES, ENGLAND
# SHELLFISH, ENGLAND

## The Fal Fishery Order 2016

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| *Made - - - -* | *6th July 2016* |
| *Laid before Parliament* | *8th July 2016* |
| *Coming into force - -* | *31st July 2016* |

The Cornwall Inshore Fisheries and Conservation Authority(**1**) ("the Authority") has made an application to the Secretary of State(**2**) in accordance with section 1(2) of the Sea Fisheries (Shellfish) Act 1967(**3**) ("the 1967 Act") for an order conferring a right of regulating a fishery.

The Secretary of State has prepared a draft Order and served a copy of it on the Authority in accordance with paragraph 1 of Schedule 1 to the 1967 Act.

The Authority 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 Schedule 1 to the 1967 Act.

The Secretary of State has considered the objections and representations made in respect of the draft Order, in accordance with paragraphs 3 to 6 of Schedule 1 to the 1967 Act, and considers that it is expedient to make this Order.

The Secretary of State makes the following Order in exercise of the powers conferred by sections 1 and 4(2) of the 1967 Act and section 15(3) of the Sea Fisheries Act 1968(**4**), and has had regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961(**5**) in accordance with paragraph 6(2) of Schedule 1 to the 1967 Act.

### Title, commencement, extent and interpretation

**1.**—(1) This Order—

(a) may be cited as the Fal Fishery Order 2016;

(**1**) The Cornwall Inshore Fisheries and Conservation Authority was established by order under section 149 of the Marine and Coastal Access Act 2009 (c. 23) (see S.I. 2010/2188).

(**2**) 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 under the 1967 Act were transferred to the Secretary of State.

(**3**) 1967 c. 83. Section 1 was amended by section 9 of, and paragraph 15 of Schedule 2 to, the Fisheries Limits Act 1976 (c. 86), section 202 of the Marine and Coastal Access Act 2009 (c. 23), and S.I. 1999/1820. Schedule 1 was amended by section 15 of the Sea Fisheries Act 1968 (c. 77), and sections 202 and 214 of the Marine and Coastal Access Act 2009.

(**4**) Section 15(3) was amended by section 202 of the Marine and Coastal Access Act 2009.

(**5**) 1961 c. 55.

(b) comes into force on 31st July 2016; and

(c) extends to England and Wales.

(2) In this Order—

"the Authority" means the Cornwall Inshore Fisheries and Conservation Authority;

"closed season" means the period beginning on 1st April and ending on 30th September and includes any extended period specified in regulations made by the Authority under paragraph article 4(2)(e);

"fisheries management and development activities" means activities which the Authority considers necessary for experimental, management or scientific purposes, including the identification of areas of shellfish production and the control of pests or diseases of any of the prescribed species;

"the fishery area" means the area described in the Schedule and includes the shore and bed of the sea and of any river, channel, creek, bay or estuary in the area;

"fishing activities" means depositing, propagating, dredging, fishing for or taking shellfish of the prescribed species;

"the licensee" means the person to whom a licence is granted under article 6;

"the prescribed species" means any bivalve or gastropod shellfish and includes—

(a) oysters;

(b) mussels of the species *Mytilus edulis*;

(c) cockles of the species *Cerastoderma edule*;

(d) bean solen (egg razor shells) of the species *Pharus legumen*;

(e) common otter shells of the species *Lutraria lutraria*;

(f) common razor shells of the species *Ensis ensis*;

(g) grooved (chequered) carpet shells (palourdes), of the species *Tapes decussatus* (*Ruditapes decussatus* or *Venerupis decussata*);

(h) pod razor shells of the species *Ensis siliqua*;

(i) razor shells of the species *Ensis arcuatus*;

(j) scallops;

(k) surf clams of the species *Spisula solida*;

(l) whelks; and

(m) winkles.

**Right of regulating a fishery**

**2.**—(1) The right of regulating a fishery for shellfish of any of the prescribed species in the fishery area is conferred on the Authority for a period of 30 years beginning on 1st July 2016.

**Publication and review of the Management Plan and Regulations**

**3.**—(1) The Authority must publish the Plan on its website.

(2) The Authority must review and update the Plan and publish the Plan as updated on its website —

(a) by 31st July 2017; and

(b) at least once a year.

(3) The Authority must, at least 4 weeks before publishing the Plan as updated or seeking the consent of the Secretary of State to regulations under article 4—

(a) notify the interested parties in writing of any proposed changes to the Plan;

(b) send a draft of any such regulations to the interested parties; and

(c) publish any proposed changes to the Plan and any draft regulations on its website.

(4) The Authority must, before publishing the Plan as updated or seeking the consent of the Secretary of State to regulations under article 4, take account of any representations it receives on them in writing.

(5) In this article—

"the interested parties" means—

(a) the Secretary of State;

(b) Natural England; and

(c) any person likely to be affected by the Plan as updated, or by the regulations or changes to them; and

"the Plan" means the Fal Fishery Order Management Plan made by the Authority on 17th June 2016(**6**).

**Power to make regulations and to carry out fisheries management and development activities**

**4.**—(1) The Authority may, with the consent of the Secretary of State—

(a) make regulations respecting the dredging, fishing for or taking of any shellfish of the prescribed species in all or part of the fishery area; and

(b) amend or revoke such regulations.

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

(a) determining, in relation to any shellfish of the prescribed species, the maximum or minimum size of shellfish which can be taken from the fishery area or moved from one part of the fishery to another;

(b) determining, in relation to shellfish retained on board or landed, the maximum weight of shellfish of the prescribed species, or the ratio of shellfish or the prescribed species to other species;

(c) determining the description of fishing boats, dredges and fishing instruments to be used in fishing activities;

(d) determining the hours within which any shellfish of the prescribed species may be taken or removed from the fishery area;

(e) extending the closed season, by up to a maximum of 4 weeks;

(f) authorising, for part or all of the closed season (excluding 14th May to 4th August), the dredging of oysters in such parts of the intertidal fishery area as are specified in the regulations;

(g) authorising, for part or all of the closed season (excluding 14th May to 4th August) the hand-gathering of oysters in such parts of the fishery area as are specified in the regulations;

(**6**) The Plan is available on the Authority's website: http://www.cornwall-ifca.gov.uk.

(h) determining the boundaries of any part of the fishery area where the dredging, fishing for or taking of any shellfish is prohibited or restricted for the purposes of protecting any area which is for the time being a marine conservation site, and specifying what activities are prohibited or restricted there;

(i) regulating the deposit of shellfish in the fishery area;

(j) regulating the disposal of any organism injurious to any shellfish of the prescribed species dredged, fished or taken during fishing activities;

(k) requiring the cleansing of any shellfish of the prescribed species and their restocking and protection;

(l) requiring the deposit or re-laying of any shellfish of the prescribed species for the purposes of cleansing them before their removal from the fishery area;

(m) requiring the collection of spat of any shellfish of the prescribed species; and

(n) requiring a person who dredges, fishes for or takes any shellfish in the fishery area to provide catch statistics to the Authority.

(3) Any regulation made by the Authority must specify the species of shellfish to which it applies.

(4) Any regulation made by the Authority which applies only to part of the fishery area must specify the part to which it applies and include an illustrative map annexed to the regulations showing that part.

(5) The Authority must publish its regulations on its website on the day on which they are confirmed by the Secretary of State.

(6) The Authority may, with the consent of the Secretary of State—

(a) carry out and authorise the carrying out of fisheries management and development activities in such part of the fishery area as it considers necessary; and

(b) include conditions in a licence granted under article 6 prohibiting or restricting fishing activities in that part of the fishery area.

(7) In this article, "marine conservation site" means—

(a) a European marine site (which has the meaning given by regulation 8(4) of the Conservation of Habitats and Species Regulations 2010(**7**));

(b) a Ramsar site (which has the meaning given by section 37A of the Wildlife and Countryside Act 1981(**8**));

(c) a site of special scientific interest (which has the same meaning as in Part 2 of that Act); or

(d) a marine conservation zone designated under section 116 of the Marine and Coastal Access Act 2009.

(8) The production of a copy of regulations purporting to be certified by an officer of the Authority authorised by the Secretary of State is conclusive evidence that the regulations were made.

**Restrictions on fishing in the fishery area**

**5.**—(1) A person must not carry out any activity prohibited by regulations made under article 4.

(2) A person must not dredge for, fish for or take oysters or mussels in the fishery area unless licensed to do so by the Authority.

(**7**) S.I. 2010/490, to which there are amendments not relevant to this Order.
(**8**) 1981 c. 69. Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c. 37). Section 37A was amended by paragraph 86 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16), and by S.I. 2013/755.

(3) A person must not dredge for, fish for or take oysters in the fishery area during the closed season, unless authorised to do so by regulations made under article 4(2)(e) or (f).

(4) A person must not dredge for, fish for or take oysters or mussels from a fishing boat which, excluding any bowsprit, is over 11 metres long.

(5) A person must not use mechanical methods of dredging, fishing for or taking any shellfish of the prescribed species.

(6) Paragraphs (1), (2), (3), (4) and (5) do not apply if the person is carrying out fisheries management and development activities in accordance with an authorisation granted by the Authority under article 4(6)(a).

(7) In paragraph (5), "mechanical methods" does not include:

(a) powering a fishing boat by sails or oars; or

(b) using a winch or other device which can only be operated by hand.

**Application for and grant of licence**

**6.**—(1) An application for a licence must be made in writing to the Authority.

(2) The Authority must not issue a licence to a person under the age of 16.

(3) A licence must—

(a) name the licensee;

(b) name any crew authorised to dredge for, fish for or take oysters or mussels from a fishing boat operated by the licensee;

(c) specify any type of gear which must be used;

(d) specify any part of the fishery area where it does not apply;

(e) specify the period during which it is valid, which must not exceed one year;

(f) specify any period outside the closed season when any restriction on fishing activities applies;

(g) specify any conditions to which it is subject; and

(h) be numbered.

(4) A person ("P") who appears to an officer of the Authority to be dredging, fishing for or taking oysters or mussels in the fishery area—

(a) must, if so requested by the officer produce the licence P is operating under or proof of P's identity; and

(b) must not dredge, fish for or take oysters or mussels until it is produced.

(5) The officer must produce to P written evidence of the officer's authority under this Order if asked to do so by P.

**Gathering of oysters and mussels by hand**

**7.** A licence authorising the dredging of oysters or mussels using a specified dredge from a fishing boat may authorise the licensee to appoint one person, who may be the licensee or one of the crew of the fishing boat, to gather oysters or mussels by hand while the dredge is not in use.

**Bagging and labelling of oysters and mussels**

**8.** A person landing oysters or mussels from a fishing boat or storing them on the shore of the fishery area must—