

2008 No. 1472

SEA FISHERIES, ENGLAND AND WALES

SHELLFISH

The Dee Estuary Cockle Fishery Order 2008

<i>Made</i> - - - -	<i>8th June 2008</i>
<i>Laid before Parliament</i>	<i>9th June 2008</i>
<i>Laid before the National Assembly for Wales</i>	<i>9th June 2008</i>
<i>Coming into force</i> - -	<i>1st July 2008</i>

The Environment Agency made an application to the Secretary of State and the National Assembly for Wales for an order under section 1 of the Sea Fisheries (Shellfish) Act 1967^(a) (“the Act”).

The Secretary of State and the National Assembly for Wales prepared a draft order and served a copy of it on the Environment Agency in accordance with paragraph 1 of Schedule 1 to the Act (“the Schedule”).

The Environment Agency 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 Schedule.

Objections were received by the Secretary of State and the National Assembly for Wales, under paragraph 3 of the Schedule, which they considered to be neither frivolous nor irrelevant, and which were not withdrawn.

The Secretary of State and the National Assembly for Wales appointed an inspector respecting the proposed order in accordance with paragraph 4(2) of the Schedule. The inspector made an inquiry in accordance with paragraph 4(3) of the Schedule, and made a report to the Secretary of State and the Welsh Ministers in accordance with paragraph 4(7) of the Schedule stating that in the inspector’s opinion the proposed order should be made.

(a) 1967 c. 83. Section 1 of the Act was amended by section 15(1) and (2) of the Sea Fisheries Act 1968 (c. 77); section 1 of the Sea Fisheries (Shellfish) (Amendment) Act 1997 (c. 3); and section 9(1) of, and paragraph 15 of Schedule 2 to, the Fishery Limits Act 1976 (c. 86). The Act is to be read with section 15(3) to (5) of the Sea Fisheries Act 1968. Schedule 1 to the Act was amended by section 15(7) of the Sea Fisheries Act 1968. The functions of the appropriate Minister as defined in section 22(1) of the Act, so far as they are exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). By virtue of article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794) the functions of the Minister were transferred to the Secretary of State.

In the opinion of the Secretary of State and the Welsh Ministers the following Order should now be made.

Accordingly, the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, exercising their powers under sections 1, 3(1), 4(2) and (4) of, and Schedule 1 to, the Act, make the following Order.

Title and commencement

1. This Order may be cited as the Dee Estuary Cockle Fishery Order 2008 and comes into force on 1st July 2008.

Interpretation

2. In this Order—

“the Act” means the Sea Fisheries (Shellfish) Act 1967;

“cockle” means any shellfish of the type *Cerastoderma edule*;

“the fishery” means the area shown coloured in red on the map prepared in triplicate, sealed with the official seal of the Secretary of State, signed on 5th June 2008 on behalf of the Secretary of State and the Welsh Ministers and marked “Dee Estuary Cockle Fishery Order 2008 – Definitive map showing the extent of the area concerned”(a);

“the grantee” means the Environment Agency.

Right of regulating a fishery and duration of right

3.—(1) The grantee has the right of regulating a fishery for cockles within the fishery for a period of 20 years starting on 1st July 2008.

(2) This right includes the right, with the consent of the appropriate national authority, to impose restrictions on, and make regulations respecting, the dredging, fishing for or taking of cockles within the limits of the fishery.

(3) In this article, “the appropriate national authority” means—

(a) in relation to England, the Secretary of State; and

(b) in relation to Wales, the Welsh Ministers.

Regulations and restrictions applicable in respect of the fishery

4.—(1) No person may dredge, fish for or take cockles within the fishery unless they do so under the terms of—

(a) a licence issued by the grantee; or

(b) an authorisation under article 6.

(2) A licensee must produce a copy of the licence if requested to do so by an authorised officer of the grantee and may not dredge, fish for or take cockles within the limits of the fishery until the licence has been produced.

(3) Paragraph (1) does not apply to any person who—

(a) takes by hand not more than five kilograms in live weight of cockles from the fishery in any one day for personal consumption; or

(b) dredges, fishes for or takes cockles in pursuance of provision made under section 3(1)(c) of the Act.

(a) The map is deposited and available for inspection at the Department for Environment, Food and Rural Affairs, Information Resource Centre, Lower Ground Floor, Ergon House, Horseferry Road, London SW1P 3JR and the Welsh Assembly Government, Fisheries Branch, Cathays Park, Cardiff CF10 3NQ.

(4) Schedule 1 (regulations and restrictions applicable to the fishery) has effect.

Licence terms, duration of licences and tolls

5.—(1) Schedule 2 (terms which may be attached to a licence) has effect.

(2) The duration of a licence must not be longer than one year from the date on which it is issued.

(3) The grantee may not issue a licence to a person until that person has paid a toll.

(4) Where a licence is to be valid for one year, the toll is £992.

(5) Where a licence is to be valid for less than one year, the toll is calculated pro rata based on the duration of the licence in relation to the duration of time the fishery is open in the year in question.

Authorisations

6.—(1) The grantee may on application from a licensee authorise a second person to dredge, fish for or take cockles within the fishery under the same conditions as the licensee, for the same or a shorter period.

(2) Any such authorisation is effective only when the grantee has entered in writing on the licence the name of the authorised person and the duration of the authorisation.

(3) An authorised person may not dredge, fish for or take cockles within the fishery at the same time as the licensee.

Accounts of income and expenditure, other information and inspections

7.—(1) The grantee must give the Secretary of State and the Welsh Ministers annual accounts of its income and expenditure under this Order.

(2) The grantee must comply with any request made by the Secretary of State or the Welsh Ministers for information relating to this Order.

(3) The grantee must allow any person authorised by the Secretary of State or the Welsh Ministers to inspect the fishery and all accounts and other documents in the possession of the grantee relating to this Order, and must give that person any information relating to these matters which that person may require.

Lawful activities of statutory undertakers

8.—(1) Nothing in this Order or in any restriction imposed or regulation made under it adversely affects the lawful activities of any statutory undertaker.

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

- (a) any person licensed under Part I of the Gas Act 1986^(a) to act as a gas transporter, interconnector, supplier or shipper;
- (b) any person licensed under section 6 of the Electricity Act 1989^(b);
- (c) any person providing a designated communications network or service or a designated associated facility within the meaning of the Communications Act 2003^(c);
- (d) any company licensed as a water supplier under section 17A of the Water Industry Act 1991^(d) or appointed as a water or sewerage undertaker under section 6 of that Act;

(a) 1986 c. 44.

(b) 1989 c. 29, as substituted by section 30 of the Utilities Act 2000 (c.27) and amended by the Energy Act 2004 (c.20), sections 89(3), 136, 143, 145 and 197(9).

(c) 2003 c. 21.

(d) 1991 c. 56; section 17A was inserted by section 56 of, and paragraphs 1 and 2 of Schedule 4 to, the Water Act 2003 (c. 37).

- (e) any person carrying on the undertaking of any navigation, harbour, general lighthouse or conservancy authority; or
- (f) any person authorised by any enactment to carry on any undertaking for the supply of hydraulic power.

8th June 2008.

Jonathan Shaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Elin Jones
Minister for Rural Affairs, one of the Welsh Ministers
6th June 2008.

SCHEDULE 1

Article 4(4)

REGULATIONS AND RESTRICTIONS APPLICABLE TO THE FISHERY

1. Any person in possession of cockles in breach of a provision of this Order must, if requested by the grantee, immediately redeposit them as close as possible to the location from which they were taken.

2.—(1) No person may remove any culch or other material for the reception of spat of cockles from the fishery or from one part of the fishery to another unless the grantee has given that person written consent.

(2) Any person lifting any culch or other material for the reception of spat of cockles within the fishery must immediately replace it as close as possible to the place from which it was lifted.

3. Paragraph 2 does not apply to any removing or lifting—

- (a) caused by raising an anchor or other mooring device for the purpose of navigation; or
- (b) in pursuance of provision made under section 3(1)(c) of the Act.

4. No person may dredge, fish for or take cockles in or from any bed within the fishery which the grantee has closed unless the grantee has given that person written consent.

5.—(1) No person may introduce any cockles into the fishery.

(2) Sub-paragraph (1) does not apply to any introduction in pursuance of provision made under section 3(1)(c) of the Act.

SCHEDULE 2

Article 5(1)

TERMS WHICH MAY BE ATTACHED TO A LICENCE

Subject to any direction made under section 4(5) of the Act, the matters about which the grantee may attach terms to a licence include the following—

- (a) the cockle beds on which a person may dredge, fish for or take cockles;

- (b) the size or description of dredges or fishing instruments which a person may use to dredge, fish for or take cockles;
- (c) the size, description or name of any vessel which a person may use to dredge, fish for or take cockles;
- (d) the means by which a person may dredge, fish for or take cockles;
- (e) when a person may dredge, fish for or take cockles;
- (f) the size of cockles in respect of which a person may dredge, fish for or take cockles;
- (g) the amount of cockles which a person may dredge, fish for or take at any one time; and
- (h) the means by which, and locations at which, a person may access the fishery in order to dredge, fish for or take cockles.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants the Environment Agency a right of regulating the cockle fishery over the estuary of the River Dee for a period of 20 years.

Article 3 allows the Environment Agency (with the consent of the appropriate national authority) to impose restrictions on, and make regulations respecting, the dredging, fishing for or taking of cockles within the limits of the fishery.

Article 4 provides that no one may dredge, fish for or take cockles unless they have a licence, an authorisation under article 6 or one of the exceptions applies. Article 5 makes provision for the payment of a toll for a licence.

Article 7 requires the Environment Agency to give the Secretary of State and Welsh Ministers annual accounts and comply with requests for information, inspections of premises and documents from them.

Article 8 protects the rights of statutory undertakers.

A person who dredges, fishes for or takes cockles in contravention of any restriction or regulation or without paying a toll imposed on him is guilty of an offence under section 3(3) of the Sea Fisheries (Shellfish) Act 1967 and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).