EXPLANATORY MEMORANDUM TO

THE FAL FISHERY ORDER 2016

2016 No. 716

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order confers on the Cornwall Inshore Fisheries and Conservation Authority (the CIFCA) the right of regulating a fishery for shellfish species within a defined area in the Fal Estuary (see map at end of document) over the next 30 years. The shellfish are fished by traditional sail or oar powered vessels towing small dredges, or by hand gathering. The Order maintains a historic fishery, the loss of which would affect approximately 70 fishermen in addition to a number of shore-related jobs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage

4. Legislative Context

4.1 The Order is made under Section 1 of the Sea Fisheries (Shellfish) Act 1967.

4.2 Section 1 of the 1967 Act provides that the Secretary of State may, on application, provide by Order for the establishment or improvement, and for the maintenance and regulation, of a fishery for shellfish of any kind specified in the Order. The Order can cover any portion of the sea shore and bed or estuary or tidal river within 6 nautical miles of the baselines.

4.3 This Order is subject to negative procedure (pursuant to section 20(2) of the 1967 Act) so is subject to annulment by resolution of either House of Parliament.

5. Extent and Territorial Application

5.1 The geographical extent of the regulated fishery is defined using the co-ordinates set out in the Schedule to the Order.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

6.1 As the Order is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Sea Fisheries (Shellfish) Act 1967 allows the Secretary of State to make Shellfish Orders granting applicants rights to regulate shellfisheries around the English coast. These Orders provide for the establishment, improvement or management of commercial shellfisheries. This Order provides for the sustainable management of native oyster and mussel fisheries within the Fal Estuary to secure the long term future of a historic, seasonal, artisanal fishery using oar and sail powered vessels. Fal oysters have Protected Designation of Origin status, unique in a European context.

7.2 Section 3 of the Sea Fisheries (Shellfish) Act 1967 gives the grantee of an Order exclusive rights, exercisable within the limits of the regulated fishery, to make and enforce regulations in respect of the fishing, dredging and taking of shellfish species to which the Order applies, and to charge a fee to anyone fishing for such species.

7.3 The Order is made at the request of the applicant, the CIFCA. It replaces the previous Truro Port Fishery Order 1936, managed by Cornwall Council, which expired in July 2014. A temporary byelaw was put in place shortly afterwards by CIFCA to allow the fishery to continue.

7.4 The Order is granted for a period of 30 years to allow the continuance of the traditional fishery within the Fal. CIFCA will continue to regulate the fishery, as documented in a management plan, which details the approach for sustainably managing the fishery. The management plan is subject to annual review.

7.5 The fishery currently supports around 70 fishermen, with an estimated net benefit of £1.6 million, and the Order will give the CIFCA the ability to ensure that the fishery is sustainable in the long term. This links to the Defra marine objective of achieving clean, healthy, safe, productive and biologically diverse oceans and seas.

8. Consultation outcome

8.1 The CIFCA carried out a consultation over an 18 month period, with consultees including land owners (Duchy of Cornwall, Crown Estate, Cornwall Council, adjacent land owners); animal health (Cefas Fish Health Inspectorate); navigation; Truro Harbour Office; environment (Natural England) as well as the oyster fishermen who operate within the fishery. All the official bodies, together with the majority of the fishermen recognise the value of this traditional fishery and support the making of the Order.

8.2 Objections were raised by 3 fishermen specifically on the proposal to prohibit dredging in a small section of the fishery (0.3% of the total fishery area). The prohibition was put in place to prevent damage to protected seagrass beds. The objections were based on the fact that under the previous 1936 Order dredging was not officially controlled in sensitive areas: instead there was a voluntary agreement to restrict fishing in areas where sensitive habitat was thought to be. As the fishery is within a Special Area of Conservation (SAC), CIFCA were required, under the Conservation of Habitats and Species Regulations 2010, to carry out an assessment to identify any activity under the Order that could potentially impact on any protected

features within the fishery area. The assessment recognised the presence of seagrass beds at the southern edge of the Order, a protected feature or habitat of the SAC and its extent was confirmed through a diver and drop down video survey in 2015. There has been no scientific evidence presented by the fishermen to support their assertion that dredging will not impact this feature. The scientific evidence available suggests that dredging will impact on the feature. Therefore to protect this nationally recognised habitat, and in keeping with the way it is protected around the UK coast, dredging is prohibited in this small area of the fishery.

9. Guidance

9.1 The Department does not plan to publish guidance on this instrument, although the management plan for the fishery will be subject to annual review with input from both regulators and industry.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. No Impact Assessment has been completed because no significant impact is foreseen to the interests of any individual, business, group or organisation as a result of the making of this Order.

11. Regulating small business

11.1 No businesses are exempt from the Order. It applies to but does not have a disproportionate impact on small businesses. The Order allows for the continuation of fishing activities by fishermen in the Fal.

12. Monitoring & review

12.1 This Order is time-limited to 30 years and will end in 2046. Annual returns, provided by the CIFCA, on the performance of the regulated fishery are to be submitted to Defra for review. Under section 5 of the Sea Fisheries (Shellfish) Act 1967, the Secretary of State can, by publishing a certificate to that effect, terminate the rights of grantees under the Order if they are not properly regulating the fishery.

13. Contact

13.1 Mike Gubbins at the Department for Environment, Food and Rural Affairs Telephone: 01305 206682 or email: Michael.gubbins@defra.gsi.gov.uk can answer any queries regarding the instrument.