STATUTORY INSTRUMENTS

1986 No. 1896

SEA FISHERIES

SHELLFISH

The River Nene Fishery Order 1986

Made - - - -	31*st October* 1986
Laid before Parliament	12*th November* 1986
Coming into Operation	3*rd December* 1986

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 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 no objection was made to the said Minister under paragraph 3 of the said Schedule;

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 consent of the Crown Estate Commissioners, hereby makes the following order:—

Title, commencement and interpretation

1.—(1) This order may be cited as the River Nene Fishery Order 1986, and shall come into operation on 3rd December 1986.

(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 River Nene Fishery Order 1986", one copy of which is in the possession of the Committee and the other copy of which is in the possession of the Minister;

(**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; Schedule 1 was amended by section 15(7) of the Sea Fisheries Act 1968.

(**b**) 1966 c.38; section 1(1) was amended by the Local Government Act 1972 (c.70), section 272 and Schedule 30, and by the Local Government Act 1985 (c.51), section 16 and Schedule 8, paragraph 19.

"the fishery" means that part of the Wash in the county of Norfolk adjacent to the River Nene which lies below the line of mean high water springs and is shown coloured red on the definitive map;

"the Minister" means the Minister of Agriculture, Fisheries and Food.

(3) A reference in this order to a numbered article shall be construed as a reference to the article bearing that number in this order.

Constitution of Committee as body corporate

2. The Committee is hereby constituted 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 beginning on 3rd December 1986 the right of several fishery for oysters, mussels, cockles and clams with respect to the fishery.

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

Marking of limits of fishery

4. The Committee shall cause to be marked the limits of the fishery in such manner as the Minister may from time to time approve and shall maintain the marks in position and in good repair.

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 spreading of disease—

(a) at any reasonable time to obtain samples of any shellfish found within the fishery and, provided they have been marked, labelled or otherwise made capable of identification, to remove them from the fishery;

(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 following provisions of this article shall apply in relation to the leasing by the Committee to any person of the right of several fishery for oysters, mussels, cockles and clams with respect to any part of the several fishery.

(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 2.5 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 its consent.

(4) The Committee shall not without the written consent of the Minister give its 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 2.5 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), (3) 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 its 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 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 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 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 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.

(12) In paragraphs (6), (7), (10) and (11) above "laying" means any part of the fishery with respect to which the right of several fishery for oysters, mussels, cockles or clams is comprised in a lease granted by the Committee.

Control of deposits

7.—(1) The grantees shall not without the written consent of the Minister deposit within the limits of that part of the fishery within which their right is exercisable any oysters of the species *Ostrea edulis* and shall comply with any condition subject to which the Minister gives his consent to the deposit of any such oyster.

(2) In this article "grantees" means any person for the time being entitled to a right of several fishery over any part of the fishery.

Accounts of income and expenditure and other information

8. The Committee shall render to the Minister annual accounts of its income and expenditure under this order, and 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, and 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

9. Nothing in this order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown, and in particular nothing herein contained shall authorise the Committee or their lessees 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, hereditaments, subjects or rights of whatever description belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners.

Rights of various persons and bodies

10. Nothing in this order shall affect prejudicially—

(a) any right conferred on the operator of a telecommunications system by, or in accordance with, the telecommunication code contained in Schedule 2 to the Telecommunications Act 1984 (**a**);

(b) the powers of the Central Electricity Generating Board, the Eastern Electricity Board, the East Midland Electricity Board or the Anglian Water Authority in respect of any operation carried out by them in the exercise of their statutory functions;

(c) the powers of any person or body to carry out coast protection work within the meaning of section 49(1) of the Coast Protection Act 1949 (**b**) in accordance with any approval or consent given under that Act.

(**a**) 1984 c.12.

(**b**) 1949 c.74 (12 and 13 Geo 6).

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 31st October 1986.

L.S.

Michael Jopling,
Minister of Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order confers on the Eastern Sea Fisheries Joint Committee the right of several fishery for oysters, mussels, cockles and clams in a specified area of the Wash adjacent to the River Nene for a period of 30 years.

The situation and extent of the several fishery are shown on the definitive map described in article 1(2) of the Order, which may be inspected (subject to prior appointment) during office hours at the office 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 Great Westminister House, Horseferry Road, London SW1P 2AE.