EXPLANATORY MEMORANDUM TO

THE RIVER ROACH OYSTER FISHERY ORDER 2013

2013 No. 1979

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

2. Purpose of the instrument

2.1 This Order confers on the Kent and Essex Inshore Fisheries and Conservation Authority ('the Grantee') a right of several fishery for oysters (*Ostrea edulis* (Native) & *Crassostrea gigas* (Pacific)) in a specified area of the River Roach (Essex) for a period of 10 years (see map at end of document).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

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

4.2 Section 1(1) of the 1967 Act provides that the appropriate Minister 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 parliamentary procedure (pursuant to section 20(2) of the 1967 Act) which means that it is subject to annulment by resolution of either House of Parliament.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales and applies in England only.

5.2 The extent of the fishery is defined using the co-ordinates set out in article 2(2) of the Order and is shown for illustrative purposes only on a map (see below) which forms part of the Explanatory Note to the Order. The map is also available for inspection from the Department.

6. European Convention on Human Rights

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

7. Policy background

7.1 The 1967 Act allows the Secretary of State to make Shellfish Orders around the English coast. These Orders provide for the establishment or improvement, and for the regulation and management, of commercial shellfisheries.

7.2 Section 2 of the 1967 Act gives the Grantee of the several fishery right exclusive rights, exercisable within a defined area of the sea shore, to fish, dredge for or take the shellfish species to which the Several Order applies. The right of several fishery empowers the Grantee to collect, move or deposit shellfish as they see fit within the defined area, which can amount to a property right that may be leased or transferred.

7.3 The Order is made at the request of the applicant (Grantee). Granting such rights allows the Grantee to plan for the long-term development of their business, and encourages them to invest in the good maintenance of the fishery.

7.4 The Department is keen to encourage the use of Shellfish Orders to develop shellfish aquaculture and improve the management of wild shellfish stocks.

8. Consultation outcome

Procedure followed

8.1 The Grantee carried out an extensive consultation (both formally and informally) of the proposed Order.

8.2 In accordance with the procedure prescribed in paragraph 1 of Schedule 1 to the 1967 Act, a draft Order was prepared and a copy served on the Grantee. The Grantee then caused printed copies of that draft Order to be published and circulated and gave notice of the application in accordance with the requirements of paragraph 2 of Schedule 2 to the 1967 Act.

Representations related to environmental impacts

8.3 The specified area is covered by a number of environmental designations:

- The Essex Estuaries Special Area of Conservation (SAC)
- The Crouch & Roach Estuaries (Mid-Essex Coast Phase 3) Special Protection Area
- The Crouch & Roach Estuaries (Mid-Essex Coast Phase 3) Ramsar Site

- The Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI)
- The Foulness (Mid-Essex Coast Phase 5) Ramsar and SPA
- The Foulness SSSI

8.4 During the consultation, the Royal Society for the Protection of Birds asked that no new oyster lays be created on new areas of land below mean low-water (created by the breaching of the Wallasea sea-walls as part of the Wallasea Island Wild Coast Project). The Grantee has agreed that no new lays will be created in this way.

8.5 The Grantee has agreed a Management Plan with Natural England, which covers the use and the types of dredge that may be used. The Grantee will monitor this and will publish an annual management plan by the 1st April each year after taking and considering Natural England's advice.

8.6 The Department is content with proposed environmental mitigation.

Representations related to navigational and operational issues

8.7 During the formal consultation one response was received from the Roach Sailing Association (RSA) that raised concerns (i) over the interaction between oyster lays and moorings, including anchorage (requesting that the RSA's mooring area be excluded from the Order to reduce anchorage disputes) and (ii) that marking the oyster beds (using withies etc.) could impede navigation.

8.8 In relation to (i), the Grantee considers that the new Order will not impact on moorings or anchorage and are prepared to resolve related disputes if they arise; the Grantee has confirmed that in the 20 years that the previous Order had operated all related disputes were resolved. The moorings are operated by Shuttlewood's Boatyard who have been consulted and not raised concerns. On issue (ii) (marking oyster lays), any structures placed in the water must be done so with the consent of the Crouch Harbour Authority (CHA), who will take into account navigational issues.

8.9 Considering the Grantee's commitments to resolve mooring and anchorage related disputes (like they have done with the previous Order for the same site), and the fact that Shuttlewood's Boatyard have not objected, the Department is of the view that the RSA's objection does not necessitate the excluding of any area from the Order. On issue (ii), considering CHA's support and confirmation of their existing controls to manage navigational concerns (the placement and movement of oyster lays required to be undertaken with approval from the navigational authority), the Department is satisfied that there are sufficient safeguards in place to deal with navigational concerns should they arise.

Other interested parties

8.10 This Order does not remove or impede any existing rights. The Crown Estate (who have rights to the ground) and the Paglesham Boatyard (who have a right to lay moorings), have no objections to this Order.

8.11 The granting of the Order also does not exempt the applicant from acquiring all necessary statutory permits such as navigational and environmental consents.

9. Guidance

9.1 The Department does not plan to publish guidance on this instrument.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument 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

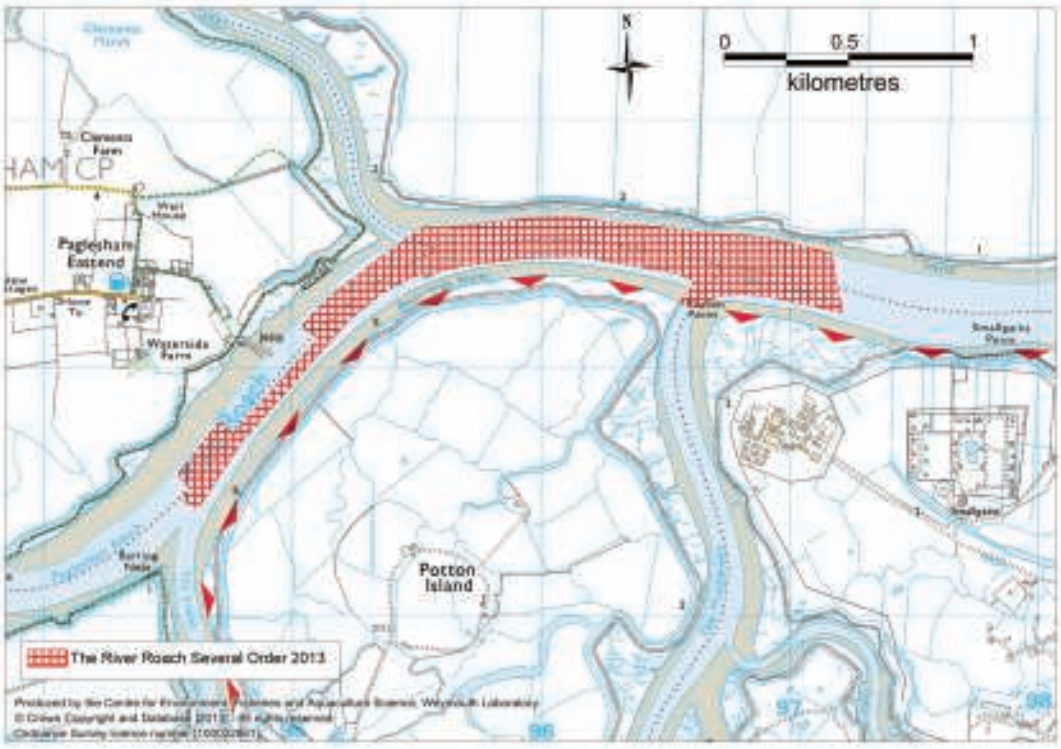
11.1 The legislation does not apply to small business. This Order is made at the request of the applicant (the Grantee).

12. Monitoring & review

12.1 This Order is time-limited for 10 years and will cease on 31st August 2023.

13. Contact

James Turner at the Department for Environment, Food and Rural Affairs (Tel: 0207 238 4869 or email: James.Turner@Defra.gsi.gov.uk) can answer any queries regarding the instrument.


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kilometres
Paglesham Eastend
Potton Island
The River Roach Several Order 2013