EXPLANATORY MEMORANDUM TO

THE THAMES ESTUARY COCKLE FISHERY (NO. 2) ORDER 2024

2024 No. 1211

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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Daniel Zeichner, Minister of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Antony Ovens at the Department for Environment, Food and Rural Affairs Telephone: 07717290986 or email: SRO@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order confers on the Kent and Essex Inshore Fisheries Conservation Authority (KEIFCA) the right of regulating a fishery for cockles within a defined area in the Thames Estuary (see Schedule 1) over the next 28 years. The cockles are fished using mechanised dredges. The Order maintains a historic fishery, the loss of which would affect approximately 84 fishers in addition to a further 150 onshore related jobs.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 In 2020 the Thames Estuary cockle fishery provided direct employment for 84 people and a further 150 processing and onshore jobs, with an estimated annual landing value

of £6.5 million. It is one of only 6 cockle fisheries in the North Atlantic to have Marine Stewardship Council certification.

5.2 This Order provides for KEIFCA, the grantee, to ensure the ongoing sustainable management of this historic cockle fisheries within the Thames Estuary, so it can continue to contribute to the local coastal community through providing skilled employment.

5.3 The Order has been made at the request and on the application of the grantee, KEIFCA. It replaces the Thames Estuary Cockle Fishery Order 1994.

5.4 Section 3 of the 1967 Act confers on the grantee of an Order exclusive rights, exercisable within the limits of the regulated fishery, to regulate the fishing, dredging and taking of shellfish species to which the Order applies, and to impose tolls and royalties to anyone fishing for such species.

5.5 The Order is granted for a period of 28 years. KEIFCA will regulate the fishery in line with Order, following the operational approach documented in the associated management plan.

5.6 The Order requires anyone fishing for cockles in the boundaries of the Order (see Schedule 1) to be licensed by KEIFCA and to pay an annual toll, which is set at £10,885 for the first year.

5.7 A limited number of licences are available, to ensure the sustainability of the fishery. The criteria which will be used to allocate licences are set out in the management plan and are scored and weighted based on a variety of factors, such as experience and support of local socio-economic contribution. These licences are renewable on an annual basis for up to 7 years.

5.8 The Order also provides a transitional licence option for those cockle fishers who have taken part in the fishery in recent years. The transitional licensing arrangements are designed to allow them to continue doing so for the first 7 years of the new Order. This will allow these businesses time to adapt to the new regulatory landscape. If a transitional licence is granted the company and vessel it is granted to must remain in the same legal and beneficial ownership throughout.

5.9 The management plan provides operational details, including sustainability objectives of the fishery and how these will be achieved and marine conservation objectives of the area. The management plan is subject to annual review.

What was the previous policy, how is this different?

5.10 A Regulating Order was in place since 1994, which allowed KEIFCA to manage the cockle fishery in the Thames Estuary. This Order expired on 28 September 2024.

5.11 This new Order is intended to replace the expiring one, allowing the continued management of the fishery, but updates licence allocation and management as detailed in the previous section.

6. Legislative and Legal Context

How has the law changed?

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

6.2 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 as defined in section 1 of the 1967 Act (as amended) which includes the shore and bed of the sea, or estuary or tidal river to 6 nautical miles from the baseline.

6.3 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.

6.4 An Order was in place since 1994, The Thames Estuary Cockle Fishery Order 1994, and this expired on 28 September 2024. This new Order is intended to replace the expired one, allowing the continued management of the fishery.

Why was this approach taken to change the law?

6.5 In April 2023, following consultation with industry on how best to continue to manage the fishery (either replacing the Regulating Order or bringing forward a new byelaw to manage the fishery), KEIFCA applied to Defra for a new Regulating Order under Section 1 of the Sea Fisheries (Shellfish) Act 1967.

6.6 The Order will set the regulatory framework for the Thames Estuary Cockle Fishery and give KEIFCA the powers to continue to regulate and manage the cockle fishery in the Thames Estuary effectively.

6.7 If a new Order is not made KEIFCA will not be able to manage the fishery and will thus need to close it, putting local livelihoods at risk.

7. Consultation

Summary of consultation outcome and methodology

7.1 KEIFCA have a duty under Section 135 of the Marine and Coastal Access Act 2009 to manage the exploitation of the cockle fisheries in a sustainable way, whilst seeking to balance the social and economic benefits of exploitation with the need to protect the marine environment, as well as seeking to balance the views of those involved in the cockle fishery.

7.2 KEIFCA carried out a series of extensive consultation exercises on the future management of the Thames Estuary Cockle Fishery between September 2021 and July 2023. During the initial consultation period 197 questionnaires were emailed or posted to various stakeholders, of which there were 49 responses. Those who responded were all involved in the fishing or processing sectors. The consultation results can be found online.[1]

7.3 Following the drafting of the Order a statutory consultation on the Order text was held for a period of one month from 29 February 2024 to 29 March 2024, in accordance with the requirements of paragraph 3 of Schedule 1 of the 1967 Act. Three responses were received, one expressing the support of the fishers currently operating under the Thames Estuary Cockle Fishery Order 1994, one stating no objections, and one setting out seven concerns.

7.4 Six of the seven concerns, about the criteria by which permit applications were evaluated, had already been raised and given due consideration through previous rounds of consultation. Key changes resulting from the previous consultation process, included:

[1] https://cocklereview.kentandessex-ifca.gov.uk/

- An increased weighting for "experience of skippering and running a cockle suction dredge boat in the Thames cockle fishery built up over a large number of cockle seasons" when allocating licences.
- A decreased weighting for "landing and cooking cockles within the District" when allocating licences.
- Dropping proposals to include consideration of fishing for other species within the Thames.

7.5 A suggestion to increase licence numbers was not taken forward, following advice from Natural England, the Statutory Nature Conservation Body. Similarly, licence allocation criteria relating to ensuring environmental and socio-economic sustainability were retained, after due consideration.

7.6 The final concern was about the lack of an appeals process for unsuccessful permit applicants. The nature and timing of the application process make an appeals process impractical. Any complaints about the licence determination should be raised directly with KEIFCA, through their complaints process. Judicial Review is available.

7.7 In light of the above the Minister has decided not to hold an inquiry pursuant to paragraph 4 of Schedule 1 of the Act.

8. Applicable Guidance

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

8.2 The management plan for the fishery will be subject to annual review with input from both regulators and industry. The management plan will be available on the KEIFCA website or by request at the KEIFCA offices.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the predicted impact on business and the economic effects of the changes being applied are under £10m p.a. This legislation will enable KEIFCA to open the Thames Estuary Cockle Fishery which will generate economic benefits expected to be similar to those of the current fishery.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is assessed as being £0.2m p.a.

9.3 The legislation does impact small or micro businesses.

9.4 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 fishers in the Thames Estuary. The Management Plan sets out clear criteria for the allocation of fishing licences. Transitional licences give fishers active in the 2024 fishery additional time to adapt to the new management regime.

9.5 The impact on the public sector is assessed as being less than £10m p.a.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This Order is time-limited to 28 years and will therefore expire in 2052. Annual returns, provided by the KEIFCA, on the performance of the regulated fishery are to be submitted to Defra for review. Under section 5 of the 1967 Act, 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. The management plan for the fishery is subject to annual review with input from both regulators and industry. The Order itself is not subject to any statutory review obligation.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Daniel Zeichner, Minister of State has made the following statement: "In my view a review provision is not appropriate given the minimal impact on business".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument revokes and replaces the Thames Estuary Cockle Fishery Order 2024 (S.I. 2024/1150). That instrument contained an error in Schedule 1 which arose while the signature version of the instrument was being validated and finalised. The Department apologises for the error.

11.2 It was a manifest error, as the text in Schedule 1 made reference to the co-ordinates and map which had been inadvertently omitted. The nature of the error was to cause the definition of "the regulated fishery" in article 2 of S.I. 2024/1150 to lack necessary legal certainty. The Department's view is that this error vitiated the entire instrument, because all of its provisions depend on that defined term establishing the area within which its operative provisions are to have effect. Accordingly, the Department considers that the vires under which S.I. 2024/1150 purported to be made remain available to be exercised correctly, and this instrument does so. Notwithstanding the Department's view that S.I. 2024/1150 did not have legal effect, this instrument contains (at article 14) provision to revoke that S.I., in the interests of transparency and certainty.

11.3 Aside from necessary changes to the title and coming into force provisions (articles 1(b) and 3(1)), the insertion of the revocation provision (article 14) and the reinstatement of the missing co-ordinates and map (Schedule 1) this instrument is otherwise in the same terms as S.I. 2024/1150. The free issue procedure is applied so that this replacement will be issued free of charge to all known recipients of S.I. 2024/1150.

12. European Convention on Human Rights

12.1 Daniel Zeichner Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of the Thames Estuary Cockle Fishery (No. 2) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts.

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").