EXPLANATORY MEMORANDUM TO

THE THAMES ESTUARY COCKLE FISHERY (NO. 2) (VARIATION) ORDER 2025

2025 No. 855

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 Variation Order corrects article 5(12) of The Thames Estuary Cockle Fishery (No. 2) Order 2024[1] (TECFO 2024) to bring the eligibility criteria for transitional period licences to fish under TECFO 2024 in-line with the policy intent.

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

[1] Statutory Instrument 2024/1211: https://www.legislation.gov.uk/uksi/2024/1211/made

Marine Stewardship Council certification. It was managed by Kent and Essex Inshore Fisheries and Conservation Authority (KEIFCA) under the Thames Estuary Cockle Fishery Order 1994 (TECFO 1994).

5.2 TECFO 1994 expired on 27 September 2024. It was replaced by TECFO 2024, which was made at the request and on the application of the grantee, KEIFCA on 22 November 2024. TECFO 2024 provides for KEIFCA, the grantee, to ensure the ongoing sustainable management of this historic cockle fishery within the Thames Estuary, so it can continue to contribute to the local coastal community through providing skilled employment.

5.3 TECFO 2024 was granted for a period of 28 years and KEIFCA regulates the fishery in line with that Order, following the operational approach documented in the associated management plan. TECFO 2024 requires anyone fishing for cockles in the boundaries of that Order to be licensed by KEIFCA.

5.4 TECFO 2024 is significantly different to TECFO 1994 in that licences are renewable on an annual basis for up to 7 years. This contrasts with TECFO 1994 where licences were renewable for the entire 30-year duration of the order.

5.5 To allow businesses that fished under TECFO 1994 time to adapt to the new regulatory landscape, TECFO 2024 also provides a transitional period licence option in the first 7-year period. The transitional period licensing arrangements under TECFO 2024 were intended to allow all 14 existing licensees under TECFO 1994 to secure up to 1 transitional period licence each for the first 7 years of TECFO 2024, subject to certain conditions. For example, if a transitional period licence is granted, the company and vessel it is granted to must remain in the same legal and beneficial ownership throughout the 7-year period. Additionally, the policy intention as consulted upon was that companies that share shareholders or directors with companies that secure a transitional period licence cannot secure additional (i.e. non-transitional period) licences in the first 7-year period, as this would prevent genuine new entrants. Following the 7-year transitional period and for the remainder of the 28-year order, all licences will open to application by any applicant.

5.6 Following the statutory consultation in 2024, drafting changes were made to the consultation draft of TECFO 2024. These changes meant that TECFO 2024 no longer achieved its intended policy for transitional period licence eligibility. The drafting of article 5(12) of TECFO 2024 inadvertently made a number of the companies which held licences under TECFO 1994 ineligible to be granted transitional period licences under TECFO 2024. Therefore, this Variation Order is required to amend article 5(12) of TECFO 2024 so that it aligns with the stated policy intention.

5.7 The Variation Order has been made at the request and on the application of the TECFO 2024 grantee, KEIFCA. The Variation Order relates only to the wording of article 5(12) of TECFO 2024 and only makes changes with respect to eligibility for transitional period licences.

What was the previous policy, how is this different?

5.8 TECFO 2024 replaced TECFO 1994 which had expired, allowing the continued management of the fishery with updated licence allocation and management, as detailed in the previous section. This Variation Order amends the wording of article 5(12) in order to give TECFO 2024 its intended effect in relation to transitional period licence eligibility. The effect of this provision is now in-line with the intended policy for transitional period licences under TECFO 2024, which was consulted on. This

Variation Order therefore corrects a drafting error made after the statutory consultation for TECFO 2024.

6. Legislative and Legal Context

How has the law changed?

6.1 TECFO 2024 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. Section 1(6) provides that any order made under Section 1 may be varied or revoked by a subsequent order made under Section 1 of the 1967 Act.

6.3 TECFO 2024 was made under Section 1 of the 1967 Act. This Variation Order is made at the request and on the application of the grantee of TECFO 2024, KEIFCA, to vary TECFO 2024 pursuant to Section 1(6) of the 1967 Act.

6.4 This Variation 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.

6.5 This Variation Order varies article 5(12) of TECFO 2024 only. It amends that article so that all 14 TECFO 1994 licensees are eligible to apply for transitional period licences in line with the intended policy which was consulted on.

Why was this approach taken to change the law?

6.6 KEIFCA applied to Defra for a new Regulating Order under Section 1 of the 1967 Act in April 2023 following consultation with industry and stakeholders on how best to continue to manage the fishery on the expiry of TECFO 1994.

6.7 TECFO 2024 was made in November 2024 and set the regulatory framework for the Thames Estuary Cockle Fishery and gave KEIFCA the powers to continue to regulate and manage the cockle fishery in the Thames Estuary effectively. This Variation Order is required to amend the wording in one provision of TECFO 2024. A variation of TECFO 2024 is the only way to achieve the policy intent. If the Variation Order is not made, a number of TECFO 1994 licence holders will not be able to be granted transitional period licences, as intended.

7. Consultation

Summary of consultation outcome and methodology

7.1 KEIFCA has a duty under Section 153 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 Following the drafting of the Variation Order, a statutory consultation on the Variation Order text was held for a period of one month from 2 May 2025 to 3 June 2025, in accordance with Schedule 1, Paragraph 3 of the 1967 Act.

7.3 25 responses were received. Of these, 19 were representations of support, and 6 were objections. Those who responded have all been, at some point, involved in the fishing or processing sectors.

7.4 The letters of support presented the following arguments:

1) There was always a clear intention that transitional period licences would be included in TECFO 2024 and that the purpose of them was to enable the licences of all those who had held licences under TECFO 1994 to be "grandfathered" into TECFO 2024.

2) Transitional period licences provide continuity for businesses operating under TECFO 1994 and an opportunity for those businesses to adapt to the new operating framework of TECFO 2024.

3) Making the Variation Order will protect skilled jobs.

4) Delay to making the order will have serious financial and staffing implications for businesses, both for those directly involved in the fishery and further along the supply chain.

7.5 The objection letters presented the following arguments/concerns:

1) The effect of article 5(12) in TECFO 2024 is already in-line with the policy intent, as consulted on and agreed, so should not be changed.

2) TECFO 2024 is now law, so should not be changed.

3) The Variation Order limits fair access to the fishery by allowing multiple licences to be issued to the same operator, which not only risks monopolisation but also denies opportunities for new entrants to participate.

4) KEIFCA's process for applying for the Variation Order is unlawful and the statutory consultation process is unfair.

7.6 In accordance with Paragraphs 3, 4 and 6 of Schedule 1 to the 1967 Act the Minister received and considered these objections and representations. The Minister concluded that it is not appropriate to appoint an inspector and decided to settle and make the proposed Variation Order, on the basis set out below.

7.7 **Policy intent:** The policy history of TECFO 2024 (recorded in detail on KEIFCA's consultation website[2] and in associated KEIFCA documents[3]) demonstrates that the intention was for each of the 14 TECFO 1994 licence holders to be able to apply for and be awarded a single transitional period licence for the first 7 years under TECFO 2024, subject to various conditions. The purpose of the first 7-year 'transitional' licencing cycle is to provide continuity and enable previous licence holders under TECFO 1994 to adapt to the change in operation under TECFO 2024. The amendment in the Variation Order will bring the effect of TECFO 2024 in-line with the policy intent. It is therefore not a departure from the policy intention, nor does it introduce a new policy to TECFO 2024.

7.8 **Parliamentary process:** While TECFO 2024 has been through the parliamentary process, the policy which both KEIFCA and Defra intended[4] has not been achieved due to a drafting change which inadvertently altered the intended effect. The Variation

[2] KEIFCA Cockle Review Website: https://cocklereview.kentandessex-ifca.gov.uk/#:~:text=Since%20the%2017%20September%202021,on%20the%2028%20September%202024.

[3] KEIFCA Authority Papers: https://www.kentandessex-ifca.gov.uk/about-us/committee/committee-meetings

[4] See paragraph 5.8 of https://www.legislation.gov.uk/uksi/2024/1211/memorandum/contents

Order is required to align the wording in article 5(12) TECFO 2024 with the stated policy intent.

7.9 **Provision for new entrants:** In contrast to TECFO 1994, TECFO 2024 will open up the fishery. Licences granted under TECFO 1994 could be renewed annually for the 30-year life of the Order, whereas licences under TECFO 2024 are renewable annually for up to 7 years only, thereby providing the opportunity for new entrants to join the fishery every 7 years. This provision is not impacted by the Variation Order.

7.10 **Single licences per person:** TECFO 2024 restricts licences to one per person (company or individual). This is not impacted by the Variation Order. Issues of common ownership among prospective transitional period licence holders were considered during development of TECFO 2024. The transitional period licence policy was developed in a way to ensure that while only one licence was held per individual or company, each of the 14 licensees under TECFO 1994 would be eligible for a single transitional period licence, subject to certain conditions.

7.11 **Monopolisation risks:** The intended effect of article 5(12) TECFO 2024 is to prevent holders of transitional period licences and their company officers/shareholders from also securing any additional available TECFO 2024 licences during the transitional period. This is not impacted by the Variation Order which removes an additional unintended effect of 5(12). The Management Plan published by KEIFCA alongside TECFO 2024 also sets out arrangements to address consolidation and competition issues and KEIFCA consulted the Competition and Markets Authority, who raised no concerns with their proposals.

7.12 **Application process:** KEIFCA followed the statutory process in the 1967 Act to make its application to Defra for the Variation Order on 8 April 2025. The Minister is satisfied that KEIFCA adhered to its internal processes to make that application. The Variation Order was published and circulated on 2 May in accordance with the requirements of the 1967 Act and was sufficient and fair.

8. Applicable Guidance

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

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 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 largest part of Thames Estuary Cockle Fishery which will generate economic benefits expected to be similar to those of the fishery under TECFO 1994.

9.2 The TECFO fishery generally runs from mid-June until end October. The need to vary the wording of TECFO 2024 has delayed the opening of the fishery, which was expected in June 2025. The Variation Order will come into force before the end of the 2025 season. It is for KEIFCA to decide when and how to open the Thames Estuary Cockle Fishery.

Impact on businesses, charities and voluntary bodies

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

9.4 The legislation does impact small or micro businesses.

9.5 No businesses are exempt from the Variation Order. It applies to, but does not have a disproportionate impact on, small businesses.

9.6 The Variation Order will bring the eligibility for transitional period licences for businesses that fished under TECFO 1994 in-line with the policy intent, allowing KEIFCA to issue TECFO 2024 transitional period licences in-line with that intent.

9.7 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 Variation Order amends TECFO 2024. The monitoring and review arrangements for TECFO 2024 are set out in paragraphs 10.1 and 10.2 of The Thames Estuary Cockle Fishery (No. 2) Order 2024 - Explanatory Memorandum[5], which are not impacted by this Variation Order.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This Statutory Instrument has been made to correct an error in S.I. 2024/1211 and is being issued free of charge to all known recipients of that Statutory Instrument.

11.2 This Variation Order amends article 5(12) of TECFO 2024. Article 5(12) inadvertently rendered a company licensed under TECFO 1994 ineligible for a transitional period licence if the company shared officers or shareholders with another company which benefitted from a transitional period licence. That was not the policy intention. This Variation Order amends article 5(12) to restore and achieve that policy intention. Defra has worked closely with the Grantee, KEIFCA to resolve this matter promptly as soon as the issue was realised.

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) (Variation) Order 2025 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").

[5] https://www.legislation.gov.uk/uksi/2024/1211/memorandum/contents