STATUTORY INSTRUMENTS

1975 No. 710

SEA FISHERIES

SHELLFISH

The Truro Port Fishery (Variation) Order 1975

Made - - - -	24*th April* 1975
Laid before Parliament	6*th May* 1975
Coming into Operation	27*th May* 1975

The Minister of Agriculture, Fisheries and Food, no objections having been received to a draft order published in accordance with Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 **(a)**, in exercise of the powers conferred on him by section 1 of the said Act as amended by section 15 of the Sea Fisheries Act 1968**(b)** and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Truro Port Fishery (Variation) Order 1975 and shall come into operation on 27th May 1975.

Interpretation

2.—(1) In this Order "the Minister" means the Minister of Agriculture, Fisheries and Food.

(2) The Interpretation Act 1889**(c)** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Variation of Principal Order

3.—(1) The Truro Port Fishery Order 1936 (hereinafter called "the Principal Order") which was confirmed by the Sea Fisheries (Truro) Order Confirmation Act 1936**(d)** shall be varied as provided by paragraphs (2) to (19) of this Article and shall have effect as it is set out in the schedule hereto with the variations made by this article.

(2) For article 1 there shall be substituted the following article:—

"*Right of Regulating Fishery*

1. There is hereby conferred upon the Carrick District Council (hereinafter called "the Council") the right of regulating a fishery for oysters and mussels with respect to the area described in article 2 of this Order."

(a) 1967 c. 83.
(b) 1968 c. 77.
(c) 1889 c. 63.
(d) 1936 c. lxxxv.

(3) For article 2 there shall be substituted the following article:—

"*Limits of Fishery*

2.—(1) The description and limits of the area of the fishery comprised in this Order (hereinafter called "the fishery") are as follows:—

All those parts of Truro and Falmouth Harbours and of the bed of the Truro, Fal and Tresillian rivers containing an area of 2721 acres (1,101 hectares) or thereabouts, as the same are shown coloured pink on the definitive map sealed by the Minister of Agriculture, Fisheries and Food (hereinafter called "the Minister") for the purposes of this Order.

(2) The limits of the fishery shall be marked out in such manner as the Minister may from time to time direct".

On the coming into operation of this Order the deposited plan sealed by the Minister (under his then style and title of The Minister of Agriculture and Fisheries) showing the limits of the fishery comprised in and described by article 2 of the Principal Order shall cease to have effect and the said map sealed by the Minister for the purposes of this Order shall henceforth have effect.

(4) In article 3 the words "Subject to the provisions contained in article 11 of this Order" and "said" shall be omitted.

(5) Articles 4 (Power to close portions of fishery) and 5 (byelaws) shall be omitted and there shall be inserted the following as a new article 4:—

"*Power to make Regulations*

4.—(1) The Council may, with the consent of the Minister, from time to time impose restrictions on and make regulations respecting the dredging, fishing for and taking of oysters and mussels or any of the them within the whole or any specified part or parts of the fishery and during the whole or any specified part or parts of a year or during a specified period and, without prejudice to the generality of the foregoing, for the purpose of

(i) determining the size below which is shall be unlawful to take mussels and oysters or any of them from the fishery or to remove them from one part of the fishery to another

(ii) determining the size or description of vessels, dredges and fishing instruments to be used in dredging, fishing for and taking oysters and mussels or any of them.

(2) The production of a copy of any regulation purporting to be certified by an Assistant Secretary of the Ministry of Agriculture, Fisheries and Food as a true copy shall be conclusive evidence of the existence of the regulation and of the due making and confirmation thereof."

(6) For articles 6 and 7 there shall be substituted the following as a new article 5:—

"*Licensing of Fishing*

5.—(1) No person shall dredge, fish for on take within the limits of the fishery oysters or mussels except under the authority of a licence issued in that behalf by the Council.

(2) A licence shall be used only by the person named therein.

(3) A licence shall be valid for the period not exceeding six months specified therein.

(4) Any person dredging, fishing for or taking oysters or mussels under the authority of a licence issued under this Order shall, when required by any officer authorised by the Council and after production by such officer of written evidence of his authority if so required, produce such licence and shall desist from dredging, fishing for or taking oysters or mussels until the same is produced.

(5) Applications for licences shall be made to the office for the time being of the Maritime Officer of the Council."

(7) For article 8 there shall be substituted the following as a new article 6:—

"*Tolls and fees payable for fishing*

6. Any person licenced under the provisions of article 5 of this Order to dredge, fish for and take oysters or mussels within the limits of the fishery shall pay to the Council before or upon receipt of his licence a toll calculated as follows:—

(*a*) In respect of a fishing smack of a capacity of not more than one registered ton or carrying not more than one dredge ... £15·60

(*b*) In respect of a fishing smack of a capacity of not more than two registered tons or carrying not more than two dredges ... £31·20

(*c*) In respect of a fishing smack of a capacity of not more than three registered tons or carrying not more than three dredges £46·80

(*d*) In respect of a fishing smack of a capacity of more than three registered tons or carrying more than three dredges ... £62·40."

(8) There shall be inserted a new article 7 as follows:—

"*Restriction on removal of culch from the fishery*

7.—(1) Except with the previous consent in writing of the Council no person shall remove any culch or other material for the reception of spat from the fishery or from one part of the fishery to another and anyone lifting any culch or other such material whilst fishing or dredging or at any other time within the fishery shall forthwith replace the same without injury below low water mark of spring tides within the fishery and as nearly as possible in the place from which it was lifted.

(2) Paragraph (1) of this article shall not apply to a removal or lifting effected by the raising of an anchor or any other mooring device for the purpose of navigation."

(9) Article 9 (prohibition on taking of small mussels and oysters) shall be omitted.

(10) Article 10 shall be renumbered and become article 8 and for the word "Corporation" wherever it occurs, there shall be substituted the word "Council".

(11) Articles 11 (Minister's power to cancel or vary prohibitions), 12 (power to appoint water bailiff), 13 (applications of tolls and fees), and 14 (marking of limits) shall be omitted.

(12) For article 15 there shall be substituted the following as a new article 9—

"*Restriction on works*

9. Nothing in this Order shall authorise the execution of any works on over or under tidal lands below the level of mean high water springs except in

accordance with plans and sections approved in writing by the Secretary of State and subject to such conditions and restrictions as the Secretary of State may prescribe before the execution of such works is begun."

(13) For article 16 there shall be substituted the following as a new article 10:—

"*Accounts of expenditure and income and other information*

10. The Council shall render to the Minister 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 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 Council relating to this Order and shall give to such person any information relating thereto as he may require."

(14) Article 17 (Minister's power to grant several orders) shall be omitted.

(15) For article 18 there shall be substituted the following as a new article 11:—

"*Duration of Order*

11. Subject to the provisions of section 5 of the Sea Fisheries (Shellfish) Act 1967 this Order shall continue in operation for 48 years from 31st July 1936 and no longer."

(16) Articles 19 (revision of tolls) and 20 (Crown Rights) shall be omitted.

(17) Article 21 shall be renumbered and become article 12. There shall be inserted after the word 'powers' where it last occurs the words "from time to time" and at the end there shall be added the words "and, without prejudice to the generality of the foregoing, article 7 of this Order shall not apply to the Commissioners or to any person acting on their behalf or on their authority."

(18) For article 22 there shall be substituted the following as a new article 13:—

"*Inspection by Cornwall Sea Fisheries Committee*

13. Nothing in this Order or in any regulation made thereunder shall preclude the fishery officers of the local fisheries committee of the Cornwall Sea Fisheries District from stopping and searching any smack fishing boat or row boat within the fishery and examining the catches and fishing instruments of such boats for the purpose of inforcing byelaws made by the said local fisheries committee under the Sea Fisheries Regulation Act 1966."**(a)**

(19) Article 23 shall be renumbered and become article 14.

In Witness whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 24th April 1975.

(L.S.)

Frederick Peart,
Minister of Agriculture, Fisheries and Food.

(a) 1966 c. 38.

SCHEDULE

Article 3(1)

TRURO PORT FISHERY ORDER 1936

AS VARIED BY THIS ORDER

Right of Regulating Fishery

1. There is hereby conferred upon the Carrick District Council (hereinafter called "the Council") the right of regulating a fishery for oysters and mussels with respect to the area described in arricle 2 of this Order.

Limits of Fishery

2.—(1) The description and limits of the area of the fishery comprised in this Order (hereinafter called "the fishery") are as follows:—

All those parts of Truro and Falmouth Harbours and of the bed of the Truro, Fal and Tresillian rivers containing an area of 2721 acres (1,101 hectares) or thereabouts, as the same are shown coloured pink on the definitive map sealed by the Minister of Agriculture, Fisheries and Food (hereinafter called "the Minister") for the purposes of this Order.

(2) The limits of the fishery shall be marked out in such manner as the Minister may from time to time direct.

Dredging for Oysters or Mussels during certain months prohibited

3. No person shall dredge or fish for or take oysters or mussels within the fishery during the months of April May June July August and September in any year.

Power to make Regulations

4.—(1) The Council may, with the consent of the Minister, from time to time impose restrictions on and make regulations respecting the dredging, fishing for and taking of oysters and mussels or any of them within the whole or any specified part or parts of the fishery and during the whole or any specified part or parts of a year or during a specified period and, without prejudice to the generality of the foregoing, for the purpose of

(i) determining the size below which it shall be unlawful to take mussels and oysters or any of them from the fishery or to remove them from one part of the fishery to another

(ii) determining the size or description of vessels, dredges and fishing instruments to be used in dredging, fishing for and taking oysters and mussels or any of them.

(2) The production of a copy of any regulation purporting to be certified by an Assistant Secretary of the Ministry of Agriculture, Fisheries and Food as a true copy shall be conclusive evidence of the existence of the regulation and of the due making and confirmation thereof.

Licensing of Fishing

5.—(1) No person shall dredge, fish for or take within the limits of the fishery oysters or mussels except under the authority of a licence issued in that behalf by the Council.

(2) A licence shall be used only by the person named therein.

(3) A licence shall be valid for the period not exceeding six months specified therein.

(4) Any person dredging, fishing for or taking oysters or mussels under the authority of a licence issued under this Order shall, when required by any officer authorised by the Council and after production by such officer of written evidence of his authority if so required, produce such licence and shall desist from dredging, fishing for or taking oysters or mussels until the same is produced.

(5) Applications for licences shall be made to the office for the time being of the Maritime Officer of the Council.

Tolls and fees payable for fishing

6. Any person licenced under the provisions of article 5 of this Order to dredge, fish for and take oysters or mussels within the limits of the fishery shall pay to the Council before or upon receipt of his licence a toll calculated as follows:—

(*a*) In respect of a fishing smack of a capacity of not more than one registered ton or carrying not more than one dredge	£15·60
(*b*) In respect of a fishing smack of a capacity of not more than two registered tons or carrying not more than two dredges	£31·20
(*c*) In respect of a fishing smack of a capacity of not more than three registered tons or carrying not more than three dredges	£46·80
(*d*) In respect of a fishing smack of a capacity of more than three registered tons or carrying more than three dredges	£62·40.

Restriction on removal of culch from the fishery

7.—(1) Except with the previous consent in writing of the Council no person shall remove any culch or other material for the reception of spat from the fishery or from one part of the fishery to another and anyone lifting any culch or other such material whilst fishing or dredging or at any other time within the fishery shall forthwith replace the same without injury below low water mark of spring tides within the fishery and as nearly as possible in the place from which it was lifted.

(2) Paragraph (1) of this article shall not apply to a removal or lifting effected by the raising of an anchor or any other mooring device for the purpose of navigation.

Power reserved to remove brood of mussels and oysters

8. For the purpose only of better cultivating the fishery the Council or any person or persons duly authorised by them may remove any brood of mussels and any spat or small-sized oysters from one portion of the fishery to another at such times as the Council may direct.

Restriction on works

9. Nothing in this Order shall authorise the execution of any works on over or under tidal lands below the level of mean high water springs except in accordance with plans and sections approved in writing by the Secretary of State and subject to such conditions and restrictions as the Secretary of State may prescribe before the execution of such works is begun.

Accounts of expenditure and income and other information

10. The Council shall render to the Minister 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 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 Council relating to this Order and shall give to such person any information relating thereto as he may require.

Duration of Order

11. Subject to the provisions of section 5 of the Sea Fisheries (Shellfish) Act 1967 this Order shall continue in operation for 48 years from 31st July 1936 and no longer.

Saving rights of Harbour Commissioners

12. Nothing in this Order contained shall prejudice or affect the powers conferred on the Falmouth Harbour Commissioners by the Falmouth Harbour Order 1870 or any other rights or powers from time to time vested in or exerciseable by them, and, without

prejudice to the generality of the foregoing, article 7 of this Order shall not apply to the Commissioners or to any person acting on their behalf or on their authority.

Inspection by Cornwall Sea Fisheries Committee

13. Nothing in this Order or in any regulation made thereunder shall preclude the fishery officers of the local fisheries committee of the Cornwall Sea Fisheries District from stopping and searching any smack fishing boat or row boat within the fishery and examining the catches and fishing instruments of such boats for the purpose of enforcing bye-laws made by the said local fisheries committee under the Sea Fisheries Regulation Act 1966.

Short title

14. This Order may be cited as the Truro Port Fishery Order 1936.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order varies the Truro Port Fishery Order 1936 (the Principal Order.)

The principal changes are:—

1. The extension of the area in respect of which the right of regulating a fishery for oysters and mussels is to be exercised by the Carrick District Council. The area of the fishery as extended is broadly described in the Order and is shown on the definitive map sealed by the Minister of Agriculture, Fisheries and Food which may be inspected during office hours at the Fisheries Department, Ministry of Agriculture, Fisheries and Food, Great Westminster House, Horseferry Road, London SW1P 2AE. A copy of the definitive map may be inspected during office hours at the office of the Chief Executive, Rural Council Hall, Rivers Street, Truro.
2. The introduction of new provisions relating to the Council's power to make regulations (art. 3(5)) and to the restriction on the removal of culch from the fishery (art. 3(8)).

The Principal Order as varied is set out in the Schedule to this Order.

The Secretary of State whose prior approval is required for works on over or under tidal lands by virtue of article 3(12) is the Secretary of State for Trade.

STATUTORY INSTRUMENTS

1975 No. 710

SEA FISHERIES

SHELLFISH

The Truro Port Fishery (Variation) Order 1975

Printed in England by McCorquodale Printers Ltd., and published by Her Majesty's Stationery Office
27/P15179/6 L 29 K 9 5/75

ISBN 0 11 050710 X