

2019 No. \*[INSERT]\*

SEA FISHERIES, ENGLAND

# The Portland Harbour Fishery Order \*[2019]\*

<i>Made</i>	*[DATE]*
<i>Laid before Parliament</i>	*[DATE]*
<i>Coming into force</i>	*[DATE]*

Portland Harbour Authority Limited has made an application to the Secretary of State<sup>1</sup> in accordance with section 1(2) of the Sea Fisheries (Shellfish) Act 1967 (“the Act”) for an order conferring a right of several fishery under section 1 of the Act<sup>2</sup>.

*\*[The Secretary of State has prepared a draft Order and served a copy of it on the applicant in accordance with paragraph 1 of Schedule 1 to the Act<sup>3</sup>.*

*The applicant has caused printed copies of the draft Order to be published and circulated, and has given notice of the application, in accordance with paragraph 2 of that Schedule.*

*\*[And whereas no objections were received by the Secretary of State under paragraph 3 of that Schedule. / The Secretary of State has considered \*[objections and / or representations] received, in accordance with paragraphs 3 to 6 of that Schedule, and considers that it is expedient to make this Order.]\**

*The Secretary of State has had regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961, in accordance with paragraph 6(2) of that Schedule.*

*The Secretary of State makes this Order, in exercise of the powers conferred by section 1 of, and paragraph 6(1) of Schedule 1 to, the Act.]\**

## Notes

<sup>1</sup> The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by virtue of article 2 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

<sup>2</sup> Section 1(1) was amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 15; the Marine and Coastal Access Act 2009 (c.23) (“the 2009 Act”), section 202(2); and S.I. 1999/1820. Section 1(4) was repealed by the 2009 Act, section 202(3) and Schedule 22, Part 5(A). Section 1(6) was substituted, by subsequent subsections (6) to (14), by the 2009 Act, section 203. See section 22(1) of the Sea Fisheries (Shellfish) Act 1967 for the definition of “the appropriate Minister” for the purposes of section 1.

<sup>3</sup> Schedule 1 was amended by the Sea Fisheries Act 1968 (c.77), section 15(7); the Criminal Law Act 1977 (c.45), section 31(6); the Criminal Justice Act 1982 (c.48), sections 37 and 46; and the 2009 Act, sections 202(4) and 214 and Schedule 22, Part 5(A).

## **1.— Citation, extent, commencement and interpretation**

(1) This Order—

- (a) may be cited as the Portland Harbour Fishery Order 2019;
- (b) extends to England and Wales; and
- (c) comes into force on \*[DATE]\*.

(2) In this Order—

“the Company” means Portland Harbour Authority Limited, whose registered office is at Bingham’s Melcombe, Dorchester, Dorset DT2 7PZ;

“the fishery area” means that area of Portland Harbour on the South coast of England described as “the harbour” in article 2 of the Portland Harbour Revision Order 1997;

“the management plan” means the management plan marked ‘Portland Harbour Fishery Order 2019 Management Plan’ submitted to the Secretary of State by the Company on \*[DATE]\* and deposited at the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR;

“laying” means a part of the fishery area with respect to which a lease has been or is to be granted;

“lease” means a lease of the right of several fishery for shellfish conferred by article 2.

## **2. Right of several fishery**

(1) Subject to the provisions of this Order there is conferred on the Company for a period of \*[20 years]\* commencing on \*[DATE]\* the rights of several fishery for shellfish in the fishery area.

## **3. Management plan**

The Company must manage the fishery area in accordance with the management plan.

## **4.— Review of management plan**

(1) In \*[INSERT YEAR]\* and in each year thereafter of the period referred to in article 2, the Company must, before \*[DATE]\*, review the management plan.

(2) At least 4 weeks before the date of such publication, the Company must notify the interested parties in writing of any proposed changes to the management plan.

(3) The Company must, before publishing the updated management plan, take account of any representations it receives in writing from any interested party on the plan or any proposed changes to it.

(4) In paragraph (3), “interested party” means—

- (a) the Secretary of State;
- (b) the Crown Estate;
- (c) Natural England;
- (d) the IFC Authority for the relevant district under the Marine and Coastal Access Act 2009;
- (e) The Portland Harbour Consultative Committee;
- (f) any person likely to be affected by the management plan or changes to it; or
- (g) any person whom the Company considers may be the owner, lessee or occupier of the fishery area.

## **5.— Provisions relating to leases**

- (1) The following provisions of this article apply in relation to any lease granted or to be granted by the Company with respect to any part of the fishery area (referred to as a “laying”).
- (2) The Company must mark, or require all layings in the fishery area to be marked, in such manner as the Secretary of State may from time to time approve.
- (3) The marks defining the limits of each laying to which paragraph (2) applies must be maintained in position and in good repair by the Company or, if so stipulated in the lease, by the lessee.
- (4) A lease has effect as if the right which it confers on the lessee were conferred by an order under section 1 of the Sea Fisheries (Shellfish) Act 1967, and as if any terms and conditions contained in the lease were contained in such an order.
- (5) A lease must provide that it may be terminated by the Company in the event that the lessee is in breach of any provisions of this article, or of any provision of the lease, and the Company must take all reasonable steps to monitor compliance with such provisions.

## **6.— Account of income and expenditure and other information**

- (1) The Company must provide to the Secretary of State annual accounts of income and expenditure under this Order and such other information relating to this Order and to the fishery area in such form and at such times the Secretary of State may reasonably require.
- (2) The Company must allow a person authorised by the Secretary of State to inspect the fishery area and all accounting records and other documents in the possession of the Company relating to this Order and to the fishery area.
- (3) The Company must give any person authorised for the purposes of paragraph (2) such information in its possession relating to the Order and to the fishery area as that person may reasonably require.

## **7.— Statutory undertakers**

- (1) Nothing in this Order prejudicially affects the lawful activities of a statutory undertaker in exercising that undertaker's statutory functions or authority.
- (2) In paragraph 1 “statutory undertaker” has the meaning given in section 262(1) of the Town and Country Planning Act 1990 and article 1(2) of the Town and Country Planning (General Permitted Development) Order 1995<sup>1</sup> and includes—
  - (a) a person operating an electronic communications code network within the meaning given in paragraph 1(1) of Schedule 17 to the Communications Act 2003; and
  - (b) any person or body carrying out coast protection work within the meaning of the Coast Protection Act 1949<sup>2</sup> in accordance with any consent or approval under that Act.

## **8. Rights of the Crown**

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 Company 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.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order confers on Portland Harbour Authority Limited a right of several fishery for shellfish of any kind for a period of *[20]* years commencing on *[DATE]*. The area within which the right is conferred (“the fishery area”) is, for illustrative purposes only, shown *[hatched]* on the map below.

Article 3 requires the Company to manage the fishery area in accordance with the management plan. A copy of the management plan can be obtained from the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

Article 4 requires the Company to review the management plan annually.

Article 5 sets out certain provisions relating to leases of the several fishery.

Article 6 requires the Company to provide annual accounts to the Secretary of State.

Article 7 preserves the power of certain persons to exercise statutory functions. Article 8 preserves any rights of the Crown.

*\*[A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.]\**