

SR695 UK Shellfish Production and Several, Regulating and Hybrid Orders: The Contribution and Value of Orders in Relation to the Sector's Past Development and Future Growth

Whiteley, R. 2016

ISBN No: 978-1-911073-01-7



UK Shellfish Production and Several, Regulating and Hybrid Orders: The Contribution and Value of Orders in Relation to the Sector's Past Development and Future Growth

Final Report to Seafish

August 2016

By Robert Whiteley*, Working Sea Ltd.

Email: rob@workingsea.com

This is a report has been commissioned through the Seafish Domestic Aquaculture Strategy Programme, and is an information source provided by Seafish for industry and key stakeholders.

**This report was undertaken by Robert Whiteley of Working Sea Ltd. who is also substantially employed by Natural England. This work does not represent that organisation or any of its views or interests.*

Acknowledgements

I am very grateful to all the contributors who kindly provided their time, expertise, and experiences in regards to the case studies within this report, as well as those who contributed to the other sections.

Thanks also to Colin Bannister of the SAGB for his strategic input.

Contents

1. Summary	5
2. Introduction	6
3. Types of Order	8
3.1 Several Orders	8
3.2 Regulating Orders	10
3.3 Hybrid Orders	10
3.4 Shellfish Fishery License – Northern Ireland	11
4. Legal Requirements for Several and Regulating Orders	12
5. Several and Regulating Orders in the UK	13
6. Contribution of Several and Regulating Orders to UK Shellfish Production, Markets and Trade	14
7. Case Studies: Users of Several, Regulating and Hybrid Orders	15
7.1 Several Order Case Studies	16
7.2 Regulating Order Case Studies	22
7.3 Hybrid Order Case Study.....	25
8. The Outlook for Several and Regulating Orders in UK Shellfish Production	28
8.1 Several Orders	28
8.2 Regulating Orders	30
8.3 Byelaw Control	31
9. Observations on the Future of Several and Regulating Orders	32
9.1 Annual Returns.....	32
9.2 Procedure and Application.....	33
9.3 Strategy	33
10. Findings and Conclusions	36
11. References	38
12. Appendices	39
Appendix 1: The SRO Application Process in England, Scotland and Wales	39
Appendix 2: The Northern Irish Shellfish Fisheries License Application Process	42
Appendix 3: Several and Regulating Orders: English Annual Returns.....	43
Appendices 4, 5 and 6: Locational Maps of English, Welsh and Scottish Orders	44
Appendix 7: NWIFCA: Comparing Powers Under the 1967 Act with Byelaw Making Powers Under the 2009 Marine & Coastal Access Act	68

1. Summary

There are currently 24 registered Several, Regulating (and Hybrid Orders) around the British Isles. Several Orders allow legal ownership of certain named shellfish species in a private shellfishery, whilst Regulating Orders create powers of management, usually for a public authority, over natural shellfisheries. Both types of Order can be made anywhere within 6nm of the seashore in England, Wales and Scotland.

Several Orders have provided an important role in UK shellfish production; offering an essential security of tenure which has allowed and encouraged the necessary long-term development of many operations. They can continue to play this role and could be an instrumental tool in the future development of UK shellfish production.

Regulating Orders, including Hybrid Orders, have also enabled continued, consistent management of shellfisheries in inshore waters and can also be an effective mechanism for collaborative approaches and bringing associated bodies together. Their future use may be limited due to the more recent byelaw making powers available for fishery regulators in England (i.e. Inshore Fishery and Conservation Authorities (IFCAs)¹ but they still have the potential to be utilised as a strong management tool in some areas.

The future use of these Orders (often referred to as SROs) would not only be enhanced by the development of an improved and simplified application and renewal process, but also by being incorporated in to any national or regional strategies (including the identification of suitable sites) to increase shellfish production.

For any Orders (planned or renewed), early and extensive consultation with associated stakeholders appears to be critical to maximise buy-in and mitigate potential issues; this would lead to smoother operation and more effective management once they are in place.

¹ IFCAs are statutory regulators created in 2009. They are responsible for the sustainable management of sea fisheries resources in Inshore Fisheries and Conservation Districts (IFCDs) to six nautical miles from coastal baselines. IFCAs must manage the exploitation of sea fisheries resources in their district, balancing the social and economic benefits of exploiting resources with the need to protect the marine environment. IFCAs have byelaw-making and enforcement powers. *Inshore Fisheries and Conservation Authorities Conduct and Operation 2010 – 2014*, Defra, March 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413425/ifca-review-2010-2014.pdf

2. Introduction

The shellfish industry is an important contributor to the UK economy, and domestic production is derived from both wild capture and a range of enhanced and/or cultivation activities, i.e. aquaculture.

Apart from privately owned shellfisheries and/or shellfish farms which are established to produce commercially valuable species, there is special legislation derived from Chapter 83 of the amended Sea Fisheries (Shellfish) Act 1967² (hence forth referred to as the Act) to encourage the establishment and management of private and natural shellfisheries in UK seas or tidal waters through what are known as Several, Regulating (and Hybrid) Orders. Under this legislation, Orders may grant exclusive fishing or management rights over one or more named species of shellfish³ within a designated area of UK coastal waters and over a specified period. Several and Regulating Orders can be made for up to 60 years, however 10-20 years is more common for the former, with 20-30 years for the latter.

The Act is applicable in England, Scotland and Wales, although application procedures differ in each of these three nations (see Appendix 1). The legislative background to Several Orders and Regulating (and Hybrid) Orders is given in Box 1.

BOX 1. The Sea Fisheries (Shellfish) Act 1967 and the Legislative Background to Several and Regulating (and Hybrid) Orders

The Sea Fisheries Act 1868 was the first act to make provision for establishing private fisheries for shellfish (namely oysters and mussels) in the UKⁱ. The 1868 act was repealed by the Sea Fisheries (Shellfish) Act 1967ⁱⁱ (hereon referred to as The Act), which gave specific provision for 'privatising' shellfisheries through establishing what are known as Several, Regulating, and Hybrid Orders. The Act and its Order making provisions are applicable in England, Scotland and Wales.

Several and Regulating Orders (as well as Hybrid Orders) grant exclusive fishing or management rights within a designated area. In this way the public right of fishing for the species named in the Order has been removed so that the designated holder is the 'protected' beneficiary of the associated harvest and income. Orders can cover one or more of the following shellfish species: oysters, mussels, clams, cockles, king scallops, queen scallops, crabs, and lobsters; and can be made for up to 60 years, although shorter Orders are far more common.

It must be noted that different (non-public) rights exist regarding Crown Estate and privately-owned land. Specifically the Sea Fisheries (Shellfish) Act 1967 Section 1(4) states: '*An Order under this Section shall not be made with respect to any portion of the sea shore which belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall except with the appropriate consent...ⁱⁱⁱ*', i.e. specific permission must be sought from The Crown Estate or private landowner in order to establish shellfish production.

ⁱ <http://www.legislation.gov.uk/ukpga/Vict/31-32/45/contents>

ⁱⁱ <http://www.legislation.gov.uk/ukpga/1967/83/contents>

ⁱⁱⁱ <http://www.legislation.gov.uk/ukpga/1967/83>

In Northern Ireland the situation is somewhat different with a Shellfish Fishery Licence issued under the provisions of the Fisheries Act (NI) 1966⁴ (Appendix 2).

² Sea Fisheries (Shellfish) Act 1967, Chapter 83 - <http://www.legislation.gov.uk/ukpga/1967/83>

³ Both Several Orders and Regulating Orders can cover one or more of the following shellfish species: oysters, mussels, clams, cockles, scallops, queen scallops ('queens' or 'queenies'), crabs, lobsters. Orders can also cover other types of mollusc and crustacea if specified - <https://www.gov.uk/guidance/shellfisheries-several-orders-and-regulating-orders>

⁴ Fisheries Act (Northern Ireland) 1966 - <http://www.legislation.gov.uk/apni/1966/17>

As the powers of these Orders originates from 1868 they could be seen as somewhat of a 'legislative legacy', and created before the farming or production of shellfish through 'aquaculture' as we know it was truly defined.

At this juncture, it would be useful to define 'enhanced fishery', 'capture-based aquaculture' and 'aquaculture'. The FAO⁵ defines each as:

- Enhanced Fishery

"Fisheries that are supported by activities aimed at supplementing or sustaining recruitment of one or more aquatic species and raising the total production or the production of selected elements of a fishery beyond a level, which is sustainable through existing natural processes"

- Capture-based Aquaculture

"The practice of collecting "seed" material - from early life stages to adults - from the wild, and its subsequent on-growing in captivity to marketable size, using aquaculture techniques"

- Aquaculture

"Aquaculture is the farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants. Farming implies some form of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators, etc. Farming also implies individual or corporate ownership of the stock being cultivated. For statistical purposes, aquatic organisms which are harvested by an individual or corporate body which has owned them throughout their rearing period contribute to aquaculture, while aquatic organisms which are exploitable by the public as a common property resource, with or without appropriate licences, are the harvest of fisheries"

The farming or aquaculture aspect of shellfish production, particularly of mussels and oysters, accounts for a significant part of UK shellfish production. The UK shellfish aquaculture industry produced around 27,000 tonnes worth some £33 million in 2012⁶. For the UK to achieve the policy objectives of the EC's 'Communication on Sustainable Aquaculture'⁷ (accepted by UK Government as UK policy) then substantial expansion of molluscan aquaculture is needed.

This report will describe and explain Several and Regulating Orders (including Hybrid Orders) by detailing their background, status and overall contribution to UK shellfish production. The case studies presented contextualise the use and importance of Orders to individual shellfish producers and regulating bodies, and highlights how their particular Order (with its associated property and management rights) has assisted and enabled secure and sustainable shellfish production.

There is little doubt that Several, Regulating and Hybrid Orders have enabled and enhanced UK shellfish production, whether through 'enhanced fisheries', and /or

⁵ FAO Term Portal: Aquaculture - <http://www.fao.org/faoterm/en/?defaultCollId=14>

⁶ Ellis, T., Gardiner, R., Gubbins, M., Reese, A. and Smith, D. (2012). *Aquaculture Statistics for the UK, with a Focus on England and Wales*. Cefas Weymouth - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405469/Aquaculture_Statistics_UK_2012.pdf

⁷ European Commission and aquaculture - http://ec.europa.eu/fisheries/cfp/aquaculture/official_documents/com_2013_229_en.pdf

'capture-based'/aquaculture - the question is what will be their future role in helping to secure and develop increased shellfish production in the UK?

3. Types of Order

3.1 Several Orders

A Several Order is granted⁸ for setting up or improving private shellfisheries and entitles the grantee to become the legal owner of the shellfish species covered by the Order and within a specified area and for a specified time i.e. rights of all persons other than the grantee are suspended for the duration, and property in all specified species is transferred to the grantee.

The owner then has the exclusive right of depositing, propagating, dredging, fishing for, and taking shellfish of any description to which the Order applies. The holder of the Order, within the limits of that right may:

- a) Make and maintain beds for such shellfish
- b) At any season collect such shellfish and remove them from place to place and deposit them as and where the grantees think fit
- c) Do all other things which the grantee thinks proper for obtaining, storing and disposing of the produce from their area

Section 7 of the Act places restrictions on general fishing practices in an area to prevent damage to the named species in a Several Order, and it is a criminal offence for anyone to disturb or injure the designated shellfish or to interfere with the area/operation without authorisation from the Order holder. Anyone doing so can be prosecuted by the grantee, including IFCA's. They may also place conditions and restrictions on the Order holder, for example, by specifying the shellfish harvesting methods that may be used⁹. Several Orders should involve some form of intervention in the management/cultivation of the shellfish and cannot be a purely extractive fishery.

The main shellfish species produced in Several Orders across the UK are mussels (*Mytilus edulis*), cockles (*Cerastoderma edule*), oysters (native and Pacific; *Ostrea edulis* and *Crassostrea gigas* respectively), King scallops (*Pecten maximus*) and various species of clams.

If wild mussel seed, for example, is dredged and re-laid elsewhere for on-growing (as opposed to being sold straight to market) at that point the practice would be considered aquaculture (more specifically capture-based aquaculture) and would require an Aquaculture Production Business¹⁰ (APB) authorisation from the designated authority, e.g. Cefas in England and Wales, or Marine Scotland.

The main types of shellfish aquaculture practiced in Several Order designations are in lays.

⁸ Sea Fisheries (Shellfish) Act 1967), Section 2: Effect of grant of right of several fishery - <http://www.legislation.gov.uk/ukpga/1967/83/section/2>

⁹ Guidance page on 'Shellfisheries: Several Orders and Regulating Orders - <https://www.gov.uk/guidance/shellfisheries-several-orders-and-regulating-orders>

¹⁰ Fish, shellfish or crustacean farm authorisation - <https://www.gov.uk/guidance/fish-shellfish-or-crustacean-farm-authorisation>

- **Lays** (Figure 2)

These are where bivalves are laid in specific intertidal or subtidal areas in order to be grown and managed before harvesting. The shellfish are usually grown to meet market size, but may be sold part-grown to another operator.

Other shellfish aquaculture practices that are either undertaken, or could potentially be utilised as part of a Several Order (although a Several Orders is not necessary to establish such systems) include:

- **Trestles/bags** (Figure 3)

Juvenile or undersized shellfish are contained in bags and secured on trestles in the intertidal zone – either for holding or to grow to market size. The aim of a trestle is to keep the shellfish away from predators, smothering, hand-gatherers, and to prevent them from being washed away. This method is mainly used for Pacific oysters, but is occasionally used to hold mussels.

- **Hanging systems/Rope-growing**

Rope-grown mussels are usually grown on ropes ('droppers') suspended from either surface longlines or rafts.

- **Bouchot posts** (Figures 5 and 6)

Seed mussel-covered ropes are wrapped around large wooden posts driven in to intertidal sediments. This is a very popular method that covers large areas in France, and has also been trialled in the UK but so far without becoming popular. Ropes can be laid-out to collect seed in the same intertidal area as the poles themselves. Any structure that removes shellfish from the seabed (such as trestles) removes the



Figure 2. Seed mussel lays in Morecambe Bay (© R. Whiteley)



Figure 3. Juvenile Pacific oysters in bags and on trestles in Morecambe Bay (© R. Whiteley)



Figure 4. Bouchot post trial in Morecambe Bay. Nets have been placed around the posts to protect them from predators (© R Whiteley)



Figure 5. Rope to collect seed mussel, in Morecambe Bay. Rope is then attached to bouchot posts (© R Whiteley)

shellfish from the public right to fish them. As the structures are property of the practitioner the animals maintained in/on them having been reduced into possession and are private property.

To achieve the policy objectives of the Communication on Sustainable Aquaculture then substantial expansion of molluscan aquaculture is needed. While rope culture, racks and other systems of containment do have a role, quantitatively there is a need for increased bottom-laid shellfish production, for instance large-scale mussel production, possibly in the richer, warmer waters around southern Britain.

3.2 Regulating Orders

Wild capture is purely extractive harvesting of wild fish and shellfish from the natural environment, whereas enhanced fisheries support activities aimed at increasing production beyond a fisheries natural level. In a regulated fishery the right of public fishery is still exercised, but by a limited number of persons.

Regulating Orders¹¹ can both regulate a wild fishery (for instance by regulating dredging or hand-gathering of mussels or cockles from natural beds) and support activities aimed at increasing production by including for example, shellfish lays. Again, if wild seed are re-laid for on-growing then at that point the practice would be considered aquaculture (more specifically capture-based aquaculture) and would require an APB authorisation from the designated authority.

The main shellfish species utilised in Regulating Orders around the UK are mussels, cockles, and native and Pacific oysters. The main wild-harvesting methods are hand-gathering, dredging (mechanical and suction), pots, and diving (i.e. hand-gathering). A Regulating Order gives the grantee the right to regulate and restrict fishing for any specified description of shellfish and imposes restrictions on, or makes regulations regarding dredging or harvesting shellfish covered by the Order within a specified area. The grantee may:

- a) Issue licences to others allowing them to take shellfish within the designated area
- b) Set conditions and restrictions that licence-holders must observe when they take shellfish
- c) Manage the shellfishery
- d) Exclude unlicensed people from the shellfishery

It is an offence for an unlicensed person to fish for, dredge, or take shellfish from the designated area¹².

3.3 Hybrid Orders

The Act gives provision for the creation of Regulating Order that may specify leases (i.e. Several Orders) within its own area – together known as Hybrid Orders. This means the grantee of the Hybrid Order would manage the operators working within

¹¹ Sea Fisheries (Shellfish) Act 1967), Section 3: Effect of grant of right of regulating a fishery - <http://www.legislation.gov.uk/ukpga/1967/83/section/3>

¹² Guidance page on 'Shellfisheries: Several Orders and Regulating Orders - <https://www.gov.uk/guidance/shellfisheries-several-orders-and-regulating-orders>

the area via Regulating Order practice, but would sub-lease Several Order rights within that designated area.

3.4 Shellfish Fishery License – Northern Ireland

In Northern Ireland, both finfish and shellfish farmers require a Fish Culture Licence under Section 11 of the Fishery Act (NI) 1966. Under Section 131 of the same Act a shellfish producer must also hold a Shellfish Fishery Licence¹³; this conveys the ownership of the shellfish at the operation to the holder of the Shellfish Fishery Licence and is in effect a several order as it provides ownership of the shellfish in the licensed area.

A public register of Northern Irish aquaculture production businesses¹⁴ is given on the DAERA (Department of Agriculture, Environment and Rural Affairs) website.

¹³ Registration of aquaculture production businesses in Northern Ireland - <https://www.daera-ni.gov.uk/articles/licensing-fish-and-shellfish-farms>

¹⁴ Public register of aquaculture production businesses in NI - <https://www.daera-ni.gov.uk/publications/public-register-aquaculture-production-businesses>

4. Legal Requirements for Several and Regulating Orders

The following legal requirements must be met to enable the granting of a Several and/or Regulating Order:

1. The SRO application¹⁵/permission itself, including (amongst others) the five-year management plan¹⁶ and relevant environmental assessment
2. Aquaculture Production Business authorisation (APB): All aquaculture production businesses (a fish or shellfish farm) must apply for authorisation before any development takes place. All fish and shellfish farms in the UK must be authorised to help prevent the introduction and spread of infectious diseases. Authorisation is managed by the Fish Health Inspectorate (FHI), Cefas for farms in England and Wales¹⁷; the FHI of Marine Scotland in Scotland¹⁸; and DAERA for Northern Ireland (formerly a responsibility of DARD (Department of Agriculture and Rural Development)¹⁹ in Northern Ireland
3. A Marine Licence may be required from the Marine Management Organisation (MMO) (the agency responsible for marine spatial planning and licensing) where certain conditions apply²⁰, additionally the MMO require notice of intention to carry out the activity in advance of the operation commencing

Prior to the amendments of the 1967 Act consent must have been obtained from The Crown Estate (CE)²¹ if a proposed operation was on any part of the seashore that belonged to it. However since 1967, CE consent is no longer required before a Several Order or Regulating Order can be granted, instead Ministers should have regard to the powers and duties of the CE when considering the granting of an Order. Consent must still be obtained however from a private landowner if a proposed operation is on any portion of the seashore that belongs to them.

If land based facilities are required then planning consent under the Town and Country Planning Act²² will be required. Consents for Scottish shellfish farms are also required from local authorities under the Town and Country Planning (Scotland) Act²³.

¹⁵ The Several and Regulated Fisheries (Form of Application) Regulations -

<http://www.legislation.gov.uk/ukxi/1987/217/schedule/made>

¹⁶ Several and Regulating Orders management plan - <https://www.gov.uk/government/publications/several-and-regulating-orders-management-plan>

¹⁷ Cefas Form AW1: Application to authorise a fish or shellfish farm - <https://www.gov.uk/government/publications/application-to-authorise-a-fish-or-shellfish-farm-form-aw1>

¹⁸ Scottish Government, Aquaculture Production Business (APB) legal obligations - <http://www.gov.scot/Topics/marine/Fish-Shellfish/FHI/authorisation/apb>

¹⁹ Guidance on applications for authorisation or registration of aquaculture production businesses - https://www.daera-ni.gov.uk/search?query=Guidance+on+applications+for+authorisation+or+registration+of+aquaculture+production+businesses&edit-submit-button=Go&as_sfid=AAAAAASaFcDZGuccA07m6hUKlocn9QH3uRB3zIOPReckXCaFJsQbtf15xiRkHNoZ6fenSzIBNtGfUj2i6jMafj2qoCgUyKUJEtWpQOT0JLo8powqg%3D%3D&as_fid=6cNwtbAuA_lqiqDI3md2

²⁰ An MMO licence is not required for the deposit of any shellfish, trestle, raft, cage, pole, rope, marker or line in the course of shellfish propagation or cultivation provided the following conditions are met:

- Notice of the intention to carry out the activity must be given to MMO before the activity is carried out. Information on how to provide this notice can be found on the make a marine licence application page (<https://www.gov.uk/guidance/make-a-marine-licence-application>)
- The deposit must not be made for the purposes of disposal
- The deposit must not be made for the purpose of creating, altering or maintaining an artificial reef
- The deposit must not cause or be likely to cause obstruction or danger to navigation

A licence is also not required for dredging or removal activities carried out for the purpose of moving shellfish within the sea in the course of its propagation or cultivation. (<https://www.gov.uk/guidance/do-i-need-a-marine-licence>)

²¹ The Crown Estate - <http://www.thecrownestate.co.uk/>

²² <http://www.legislation.gov.uk/ukpga/1990/8/introduction>

²³ <http://www.legislation.gov.uk/ukpga/1997/8/contents>

5. Several and Regulating Orders in the UK

There are currently 24 registered Several and Regulation Orders around the UK (Figure 6).

- **England** Twelve (Excluding the Dee) (Note: the latest English Regulating Order 'The Fal Fishery Order 2016'²⁴ came in to force in July 2016)
- **Wales** = Six (Including the Dee)
- **Scotland** = Six (Note, there is also a Regulating Order currently being applied for in the Clyde²⁵ for nephrops, King and Queen scallop)

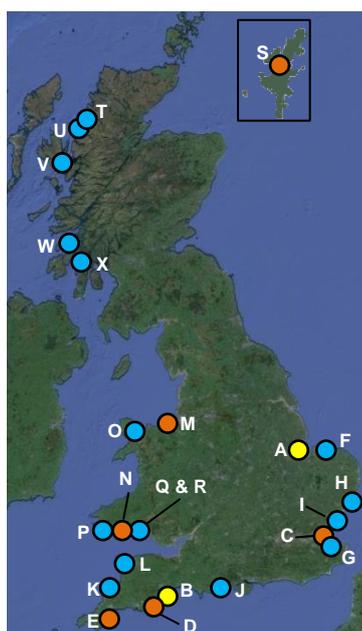


Figure 6. Locations of Registered Several and Regulation (and Hybrid) Orders Across the UK

● 16 x Several Order
 ● 6 x Regulating Order
 ● 2 x Hybrid Order
 (Not to scale)

Table 1 lists the official names of each type of Order found across the UK²⁶; the letter assigned to each corresponds to the letters in Figure 6. Appendices 4, 5 and 6 provide more detailed maps of English, Welsh and Scottish SROs respectively.

Table 1. Registered Several and Regulation (and Hybrid) Orders Across the UK					
	Order Type	Letter in Figure 6	Order Name	No	Total
ENGLAND	Hybrid	A	The Wash Fishery Order 1992	2	12
		B	The Waddeton Fishery Order 2001		
	Regulating	C	The Thames Estuary Cockle Fishery Order 1994	3	
		D	The River Teign Mussel Fishery Order 1966		
			The River Teign Mussel Fishery (Variation) (Oysters) Order 1996		
		E	The Fal Fishery Order 2016		
	Several	F	The Blakeney Harbour Mussel Fishery Order 1966	7	
		G	The River Roach Oyster Fishery Order 2013		
		H	The Horsey Island Oyster Fishery Order 1963		
		I	The Tollesbury and Mersea (Blackwater Fishery) Order 1999		
		J	The Poole Harbour Fishery Order 2015		
K		The River Camel Mussel and Oyster Fishery Order 2013			
L		The River Taw Mussel Fishery Order 1962			
WALES	Regulating	M	The Dee Estuary Cockle Fishery Order 2008	2	6
		N	The Burry Inlet Cockle Fishery Order 1965		
	Several	O	The Menai Strait Oyster and Mussel Fishery Order 1962	4	
			The Menai Strait Oyster and Mussel Fishery (Amendment) Order 1964		
		P	The Lydstep Haven Mussel Fishery Order 2013		
		Q	The Swansea Bay (Thomas Shellfish Limited) Mussel Fishery Order 2012		
R	The Mumbles Oyster Fishery Order 2013				
SCOTLAND	Regulating	S	The Shetland Islands Regulated Fishery Order 2012	1	6
		T	The Little Loch Broom Scallops Several Fishery Order 2015		
	Several	U	The Loch Ewe, Isle of Ewe, Wester Ross, Scallops Several Fishery Order 2015	5	
		V	The Loch Sligachan, Isle of Skye, Scallops Several Fishery Order 2013		
		W	The Loch Crinan Scallops Several Fishery Order 2005		
		X	The Loch Caolisport Scallops Several Fishery (Scotland) Order 2002		

Northern Ireland has a total of 46 private shellfish farms covering 54 licensed sites (one being land-based).

²⁴ Cornwall IFCA -

https://secure.toolkitfiles.co.uk/clients/17099/sitedata/Fal_Fishery/Fal%20Fishery%20Order%20Management%20Plan.pdf

²⁵ Sustainable Inshore Fisheries Trust - <http://www.sift-uk.org/WhatWeDo.aspx>

²⁶ Information provided by CEFAS and Marine Scotland, 2016

6. Contribution of Several and Regulating Orders to UK Shellfish Production, Markets and Trade

In England and Wales, Defra have an opportunity to review the activities within Several and Regulating Orders to ensure that they are being utilised effectively. The submission of annual returns by the grantee of the Order provides them with an opportunity to demonstrate this. The returns include data on economic value and business activities as well as specific details of the management of the Several or Regulating Order and its production levels.

Orders contribute significant volumes to UK shellfish production. For instance, 2012 Several and Regulating Order returns for England (but including the 'Welsh' Dee river basin) reveal 11,549 tonnes of shellfish (with first sale value of £12,721,077) were derived from areas under the jurisdiction of Orders²⁷. Appendix 3 provides English SRO data which has been broken down by river basin district (to avoid identification of individual businesses) and by species. Unfortunately there are no equivalent figures available for Scotland.

Although the total tonnages and values of Several and Regulating Order derived shellfish over the years 2008 – 2014 as detailed in Appendix 3 are significant, these do not include Welsh production (apart from the Dee) nor that from Scotland.

Submission of SRO annual returns has a poor history, and therefore an incomplete picture of what is actually happening appears to be presented. Subsequently, figures are likely to be a gross underestimate of the total production and the overall contribution made by licensed Order operations.

In England and Wales Defra is working with Cefas to identify ways to improve how associated information is collected and collated from Several and Regulating Order areas; this will greatly improve understanding of their specific contributions. This is discussed more in Section 9.

UK domestic market demand for shellfish is met though both domestic production and imports. The majority of UK consumer demand for shellfish is met through both major retailer sales and the food service sector, which supplies restaurants and hotels, etc. Smaller local sales whether year-round or at more specific events such as seafood festivals, e.g. the Whitstable and Falmouth Oyster Festivals, also play an important role in satisfying more geographically specific demand. The main export markets for UK seafood are France, Spain, Italy, the Irish Republic and the USA, which between them accounted for around 50% (by value) of the seafood exported from the UK²⁸.

Further to the financial contribution that Several and Regulating Orders make to the UK economy (through first and subsequent sales) they provide benefits to fragile fringe coastal economies (e.g. through local employment), and can have important and positive social and community effects.

²⁷ Vogt, F., Morgan, O. and Kershaw, S., 2016. Classified Bivalve Mollusc Shellfishery Production and Landings in England: Data review in support of WFD River Basin Management Planning. Cefas, 20/04/2016

²⁸ Seavision: figures on UK shellfish exports - <http://www.seavision.org.uk/about/fisheries-aquaculture>

7. Case Studies: Users of Several, Regulating and Hybrid Orders

Case studies from across the UK (Figure 7) are presented in the following section to highlight the importance that Several and Regulating Orders can bring to today's individual shellfish producers and regulating bodies, e.g. IFCA's).

The case studies present a range of shellfish operations and scales from around the UK. Narrative descriptions (gathered through field visits and interviews) illustrate the current experience and viewpoint of users in regards to the operational and management perspectives of their respective Several, Regulating and Hybrid Order.

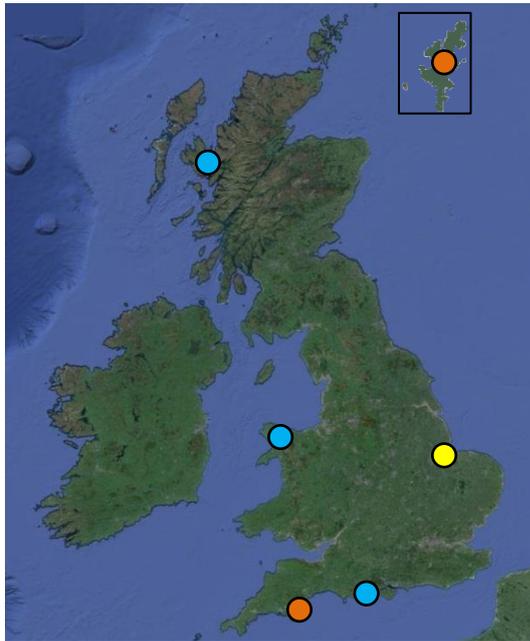


Figure 7. Several and Regulating (and Hybrid) Order Case Study Locations

Six case studies are presented:

- Several Order - one each from England, Scotland and Wales
Case studies *I - III*
- Regulating Order - one each from England and Scotland
Case studies *IV and V*
- Hybrid Order - one from England
Case Study *VI*

7.1 Several Order Case Studies

1. Isle of Skye, West Coast, Scotland

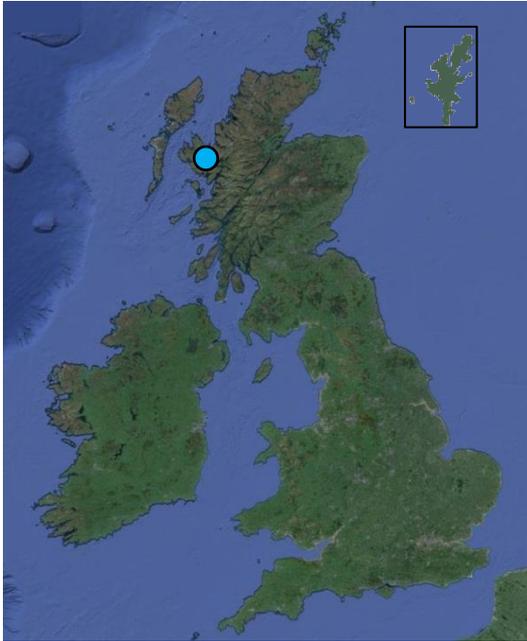


Figure 8. Loch Sligachan, Isle of Skye

David Oakes started his Scottish scallop farming venture on the Isle of Skye on the west coast of Scotland (Figure 8) in late 1987.

Throughout the 1990s David trialed scallop cultivation using lanterns and longlines, but after familiarising himself with Several Orders he decided to apply for a Several Order and cultivate his scallops on the seabed, the product of which supports Sconser Scallops; a sustainable family business that employs four people on a part-time basis.

The first Loch Sligachan, Isle of Skye, Scallops Several Fishery (Scotland) Order²⁹ (Figure 9) was granted in 1997 for fifteen years, and was re-issued in 2013 for another fifteen.

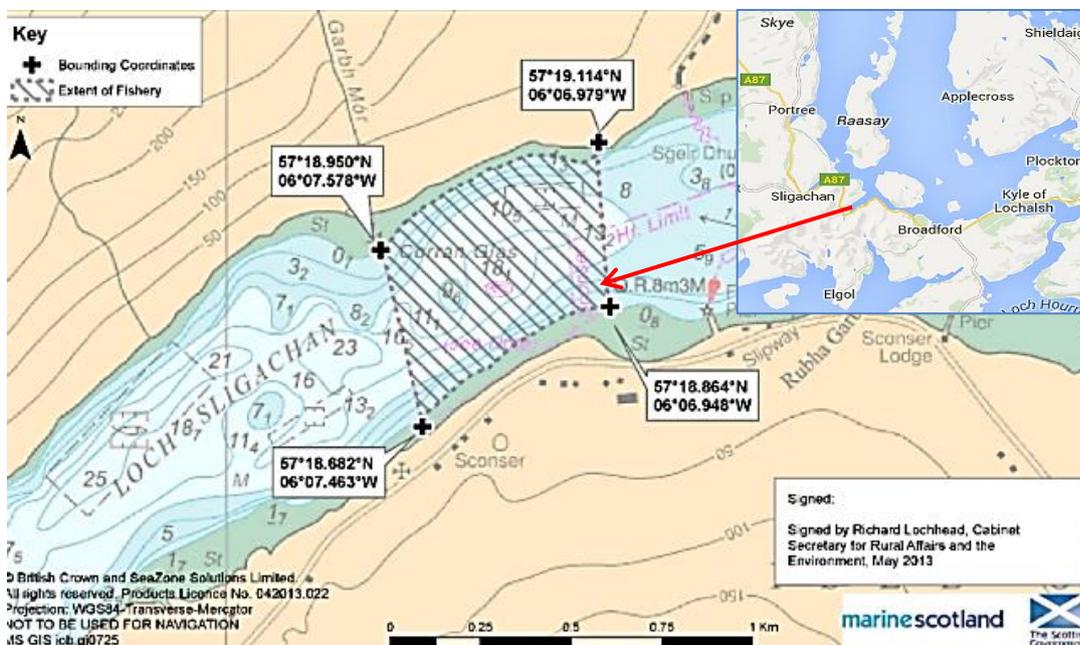


Figure 9. Sconser Scallops Several Order
(<http://www.sconser-scallops.co.uk/SeveralOrderDraftStatutoryInstrument.html>)

Although scallop cultivation period in Scotland is usually between 4-5 years, Sconser growth and production trials has led them to a seven year cultivation time which massively increases their cultivated scallops fecundity and production ('four to a kilo')

²⁹ <http://www.legislation.gov.uk/ukxi/1998/2640/made/data.pdf>

as opposed to ‘five or six a kilo’ in marketing terms). Sconser now use natural regeneration for stocking the shellfishery, as opposed to their initial technique of catching, cultivating and re-laying spat in the Several Order when the growing scallops reached 50mm+.

All Sconser scallops are granted protection from dredging and hand-diving is the only collection method allowed in the Order (Figure 10). The scallops are currently sold to local markets and restaurants (Figures 11 and 12).



Figure 10. David Oakes, following a scallop dive
(© Alison Oakes)



Figure 11. Sconser hand-dived scallops
(© Alison Oakes)



Figure 12. Scallops delivery to a local restaurant
(© Alison Oakes)

David Oakes feels his Several Order has not only allowed but increased natural recruitment in his leased area, but has also enhanced the wild scallop population and the public fishery beyond his Several Order. According to David, *“As scallops get older they grow more slowly, so having the Several Order in place has really enabled us to allow them to reach this size and associated fecundity level. However, it could also leave us with a lot of investment in stock to which we would have no legal right should the Order not be renewed.”*

David considers the length and security of the Loch Sligachan Several Order as being instrumental to the success of developing the Sconser Scallops business and ensuring a reliable, quality product over the long term.

II. Menai Strait, North wales

The Menai Strait is location between mainland Wales and the Island of Anglesey in the north west of the country (Figure 13).

The Several Order in Menai Strait East goes back to 1962 when a 60 year Hybrid Order was established to encompass all the areas not included in the local hand-worked fishery. The initial lease for the Order was held by the Severnside Oyster Company who produced around 2,000-3,000 tonnes of mussels per year before the lease was taken over by the Owen family in 1977.

Shellfish producer Kim Mould established the company Myti Mussels Limited in 1981, and worked the Order area along with the Owens until 1987. Myti Mussels then took over the whole lease and worked the beds alone until the involvement of two more companies in the mid-1990s; Deepdock Ltd. of the Wilson family in 1993 and Extramussel Ltd. of Trevor Jones in 1995 (Figure 14).

Along with Ogwen Mussel Ltd. (Holyhead, Anglesey) these companies now form Bangor Mussel Producers Ltd. (BMPL).

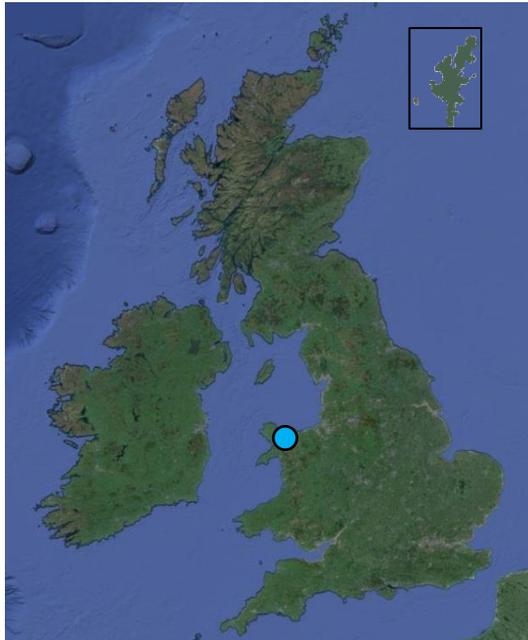


Figure 14. (L-R) Trevor Owen, Kim Mould, and James Wilson of Bangor Mussel Producers Limited (© R. Whiteley)

Figure 13. Menai Strait, North Wales

When the North Western and North Wales Sea Fisheries Committee disbanded in 2009, English waters fell under the jurisdiction of the new North Western Inshore Fisheries and Conservation Authority (NWIFCA) and Welsh waters came under the Welsh Government. As Welsh Government cannot be both grantor and grantee of the Order, BMPL consorted with Welsh Government, Natural Resources Wales, the University of Wales Bangor, and set up the Menai Strait Fishery Order Management Association (MSFOMA³⁰). The Menai Strait East Several Order³¹ (Figure 15) is now granted to the association, and is managed through collaborative effort.

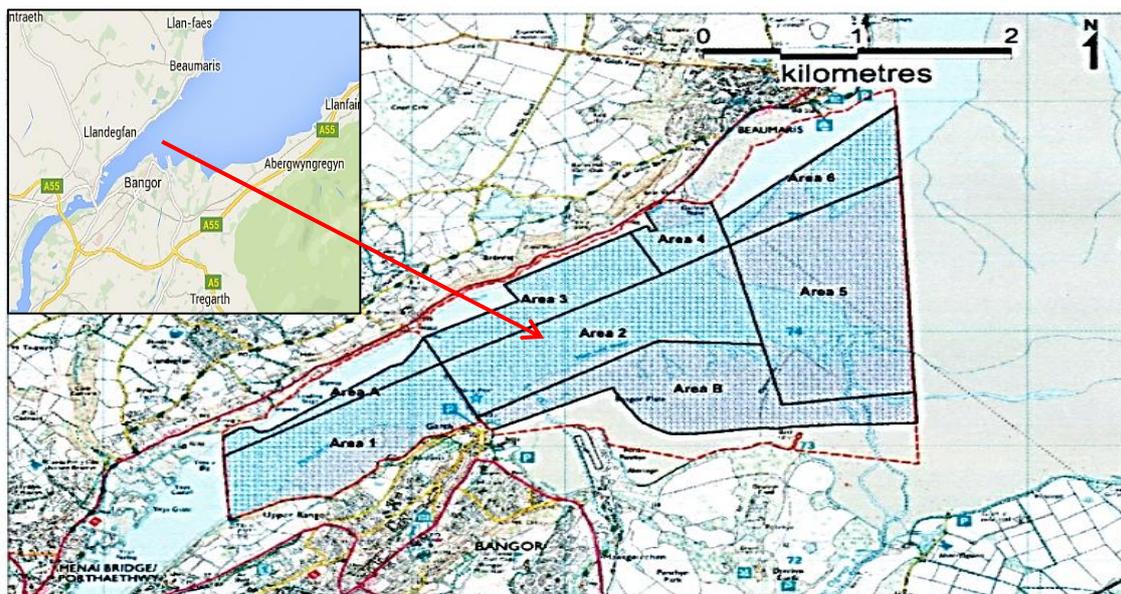


Figure 15. The Menai Strait East Mussel Fishery Order (<http://www.msfoma.org>)

³⁰ MSFOMA - <http://www.msfoma.org/>

³¹ <http://www.msfoma.org/wp-content/uploads/2011/04/Menai-Strait-1964-Amending-Order.pdf>

The shellfish production in Menai is a capture-based aquaculture venture reliant on wild seed mussel or ‘spat’ which is sourced from various locations across England and Wales, including Morecambe Bay, the Dee estuary, Caernarfon, and South Wales. Mussel seed is initially laid in an intertidal area of the Menai Strait to grow on for the first 1 – 2 years. Following this initial period of cultivation purpose-built vessels specifically designed to skim the mussels off the seabed are used to re-lay the stock in exact locations across the Several Order (Figures 16 – 20). Mussels; re-laying for a further six months helps to thin out the shell and increase the meat yield as the mussels grow to market size.



Figure 16. *Lottie Holly* (built 2012)
[\(http://worldmaritimeneews.com/archives/146009/lottie-holly-pretty-in-pink/\)](http://worldmaritimeneews.com/archives/146009/lottie-holly-pretty-in-pink/)



Figure 17. *Valente* (built 2003)
 (© R. Whiteley)



Figure 19. *Valente* lifting dredged Menai Strait mussel (© R. Whiteley)



Figure 18. *Valente* with mussel dredge equipment (© R. Whiteley)



Figure 20. Dredged mussel on board the *Valente* (© R. Whiteley)

Mussels from the Menai Several Order are harvested between October and March each year. Average annual production is around 10,000 tonnes, with first-sales generating between £5 million and £10 million. The mussels are mainly exported to Europe (particularly Holland) but BMPL are looking towards the UK market for future expansion. Menai mussels attained Marine Stewardship Council accreditation as an ‘Enhanced Fishery’³² in 2010 (re-certified in May 2016)³³, and have since been able to label the products from BMPL with the sustainable MSC fisheries logo.

The Bangor Mussel Producers Ltd case study is an excellent example of what can be achieved within a Several Order. The time period of the Order and level of protection that it has bestowed has greatly assisted the five-fold increase in annual shellfish production since the 1960s.

The security of tenure and the production levels which have been generated within the Order has allowed successful business planning, and has supported significant capital investment in vessels and equipment. This demonstrates not only the past

³² ‘Enhanced fisheries and the MSC’ (<https://www.msc.org/get-certified/fisheries/eligible-fisheries>)

³³ <https://www.msc.org/track-a-fishery/fisheries-in-the-program/certified/north-east-atlantic/north-menai-strait-mussel>

successes of BMPL, but send out a clear message of intent for future, long-term shellfish production in the Menai Strait.

III. Poole Harbour, Dorset, Southern England



Figure 21. Poole Harbour, Dorset

Poole Harbour is located on the south coast of England, in the county of Dorset (Figure 21). There is a long history of fisheries management in Poole Harbour; from 1915, right up to present day with the latest Poole Fishery Order 2015³⁴. This is a 20-year Several Order that allows the Southern IFCA (SIFCA) to lease ground for shellfish production (with shellfish species as defined in the Marine and Coastal Access Act 2009 as '*crustaceans and molluscs of any kind*').

The Order covers 838 ha and currently has 31 beds leased within it (Figure 22). These leases are currently divided by nine different individuals/companies, and provide a range of local employment. The leases include large-scale mussel, cockle, and Pacific oyster production (Figures 23-26).

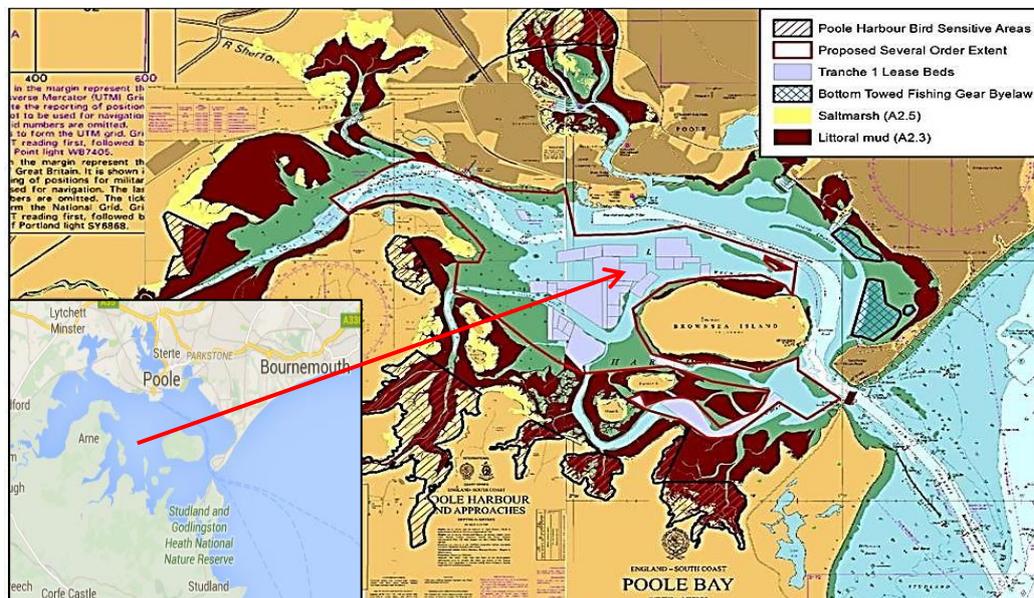


Figure 22. Poole Harbour Several Order 2015

(https://secure.toolkitfiles.co.uk/clients/25364/sitedata/files/PHSO2015_Management%20Plan.pdf)

³⁴ The Poole Harbour Fishery Order 2015 - <http://www.legislation.gov.uk/ukxi/2015/1346/introduction/made>



Figure 23. Shellfish harvester used by Othniel Oysters in Poole Harbour
(© Southern IFCA)



Figure 24. Shellfish harvester used by Othniel Oysters in Poole Harbour
(© Gary Wordsworth)



Figure 26. Mussel harvesting in Poole Harbour
(© Southern IFCA)



Figure 25. Pacific oysters from Poole Harbour
(© Gary Wordsworth)

In 2014/15 shellfish production figures for Poole Harbour were around 700 tonnes; with two thirds of production being Pacific oysters and mussels (~470 tonnes combined).

Other shellfish production in Poole Harbour is based on the non-leased, public bivalve fishery, mainly focused on dredging for cockles and clams, Permits determine the conditions for operating in this public fishery and under a number of categories including catch restrictions and reporting, gear types, gear construction and restrictions, spatial and temporal restriction, and the fitting of specified equipment to vessels.

Poole Harbour previously utilised a Regulating Order within a Hybrid Order to manage the non-leased parts of the area. The current Poole Harbour Several Order now uses byelaws to manage these areas. During deliberations within the SIFCA on the best management strategy the consensus was that managing the Regulating Order aspect of the fishery through byelaws and the shellfish culture and production leases through Several Order meant the Harbour could continue to be managed as a whole (including its conservation aspects as a Special Protection Area (SPA³⁵)), but with an added level of flexibility.

The current Poole Several Order covers all areas that do and could potentially support aquaculture— including currently un-utilised ones; avoiding areas mapped out as having sensitive habitat, as well as areas with other key uses including private ownership and navigation.

In setting up the new Order, SIFCA consulted with industry and associated stakeholders 18 months in advance of its application. This enabled stakeholders to shape byelaw details and helped the IFCA iron-out potential issues or concerns. Consultation was widely advertised and a number of meetings and drop-in sessions

³⁵ Special Protection Areas (SPAs) - <http://jncc.defra.gov.uk/page-162>

were held. All engagement invited feedback, and the comments and results generated were incorporated into decisions guided by a working group of key authority members. The use of fishery Orders in Poole Harbour dates back a hundred years. This has engrained in local stakeholders not only a familiarity with the processes associated in establishing Orders, but a willingness to engage. This has enabled shellfish farming to remain strong throughout the process, and new entrants want to join the Poole industry.

According to Sarah Birchenough, Inshore Fisheries and Conservation Officer for SIFCA, *“The security offered by the 20 year Several Order has really helped the lease holders invest in their operations and secure outside investment. Under the new Order, lease holders are charged per ha of ground leased enabling the IFCA to recover the cost of establishing and managing the Order (including surveys) – again ensuring its longer term success.”*

7.2 Regulating Order Case Studies

IV. River Teign, Devon, South West England

The River Teign is located in Devon, southern England (Figure 28).

The Teign Regulating Order³⁶ (Figure 29) was set up in 1966 by a conglomerate of fishers known as the ‘Musselmen Society’; 14 men all of whom worked the beds and had a vision for a long-term fishery. Unlike most Regulating Orders the Teign Order was given directly to the society as opposed to the local Sea Fisheries Committee, and was granted for a period of 60 years.



Figure 28. Teign, Devon



Figure 29. River Teign Regulating Order (<https://www.cefas.co.uk/media/41402/the-river-teign-mussel-fishery-variation-oysters-order-1996.jpg>)

³⁶ The River Teign Mussel Fishery Order 1966 - <http://www.legislation.gov.uk/uk/si/1966/792/contents/made>

Of the original Musselmen only Barry Sessions remains, working the Order through his company, River Teign Shellfish Ltd.

The 156 ha Order was originally set up specifically for mussels but was amended in the 1980s to include Pacific oysters which were becoming a more commercially viable species at the time. Currently the mussel lays operate year round with some 2 tonnes being harvested per week, and the trestle-grown Pacific oysters yield a saleable harvest of some 500,000 individuals per year (Figures 30 -32).



Figure 30. Dredging barge from the River Teign Regulating Order (© River Teign Shellfish)



Figure 31. Grading Pacific oysters in the River Teign Regulating Order (© River Teign Shellfish)



Figure 32. The River Teign Pacific oyster trestles at low tide (© River Teign Shellfish)



Figure 33. Pacific oysters from the River Teign Regulating Order (© River Teign Shellfish)



Figure 34. Bagging the River Teign mussels (© River Teign Shellfish)



Figure 35. Depurating River Teign Pacific oysters (L) and mussels (R) (© River Teign Shellfish)

River Teign Shellfish source their own seed for both species they culture, and actively manage the stock protected under the Order. Harvested product is depurated, packaged and sold directly to wholesalers as well as local businesses such as pubs and restaurants (Figures 33 – 35). River Teign Shellfish Ltd is a small business with a long history of sustainable production. According to Barry Sessions, *“The success of the fishery is directly related to the security of tenure associated with the Order. It has meant I’ve been able to work the beds sustainably for the past 50 years”*.

The prolonged time period over which this Order has been in place has enabled the necessary investment in the operation, and since the Order was first granted it has been especially important in maintaining the fishery and shellfish cultivation in the face of increased river usage and non-shellfish development interest.

V. The Shetland Islands

The Shetland Islands are a temperate maritime archipelago lying in the North Atlantic, some 200km north of mainland Scotland (Figure 36).

The Shetland Islands Regulated Fishery (Scotland) Order³⁷ (Figure 37) is a Regulating Order originally proposed in 1998 and has been subsequently updated. The latest 2012 Order came in to force in early 2013 and will last until 2028. The Order regulates the fishing of various shellfish i.e. oysters, mussels, cockles, clams, lobsters, King and Queen scallops, crabs, razorshells, and whelks.

The shellfish industry is an important contributor to Shetland, and in 2015 1,800 tonnes of shellfish were landed (with less than 1% from non-Shetland boats), worth £3.6 million. Shellfish are mainly exported to Europe, but some brown crab product goes to large processors (e.g. John West), and a proportion of the scallops are transported to the UK mainland.

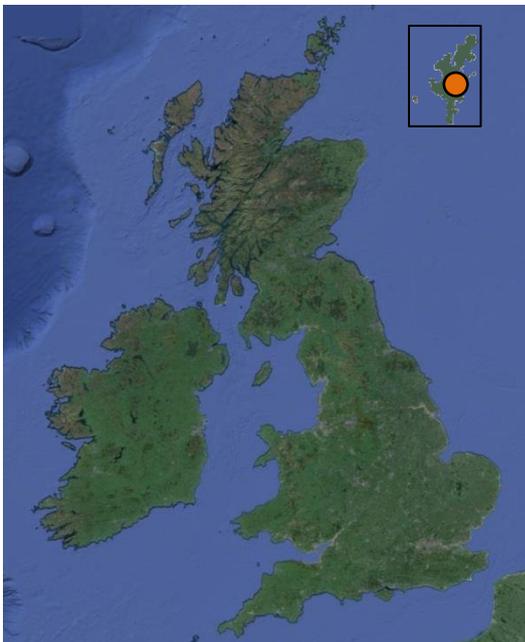


Figure 36. The Shetland Islands

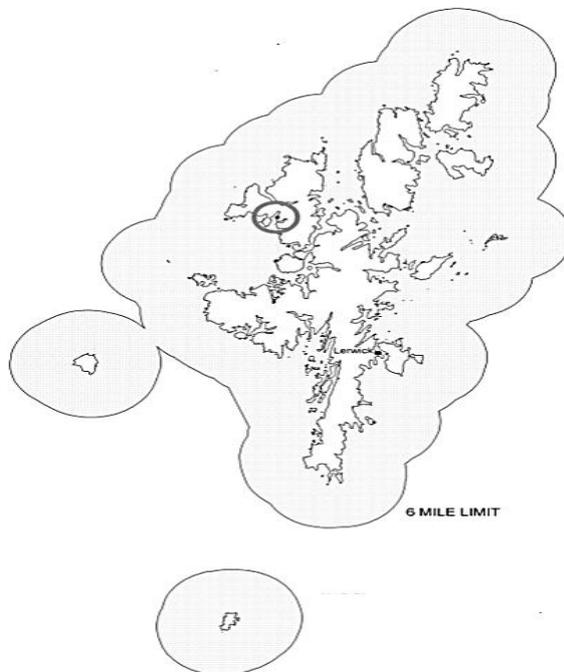


Figure 37. Shetland Islands Regulated Fishery (Scotland) Order

<http://www.legislation.gov.uk/ssi/2012/348/made>

The legal right to manage the Order has been granted to the Shetland Shellfish Management Organisation (SSMO)³⁸. Established in 2000 as a non-profit making company and with a broad constituency (including representatives of local fisherman's organisations, [island] council, fish processing association, local fisheries college and the statutory conservation authority in Scotland), the SSMO is to maintain and improve commercial shellfisheries out to the 6nm limit³⁹.

³⁷ The Shetland Islands Regulated Fishery (Scotland) Order 2012 - <http://faolex.fao.org/docs/pdf/uk121841.pdf>

³⁸ <http://www.ssmo.co.uk/>

³⁹ Symes, D. and Phillipson, J., 2002. *Inshore Fisheries Management*. Kluwer Academic Publishers, 2002

The granting of the Order and the powers it confers has enabled innovative management (i.e. to impose restrictions and regulations, issue licenses, and the right to set tolls), and in doing so has created a strong tool to enabling the SSMO to maintain sustainable and well managed shellfish fisheries. The success of Shetland's shellfisheries under this Order was highlighted in 2012 when the SSMO secured MSC accreditation for its scallops, brown crab, and velvet crab fisheries⁴⁰.

Managing a fishery is no easy task, especially in such a remote and independent community as the Shetland. Nevertheless, the Shetland Fishermen's Association (SFA) meeting in June 2016 clearly demonstrated their confidence in the Regulating Order, and its management. Leslie Tait, SFA Chairman stated, *"Last night's meeting reaffirmed the SFA's role in ensuring that we support the SSMO in delivering for the needs of Shetland's substantial inshore shellfish fishery...there is as much need today for this important local regulation as there was when the SFA pressed for the formation of the regulating order back in the 1990's"*.

The Regulating Order in Shetland and its management and implementation through the SSMO appears to be an excellent example of a strong Regulating Order. Ian Walterson, SSMO Chairman has said, *"The Regulating Order allows local management of an inshore fishery and brings protection and security to a sustainable resource which is of great benefit to a remote island group and its communities."*

7.3 Hybrid Order Case Study

VI. The Wash, Eastern England

The Wash is a square-mouthed sheltered bay and estuary (among the largest in the UK) on the northwest margin of East Anglia on the east coast of England (Figure 38). The Wash Fishery Order⁴¹ (WFO) (Figure 39) is a 30 year Hybrid Order which was first granted in 1992 to the then Eastern Sea Fisheries Joint Committee (ESFJC). It was created to provide local management of the oyster, mussel, cockle, clams, and king and queen scallops (as prescribed species) within the Wash estuary embayment.

The Marine and Coastal Access Act 2009 (Transitional and Saving Provisions) Order 2011 came into force in 2011 and amended the 1992 WFO; making the Eastern Inshore Fisheries Conservation Authority (EIFCA) the Order grantee in place of the dis-established ESFJC Order.

The WFO is due to expire in 2022, at which point the EIFCA will review how any revisions (potentially alongside bylaws), will best suit future management of The Wash site.

⁴⁰ MSC certification for Shetland fisheries - <https://www.msc.org/track-a-fishery/fisheries-in-the-program/certified/north-east-atlantic/shetland-inshore-crab-lobster-and-scallop>

⁴¹The Wash Fishery Order 1992 EIFCA - <http://www.eifca.gov.uk/documents/wfo1992%20a.pdf>
<http://www.eifca.gov.uk/documents/wfo1992%20a.pdf>

The two aspects of the WFO are the Several fishery (shellfish lays), and the Regulated fishery. The production returns for the WFO in 2013 were 3,751 tonnes of cockles landed, with a value of around £1.6 million; and 892 tonnes of mussels landed, with a value of £490,000.

The Several Fishery (Lays)

The WFO enables the EIFCA to create Several Orders within The Wash and then grant these exclusive fishing rights to individuals, whom are then referred to as 'Lay Holders'. The EIFCA collects lay rents on behalf of The Crown Estate, and the Authority byelaws continue to apply to the lays.

The current lays are used for mussel cultivation only; with around 50 leases covering an area totalling 250 ha (Figures 40 and 41). There were historic native oyster lays but these have since disappeared through a mixture of market forces and environmental factors.

The maximum permitted individual lease area in the current Order is 10 ha, but this could be increased in the future if Ministerial consent is sought and obtained. Mussel seed is sourced from within the Wash when stocks are available in the wider district (via a derogation to dredge), but is otherwise brought in from outside the area, which may also require some exemptions. Once laid and grown, the mussel is generally harvested via a small dredge.

There is a steady demand for leases with around 38 people currently on the waiting list. The application process is as follows:

1. The individual applies for lease/entitlement under rules prescribed by the WFO
2. If approved, the EIFCA and the applicant will survey the area for suitability. Leases are not allowed in areas with natural cockle and/or mussel stocks as it would remove that site from the public fishery

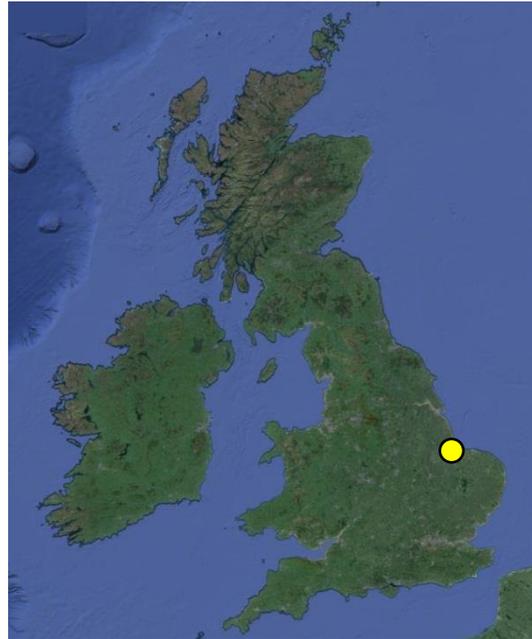


Figure 38. The Wash

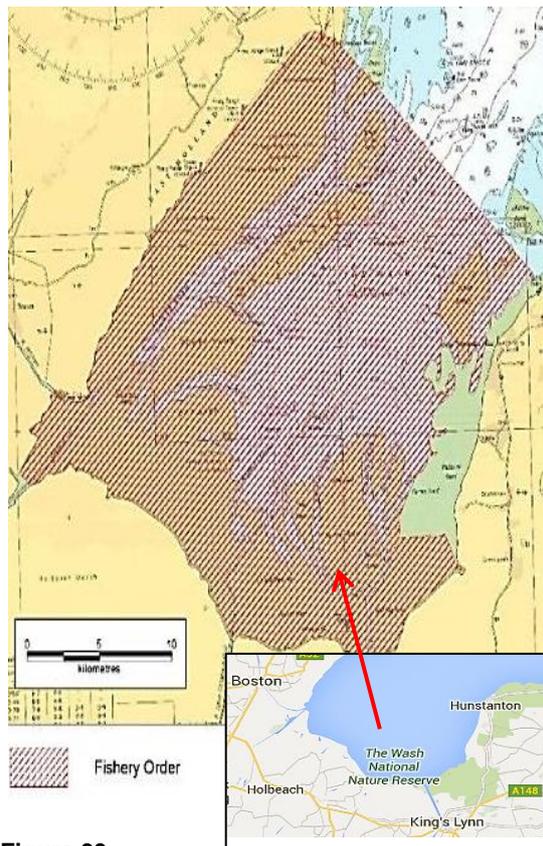


Figure 39. Wash Fishery Order 1992 (<https://www.cefas.co.uk/media/41393/the-wash-fishery-Order-1992-ukho.jpg>)

3. If the area in question is determined as suitable then the EIFCA undertakes a biotope survey (looking at sediment type and conspicuous epifauna) which then feeds in to the Habitat Regulations Assessment (HRA) (see 4)
4. The HRA is undertaken by the IFCA. (A HRA is the environmental assessment produced for any plan or project occurring in a protected site as determined by The Conservation of Habitats and Species Regulations 2010⁴²)
5. If the application passes the HRA, it goes out to public consultation. This consultation includes the other lease holders. If successful it is then approved

The leases currently have a 10 year limit, but any leases issued since 2012 have all been limited until 2022 and will then be revised along with the WFO.



Figure 40. Outlook over The Wash at low tide (© EIFCA)



Figure 41. Mussels lay in The Wash (© EIFCA)



Figure 42. Cockles in The Wash (© EIFCA)

The EIFCA believe there are some benefits but also some important considerations when using a Hybrid Order as the management tool for the WFO. In relation to Several Orders, Judith Stoutt, Senior Marine Environment Officer, EIFCA states, *“Applying for a Several Order lease as part of the Hybrid Order requires early engagement with the IFCA and we can advise early on any likely issues – environmental or otherwise.”*

The Regulated Fishery

The WFO enables the EIFCA to develop and enforce management measures and regulations to ensure that stocks of the prescribed species are fished in an appropriate, sustainable and environmentally-compliant manner. This is done by setting size limits, and annual and seasonal catch limits based on stock surveys, specifying which shellfish beds may be targeted in a given season, and by limiting the number of operators licensed to fish.

The public fishery has mainly centred on cockles in recent years (Figure 42) as natural mussel stocks and seed have been low in numbers. The cockles are regularly hand-worked and also “prop-washed” (whereby cockles are dislodged from the bed by the wash from the propeller of a vessel circling around its anchor; for obvious environmental reasons this method requires adherence to a code of conduct). Around 2,000-3,000 tonnes of cockles are fished from The Wash each year, but at the time of writing (June 2016) a good spat settlement means there is the potential for a larger fishery later in 2016.

⁴² The Conservation of Habitats and Species Regulations 2010 - <http://jncc.defra.gov.uk/page-1379>

The Order has provided a strong overall tool to coherently manage the fishery. It should be pointed out that prior to the establishment of The Wash Fishery Orders there were frequent conflicts of interest between individuals and groups, and harvesting methods used. The advent of the Order led to significant attempts by the former Sea Fisheries Committee (SFC), and latterly by the IFCA, to develop and enhance consultation between managers and industry stakeholders on assessing, allocating, and administering the fisheries. To achieve this, the EIFCA has invested in the vessels and manpower required to survey the stocks annually, and to monitor compliance with the fishery regulations.

Such surveying and monitoring is integral, not only to the interests of the catchers but also to other stakeholders such as Natural England who hold concerns about the impacts of fishing on the sea bed, and the maintenance of sufficient bivalve biomass to support the large wader populations in the embayment. Furthermore, WFO management policies have been agreed through collaboration between the former SFC, Natural England and industry stakeholders, which are designed to align management parameters for these fisheries with the conservation objectives for the Wash.

8. The Outlook for Several and Regulating Orders in UK Shellfish Production

Several and Regulation Orders have played pivotal roles for the shellfish producers and shellfish production areas as described in the previous case studies. These Orders have offered a mechanism for long-term development and coherent management, both by individual practitioners and IFCA regulatory bodies. SROs can continue to offer such mechanisms, but they must work with the current regulatory landscape - in particular they must be considered alongside the use of bylaws for inshore fisheries management.

During consultations and discussions with shellfish stakeholders views on the advantages and disadvantages of Several and Regulating Orders were captured and these are presented below.

8.1 Several Orders

Advantages

By far the most valuable aspect of a Several Order is the security of tenure it offers, especially in relation to bottom-laid shellfish stock. Shellfish producers regard leases of a significant time period as essential to enable the level of investment necessary to secure effective and financially viable businesses; especially as an operation itself can take years to develop. In fact this was deemed as critical to the success of a business in terms of the necessary investment in the stock, infrastructure, staff; and general development. The minimum term recommended for a Several Order by the practitioners who were approached for this report was 15 years, with 20-30 years being considered the optimum. Five-year trials may also be suitable to identify potential shellfish production areas.

The long-term aspect of a Several Order, coupled with the responsibility of ownership, brings the expectation of an inherently sustainable approach to the production of shellfish within the Order area. The Management Plan should be designed to capture how such sustainable approaches can be assessed and demonstrated, and the successful attainment of MSC certification by Bangor Mussel producers (case study II) is an excellent example of where a Several Order has been central to sustainable shellfish production.

In situations where individual Several Orders are leased as part of a Hybrid Order (whereby the management structure and procedures are already established) the Several Order lease application is administered locally rather than through central Government, thus reducing levels of process and bureaucracy. Applicants also have the opportunity to engage early with the IFCA who can advise on any likely issues – environmental or otherwise.

Disadvantages

At the primary level the current Several Order application process is widely perceived by the industry to be unclear, inefficient, protracted, and as putting a burden, even a potential barrier, on what is often likely to be an individual applying for the Order. Defra are currently planning to revise and update the application process for England and Wales, but at this stage it is not known when, or how extensive this revision will be.

When regarding Several Order leased as part of a Hybrid Order it does not require an applicant to provide a survey or other information as would be necessary were they to apply for an individual Several Order. This supporting information is supplied by the IFCA. From an IFCA perspective, the associated time and cost commitments can therefore be high and they may not be able to fully recover these costs.

A major factor that needs to be considered when assessing the potential for expanding the UK portfolio of Several Orders, in English, Welsh and Scottish waters, is the availability of appropriate new areas for shellfish production.

Identifying new sites must take in to account many factors, and many aspects of a potential new site need to be examined and clarified. At a basic level, various physical and environmental conditions all need to be suitable for a shellfish growth, but factors including access, current usage, designation status and protection (e.g. environmental), local water quality and the effects of both transient and long term pollution levels all need to be considered for an operation to succeed.

Where there are existing natural shellfisheries there are likely to be major objections to establishing Several Orders from fishermen who are excluded from the grounds in question. From that point of view, a mussel several order is more likely to be achievable on ground where there is no existing fishery.

The Shellfish Association of Great Britain (SAGB) highlights that industry and individual entrepreneurs have been left to identify sites for new operations, and that past attempts to formulate an for instance, an English aquaculture development plan or programme have not been matched by any serious attempts to develop site

identification with which to begin the process. The current Marine Plan Areas (MPAs)⁴³ now being drawn up around England by the MMO may help address this issue in terms of siting aquaculture production. However, despite MPAs goals and objectives, many see these MPAs as more constraint than opportunity focused, particularly in relation to aquaculture.

8.2 Regulating Orders

Advantages

Regulating Orders give a sense of local control, ownership, responsibility, and can create 'buy-in' from those involved. This is advantageous for IFCA/industry relationships, and for those seeking a secure future in supplying shellfish. Regulating Orders originate as a tool for management, but are invariably most successful when they create a collaborative co-management scenario based on buy-in and a mandate from the industry.

As with Several Orders, the long-term aspect of a Regulating Order brings the expectation of an inherently sustainable approach (especially environmentally) and the Management Plan should be designed to capture how such sustainable approaches can be assessed and demonstrated. A Regulating Order fishery/enhanced fishery may score well if it were to apply for sustainability-based certification, particularly on principles such as effective management⁴⁴. The Shetland case study (case study V), and the MSC accreditation attained for scallop, brown crab, and velvet crab fisheries managed under their Regulating Order demonstrates this very well.

Regulating Orders can also engender an enforcement perspective as in:

- a) The licence holders will ensure the necessary stock protection
- b) There should hopefully be fewer opportunistic, unknown elements in the fishery

Disadvantages

The sense of entitlement inherent in a Regulating Order may make management more difficult under a variety of scenarios e.g.:

- When licence holders are faced with reduced quotas when stocks are low (although since this problem can be foreseen it could be ameliorated in advance by adopting pre-agreed precautionary harvest control rules for low stock scenarios)
- When there is a large demand for a fixed number of licences, which means applicants will be waiting for extended periods;
- If rights are transferable from one holder to another individual

To manage shellfish stocks effectively stock surveys are necessary (annually or biennially as required). In England IFCA's must undertake shellfish surveys, for

⁴³ MMO, Marine Planning - <https://www.gov.uk/topic/planning-development/marine-planning>

⁴⁴ 'The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable' https://www.msc.org/documents/scheme-documents/msc-standards/MSC_environmental_standard_for_sustainable_fishing.pdf

example the EIFCA⁴⁵ requires roughly eight and six weeks to undertake The Wash cockle and mussel survey respectively). This entails significant IFCA budget and effort which it may pose cost-recovery problems from the industry, even where there is provision to do so.

8.3 Byelaw Control

Advantages

Under Section 155 of the Marine and Coastal Access Act 2009 (MaCCA), IFCAs may make byelaws for the management of inshore fisheries for their respective districts^{46, 47}. These byelaws allow the IFCAs to limit, condition, and charge for licenses to utilise shellfisheries within their district. Byelaws apply to everyone in a district and can give a sense of fairness and equality to all stakeholders; exceptions might occur where not all can access a limited number of permits in a fishery, but the selection criteria should be consistent. A statutory equivalent in Scotland is the five new Regional Inshore Fisheries Groups (RIFGs).

However in Wales and Northern Ireland, which do not have IFCAs or a statutory equivalent, the same byelaw creating considerations would need to be assessed more centrally.

Byelaws effectively provide the same level of control and management as a Regulating Order, albeit through a different mechanism. They are seen as a more flexible management tool compared to an Order in that the authority can review the permit conditions as required, and at each point consider the fishery, environmental, and enforcement aspects associated with it. Changing a byelaw is also considered to be a faster and more straightforward process than changing the details of an Order, and as such can be more easily re-defined if necessary; however both require very careful wording to avoid potential loopholes.

The use of byelaws alongside or in place of a Hybrid or Regulating Order is an important consideration for regulatory bodies and their stakeholders in order to ascertain which mechanism best suits their situation.

A recent example is the North Western IFCA, and their management plans for Morecambe Bay. NWIFCA initially focused on pursuing a Hybrid Order, but plans were re-evaluated after comparing the powers of the 1967 Act vs. byelaw making powers under the MaCCA (the comparison table developed is given in Appendix 7). The main aim of the NWIFCA's approach was to secure more sustainable fishing of cockles and mussel stocks – as opposed to the 'boom and bust' nature of these fisheries – with fair allocation of permits based on applicants past history/track record.

⁴⁵ <http://www.eastern-ifca.gov.uk/>

⁴⁶ Marine and Coastal Access Act 2009 - <http://www.legislation.gov.uk/ukpga/2009/23/section/153>

⁴⁷ Marine and Coastal Access Act 2009 - <http://www.legislation.gov.uk/ukpga/2009/23/section/155>

The resulting NWIFCA Byelaw 3 'Permit to fish for cockles and mussels' was put in place in 2012⁴⁸.

In short, the NWIFCA exercise highlighted some key issues in relation to a Hybrid Order. The MaCCA lacked power to grant private rights (i.e. Several Orders) however it did demonstrate that its bylaw provisions allowed for the effective regulations and restrictions as would be granted in a Regulating Order.

In addition the powers of the MaCCA also provided the IFCA with:

- Additional powers of associated investigation and monitoring
- Greater power over third-party rights
- Stronger emergency regulations

The MWIFCA now has a suite of Byelaws to help manage and protect its jurisdiction (see footnote 34).

Disadvantages

The permitting aspects of most byelaws are inherently restrictive, and without effective industry engagement and consideration of concerns this can potentially strain the relationship between an IFCA and stakeholders.

Byelaws have a geographical limitation; they can only be made within the IFCA district, whereas a Several or Regulating Order can be made anywhere within 6nm of the seashore.

9. Observations on the Future of Several and Regulating Orders

9.1 Annual Returns

Previously, annual shellfish production figures derived from Several and Regulating Order designations have not been collected consistently or stored in a readily-available/digitised manner. Furthermore there has been apparent under-reporting of production from some sites, and old records being held centrally in hard-copy only.

This situation has not allowed the full contribution of Orders to be meaningfully quantified and demonstrated in the context of overall shellfish production in the UK (i.e. in terms of shellfish quantities and/or value from respective Order sites).

The following steps are therefore being implemented by Defra:

- a. The associated Government departments ensure that the production figures are provided accurately and in detail each year (as a condition of the Order)
- b. Existing paper records are digitised, and up-dated with any additional information where possible
- c. All such records are to be stored centrally (by Defra or Cefas for England and Wales; Marine Scotland) and where appropriate made publically available

⁴⁸ North Western IFCA Byelaws - [http://www.nw-ifca.gov.uk/contents/images/Byelaws%20and%20application%20forms/NW%20IFCA%20byelaws%20\(Feb%202016\)%20with%20cover%20\(3\).pdf](http://www.nw-ifca.gov.uk/contents/images/Byelaws%20and%20application%20forms/NW%20IFCA%20byelaws%20(Feb%202016)%20with%20cover%20(3).pdf)

9.2 Procedure and Application

Industry widely perceives the current Several Order application process as unclear, inefficient, protracted, and applicants consider it 'overwhelming'. This situation is placing a significant burden, even a potential barrier, on individuals applying for an Order. The Shellfish Association of Great Britain (SAGB) considers that the application process has a "presumption of failure rather than success". What is needed is a much quicker process which will reduce the uncertainty of an application; turning it from a passive to an active process.

As mentioned previously, Defra are currently undertaking a review of the application and guidance procedure for Several and Regulating Orders in England and Wales, and matters highlighted in this report will hopefully be considered. The wider points and more strategic approach detailed below should also be considered by Defra in regards to future marine planning.

In Scotland, the centralised application procedure appears more straightforward as it is handled centrally by Marine Scotland, and they also undertake the associated environmental assessments. Part of Marine Scotland's Inshore Fisheries Strategy is to develop a fresh legislative framework⁴⁹ before the next parliament, and part of this could include a review of how the 1967 Act is implemented to make the Orders more accessible.

It is important that current and potential future Order holders and potential applicants feed any suggestions on ways to improve the process back to their respective Devolved Authorities.

9.3 Strategy

Thoughts from the SAGB

Consultation with the SAGB regarding the future of Several and Regulating Orders was undertaken, and thoughts focused on the utilisation of Orders for shellfish aquaculture. Their view is that the concept of establishing a development plan for aquaculture has been discussed several times without coming to fruition. Reasons for this include (in England at least) not only uncertainty over where new, suitable sites are likely to be available and whether they would have to fit into the marine planning process, but the complexity of the Several and Regulating Order application process as well as the longevity of Orders themselves.

The SAGB has made an initial attempt at identifying a process that should be developed, and propose the creation of a more strategic approach in the shape of a shellfish aquaculture; SROs play an important part. The plan is based around the steps listed below:

- A comprehensive review and SWOT analysis of existing Several and Regulating Order sites and operations

⁴⁹ Marine Scotland Inshore Fisheries Strategy - <http://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/InshoreFisheriesStrategy>

- A comprehensive coastal survey to identify sites where new or expanded operations are feasible.
- Determination of potential priorities for implementation at the most favourable sites
- Linked pre-planning and focused guidelines for completion of the consents required in a corresponding Several and Regulating Order application, in order to allow a faster-track completion of the full Order application
- Creation of a publicly available 'library of sites' to allow a prospective grantee to identify, select, and commence the completion of the Several Order application

These steps aim to create a more "positive presumption of likely success" when applying for a Several Order, and to provide scope for a partially completed 'off-the-shelf' Order application that reduces the time needed for approval, implementation, and any subsequent review and renewal.

The SAGB is firmly of the view that to create a viable shellfish business and stock management plan the minimum of any Several Order should not be less than 15 years, and that when an Order is granted there will be a presumption that after a suitable period of progress (i.e. unless there are negative developments) it will be open for fast-track extension or renewal.

Critical to all this is the need to assess potential sites as in their current use, and to then consult with those current users. Order applications often fail through objections, based on either competition for site use (including potential or perception of), and also a lack of understanding about what the development and its operation will result in. Early, pro-active, pre-consultation by the applicant regarding the proposed Order can raise and hopefully deal with any concerns, including potentially tailoring the development to best suit the site and its current uses.

Potential Orders must also take in to account and comply with MPA designations⁵⁰. The key protected environmental features that a shellfish development may impact on are disturbance of birds, removal (or change) of bird feeding potential, and the loss of (or physical impact on) protected sites and features. Again, early pre-consultation with the relevant statutory nature conservation body can account for and hopefully remove any key concerns that may affect the acceptance of an Order and its management plan at the formal consultation stage.

A 'bigger picture' approach

Following the lead taken by Shetland, interest was expressed in the development of other, very extensive Regulating Orders elsewhere around the Scottish coast⁵¹. Perhaps this idea should be revisited; utilising Several and Regulating (and Hybrid) Orders on a grander scale and across large swaths of the British coastline, much like the SSMO and Shetland?

Such a 'bigger picture' approach raises plenty of issues: Would such large-scale Orders serve in being inclusionary or exclusionary? To what extent would they be able to mediate local interests? Who could take on the task of managing and

⁵⁰ Marine Protected Areas in the UK - <http://jncc.defra.gov.uk/page-5201>

⁵¹ Symes, D. and Phillipson, J., 2002. *Inshore Fisheries Management*. Kluwer Academic Publishers, 2002

enforcing such ‘mega’ Orders and the wholesale inshore ‘districts’ they would create?

Specific regional management organisations like the SSMO, could hold and managed such ‘mega’ Orders; for instance, in Scotland the 5 new Regional Inshore Fisheries Groups⁵² (RIFGs) (Figure 43), and in England the ten regional IFCA⁵³ (Figure 44) could be considered well-placed to step in to such a role.

Figure 42.
Scottish RIFGs
(<http://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/rifgs>)

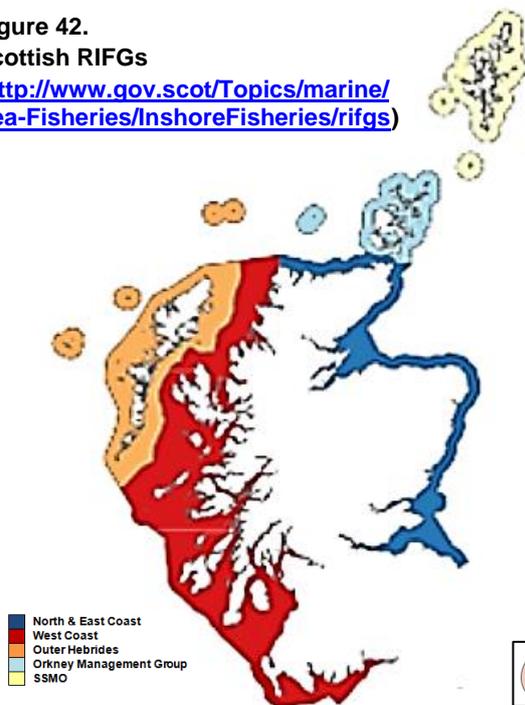
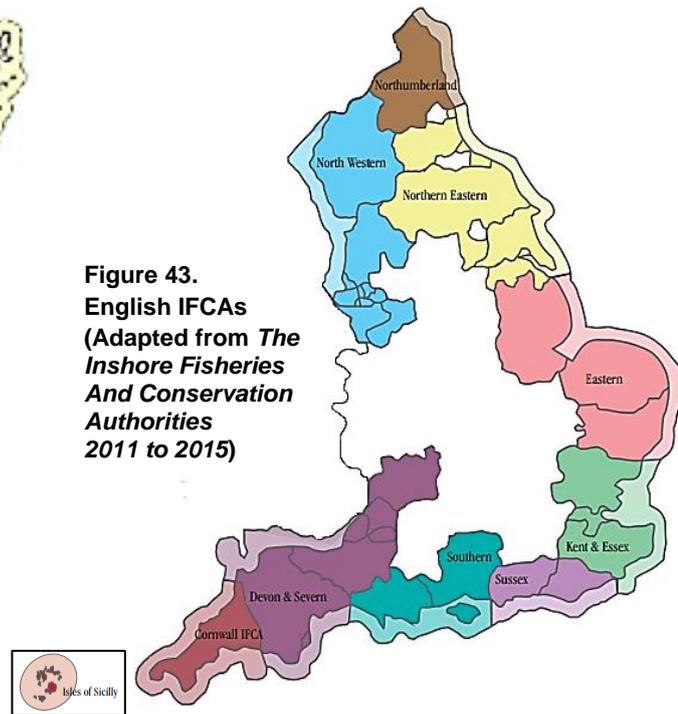


Figure 43.
English IFCA
(Adapted from *The Inshore Fisheries And Conservation Authorities 2011 to 2015*)



As case studies III and VI have shown IFCAs no strangers to holding and managing Orders, in fact 5 IFCAs are already grantees of 6 out of the 12 Orders found in England (Table 2); 4 of which (The Wash, Thames, Fal and Poole Harbour) are amongst England’s largest.

Table 2. Several, Regulating and Hybrid Orders in England Held by IFCAs			
	Order Type	Order Name	Grantee
ENGLAND	Hybrid	The Wash Fishery Order 1992	Eastern IFCA
		The Waddeton Fishery Order 2001	Devon and Severn IFCA
	Regulating	The Fal Fishery Order 2016	Cornwall IFCA
		The Thames Estuary Cockle Fishery Order 1994	Kent and Essex IFCA
	Several	The River Roach Oyster Fishery Order 2013	Kent and Essex IFCA
		The Poole Harbour Fishery Order 2015	Southern IFCA

Through their established, inclusive forums and by utilising large-scale Orders that encompass their jurisdictions, each IFCA could use the powers conferred through a mega Order to decide on inclusionary or exclusionary activities within their area, and develop tools which:

⁵² Regional Inshore Fisheries Groups - <http://www.ifgs.org.uk/> / <http://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/rifgs>

⁵³ Association of Inshore Fisheries and Conservation Authorities - <http://www.association-ifca.org.uk/>

- Generate a centralised permit scheme/s for the fishing of specified Order shellfish species which would enable better, more sustainable shellfisheries management
- Use local knowledge to identify and target sites for shellfish aquaculture, whilst taking in to account the aspects such as current usage, water quality, and conservation status of designated waters and shorelines (the latter already under their remit)
- Reduce the risk and cost to individual shellfish growers by establishing and managing an Order, then leasing and policing aquaculture production sites to capable and responsible operators

Under the Marine and Coastal Access Act 2009, IFCAs may make byelaws for the management of inshore fisheries for their respective districts, and even though the flexibility offered by byelaws seems to be the approach currently favoured by some IFCAs, the above scenario may be worthy of consideration. Such mega Orders may offer a tool that would not only ensure environmentally sound, ecosystem-based management of both fisheries and aquaculture, but one that this is appropriately balanced against a viable seafood industry which increases social and economic benefits in the coastal communities of an Order area - sentiments that echo the IFCA vision.

A large amount of engagement, skill and experience would be necessary to achieve such an outcome (take case study *///* Poole Harbour as an example). To realise the expansion of Several and Regulating Orders to such an extent would likely need increased resources and capability made available to public interest organisations, whether these be IFCAs, RIFGs, or others.

10. Findings and Conclusions

Several and Regulating Orders have proven to be a valuable tool to help establish both effective shellfish production operations and a strong mechanism for inshore shellfisheries management.

The security of tenure offered by Several Orders, by the way of private rights for a set period, provides an important time-platform to facilitate the necessary long-term development of a shellfish operation. This appears to be an even more important consideration as inshore waters are placed under increasing pressure from other users and new legislature.

Regulating Orders (and Hybrid Orders) have also enabled continued and consistent management of bivalve areas in inshore waters, and can be an effective mechanism for creating collaborative approaches and bringing associated bodies together. Their future use may be under question due to the byelaw making powers available for IFCAs, but they continue to exhibit potential to be used as a strong management tool many areas.

For any future Order to succeed (whether it is a planned, existing, or up for renewal), early and extensive consultation with associated stakeholders is critical. Maximising early engagement and encouraging dialogue should help shape the Order and minimise and/or mitigate any objections or potential issues and uncertainty at the

time of formal consultation. This also should result in a more efficient procedures and ultimately greater management effectiveness once an Order is in place and operational.

The application and renewal procedure for Several and Regulating Orders should be made as efficient as possible to encourage their potential use; with active systems in place to inform and support the operators. Further, suggestions made by the SAGB regarding a wider development plan for aquaculture would also create a more strategic approach to identifying potential sites.

Improving the annual returns and storage procedures for Several and Regulating Orders would also allow their contribution to be quantified in terms of UK shellfish production.

There is little doubt that Orders could be made more 'user-friendly', and in doing so their inclusion and use in planning, managing and increasing shellfish production across England, Wales and Scotland could be harnessed more effectively - whether this be through individual sites/holders, or via large-scale Orders encompassing expansive areas of the British coastline. It may be appropriate to build on the significant expertise, influence on development decisions and to raise the profile of shellfish aquaculture development within regional management organisations such as IFCA's.

Several and Regulating Orders may well be seen as legacy legislature, complex and under-utilised. Nevertheless, it is often the tools we already possess that have the potential to be used the most effectively...perhaps all they need is sharpening in order to be wielded with more conviction and precision?

11. References

References are given in footnotes throughout the text. Websites accessed in the researching of this report are given in alphabetical order below:

- Association of Inshore Fisheries and Conservation Authorities - <http://www.association-ifca.org.uk/>
- Centre for Environment, Fisheries and Aquaculture Science (CEFAS) -
 - <https://www.cefasc.co.uk/about-us/>
 - <https://www.gov.uk/government/organisations/centre-for-environment-fisheries-and-aquaculture-science>
- Cornwall Inshore Fisheries and Conservation Authority (CIFCA) – <http://www.cornwall-ifca.gov.uk/>
- Department of Agriculture, Environment and Rural Affairs (DAERA) - <https://www.daera-ni.gov.uk/about-daera>
- Department of Environment, Food and Rural Affairs (DEFRA) - <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>
- Devon and Severn Inshore Fisheries and Conservation Authority (D&SIFCA) - <http://www.devonandsevernifca.gov.uk/>
- Eastern Inshore Fisheries and Conservation Authority (EIFCA) - <http://www.eastern-ifca.gov.uk/>
- European Commission/Fisheries/Aquaculture - http://ec.europa.eu/fisheries/cfp/aquaculture/index_en.htm
- Fish Health Inspectorate (FHI) - <https://www.gov.uk/government/groups/fish-health-inspectorate>
- Food and Agriculture Organization (FAO)/Fishery/Aquaculture - <http://www.fao.org/fishery/aquaculture/en>
- Joint Nature Conservation Committee (JNCC) - <http://jncc.defra.gov.uk/>
- Kent and Essex Inshore Fisheries and Conservation Authority (K&EIFCA) - <http://www.kentandessex-ifca.gov.uk/>
- Marine Conservation Society (MSC) - <https://www.mcsuk.org/>
- Marine Management Organisation (MMO) - <https://www.gov.uk/government/organisations/marine-management-organisation>
- Marine Scotland - <http://www.gov.scot/About/People/Directorates/marinescotland>
- Menai Strait Fishery Order Management Association (MSFOMA) - <http://www.msfoma.org/>
- North West Inshore Fisheries and Conservation Authority (NWIFCA) - <http://www.nw-ifca.gov.uk/>
- Regional Inshore Fisheries Groups (RIFGs)
 - <http://www.ifgs.org.uk/>
 - <http://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/rifgs>
- River Teign Shellfish Ltd. - https://www.facebook.com/River-Teign-Shellfish-Ltd-431934306974294/info/?entry_point=page_nav_about_item&tab=overview
- Sconser Scallops - <http://www.sconser-scallops.co.uk/>
- Sea Fish Industry Authority (Seafish) - <http://www.seafish.org/>
- Shellfish Association of Great Britain (SAGB) - <http://shellfish.org.uk/>
- Shetland Shellfish Management Organisation (SSMO) - <http://www.ssmo.co.uk/>
- Southern Inshore Fisheries and Conservation Authority (SIFCA) - <http://www.southern-ifca.gov.uk/>
- Sustainable Inshore Fisheries Trust (SIFT) - <http://www.sift-uk.org/Home.aspx>
- UK legislation portal - <http://www.legislation.gov.uk/>

12. Appendices

Appendix 1: The SRO Application Process in England, Scotland and Wales

The formal procedure for applying for a Several and Regulating Order in England, Scotland and Wales are detailed below. The steps in the application chains shown in each box are accurate at the time of writing (QII 2016). Defra however have alluded to a revision of Several and Regulating Order application procedure and guidance material for England. This could be completed later in 2016.

The English SRO Application Process

Formal procedure for applying for a SRO in England

1. Submit a completed application formⁱ. This should include:
 - a- Consents from the owners of any rights associated with the area in question
 - b- A five-year management planⁱⁱ
 - c- Two copies of the latest Admiralty chart of the area;
 - d- Company or corporate details, if applicable;
 - e- Environmental assessment if required. If the site in question is in any of the following types of marine protected area it will require the relevant form of environmental assessment:
 - Special Protection Areas (SPAⁱⁱⁱ) and Special Areas of Conservation (SAC^{iv}) (together marine SPAs and SACs are known as European Marine Sites)
 - Site of Special Scientific Interest (SSSI^v)
 - Marine Conservation Zones (MCZ^{vi}); and Ramsar^{vii}

A site may have more than one type of Marine Protected Area (MPA – collective terms for all the sites listed above), and a map of all the ones in the UK can be found here^{viii}. The cost of undertaking the environmental assessment is the responsibility of the applicant.
2. Preliminary consideration by Defra. This will decide whether the application should proceed further. At this stage the practical and commercial potential of the proposal is considered, as well as any legal obstacles and conservation issues. It is here that the five-year management plan will be a key consideration.
3. Notification of rejection or preparation of a draft Order from Defra. If the application is rejected then reasons will be given. If approved, it will move on to the next step.
4. Defra will send the draft Order to other government departments and interested bodies for comments. This will include the related fishery regulators (such as the local IFCA) and Statutory Nature Conservation Body (i.e. Natural England for England), as well as other key stakeholders.
5. Assessment of comments and amendment of the draft Order. The comments from step 4, along with any associated amendments to the draft Order will be sent by Defra to the applicant.
6. Consultation of the draft Order in the local media. The details of the draft Order must be advertised in local media and must meet certain requirements. The applicant is responsible for the consultation and it will need to include both national and local interests.
7. Receipt of any written objections and an opportunity to resolve these. The applicant is expected to deal initially with the objections. Once they have dealt with them then Defra must be sent the package of consultation outcomes including an explanation of how any objections have been handled. Defra will then take a view and the response may be to reject, initiate a public inquiry (paid for by the applicant), or accept (which may be subject to amendments).
8. Arrangement of a public inquiry, if necessary. The public inquiry would be set up to examine any significant objections to the Order that have not been withdrawn or resolved in 7.
9. The Minister makes a decision to endorse or reject the application.
10. The Statutory Instrument (SI) is subject to scrutiny by Parliament (a period of around 40 days). This may lead to further amendment or promulgation. After 21 days if the SI is not propositioned for debate, it becomes law.
11. Announcement of the decision by Defra. If the decision is made in the applicant's favour, it would then move on to 12.
12. Advertisement of the Order in the local media. This would include details of when the Order comes into force.
13. Printing of the Order.
14. Following promulgation, SRO holders need to produce annual returns relating to production levels of harvest, and are required to submit reviews of the Management Plans.

ⁱ <http://www.legislation.gov.uk/uksi/1987/217/schedule/made>

ⁱⁱ <http://www.legislation.gov.uk/uksi/1987/217/schedule/made>

ⁱⁱⁱ <http://jncc.defra.gov.uk/page-162>

^{iv} <http://jncc.defra.gov.uk/page-23>

^v <https://www.gov.uk/government/publications/sites-of-special-scientific-interest-designation>

^{vi} <http://jncc.defra.gov.uk/page-4525>

^{vii} <http://jncc.defra.gov.uk/page-161>

^{viii} <http://jncc.defra.gov.uk/page-5201>

The Scottish SRO Application Process

SCOTLAND

Scotland's SROs stem from the same Sea Fisheries (Shellfish) Act 1967 as England and Wales, but all applications run through Marine Scotland (MS) as a part of central Scottish government. The application process is very similar, but specifically:

1. The applicant is expected to undertake informal consultation in advance of the application with relevant stakeholders and iron-out any issues.
2. The application is then submitted to Marine Scotland
3. MS will undertake formal consultation with all associated stakeholders, and will pass on any issues to the applicant to address. Once done:
4. MS will either reject or move to next stage:
5. MS will produce a draft Order
6. The Order will then be advertised by applicant with comments to be sent to Marine Scotland
7. The Minister may call for a public enquiry. Once done
8. The Minister will make the decision.
9. If supported, the Order will be laid before Parliament

The main difference is that Marine Scotland would undertake any associated environmental assessments themselves.

The Welsh SRO Application Process

WALES

Preliminary requirements

1. First contact the Welsh Assembly Government fisheries unit who will be able to offer advice and guidance throughout the application process which can be lengthy and complicated.
2. Before you apply you must first establish the identity of whoever owns, or is entitled to rights in or over, the area which you wish to cultivate/manage:
 - Where any parts of the sea shore are subject to private rights the agreement of the holders of those rights must also be obtained
3. The Commissioners will, where appropriate, advise you to consult the Duchy of Lancaster or of Cornwall. You will also need to make your proposals known to the Commissioners, Lessees or Grantees.
4. It is advisable for you to consult other parties likely to be affected by the granting of the Order before making an application. These should include not only fisheries interests, but also other users of the area, such as recreational and sporting interests, along with navigation and harbour authorities. Undertaking an informal consultation before application can reduce the chances of objections being made once the draft Order is advertised.
5. It is highly advised that you enter into discussions with your local Natural Resource Wales (NRW) office at this stage. They will be able to advise you of any Special Area of Conservation (including candidate sites), designated under the Habitats Directive, or a Special Protection Area designated under the Wild Birds Directive which may be affected by your fishery. You will then be able to address these issues within the Environmental Statement and subsequent management plan.
6. Please note that once an Order is made it cannot be subsequently amended or its duration extended without repeating the full application process. You should ensure, therefore, that the application covers all your foreseeable needs for the period of the Order.
7. You will be responsible for the costs associated with the application, including advertisement, the costs of any environmental assessments (including any related further publication requirements), the costs of any public inquiry and any costs incurred by the Welsh Assembly Government in relation to your application for a Several or Regulating Order.

WALES

Formal Procedure

8. When you have fully established the position regarding ownership, lessees and existing rights, you should complete and submit the application form. The application is in 3 parts. The first is the Several and Regulated Fisheries (Form of Application) Regulations 1987 Available at; http://www.opsi.gov.uk/SI/si1987/Uksi_19870217_en_2.htm
9. The second part of the application is further information required by the Minister under Section 4(3) of the regulations. The final pro-forma is the Management Plan.
10. Once all Sections are completed, the application should be submitted to: Welsh Assembly Government, Fisheries Unit, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth. SY23 3UR
11. You must enclose with the application:
 - Any written agreement from owners of rights to the land under application
 - An Environmental Statement
 - A Management Plan
 - Two copies of the latest Admiralty Chart of the area – one must be the original chart and from this the definitive map must be prepared; the second, which may be a photocopy, should show accurately the proposed area of the fishery
 - If you are a company incorporate under the Companies Acts, a copy of the memorandum and Articles of Association and any registered Special Resolution of the company relating to its objects
 - If you are a corporate body in any other manner, a copy of every instrument of incorporation, charter or local Act of Parliament relating to that body. (The application must be signed by an authorised officer of the corporate body); and
 - On receipt of the application, the Minister for Natural Resources will decide whether to allow it to proceed further
12. For all Orders the Minister for Natural Resources will also consider, via consultation with NRW, whether the proposed activity is likely to have a significant effect on any Special Area of Conservation (including candidate sites), designated under the Habitats Directive, or a Special Protection Area (including potential sites), designated under the Wild Birds Directive. Where the proposed activity is likely to have a significant effect on such a site, an Appropriate Assessment of the implications of the proposed activities for the conservation objectives of the site will be undertaken by the competent authority. If the Appropriate Assessment indicates that the proposed activity would adversely affect the integrity of the site, the Minister for Natural Resources cannot allow the application to proceed unless there is an overriding public interest in favour of the activity.
13. Under Section 1(5) of the Act the existence of certain rights on, to or over the sea shore may limit the exercise of rights obtained under a Several or Regulating Order. Where you wish to include areas subject to private rights within your application, the Department will require evidence that the consents of interested parties have been obtained. Occasionally, a person entitled to private rights may attach conditions to the giving of consent. The Department takes the view that such consents should be expressed in "private" agreements between the parties concerned rather than in the Order itself.
14. If, after preliminary consideration, the Minister for Natural Resources decides to reject the application we will let you know, with reasons for the rejection.
15. If the Minister for Natural Resources decides to allow the application to proceed, a draft Order will be prepared and sent to you for advertising. It will be your responsibility to advertise, at your own cost, the draft Order in accordance with the instructions you will receive from the Minister. To assist you in this, we will supply a draft advertisement and will advise you of the newspapers in which the advert should be placed. The draft advertisement will contain the following information:
 - A statement of the principal objectives of the Order
 - the address where copies of the draft Order and Environmental Statement can be seen and obtained
 - the address where a copy of the plan, map or chart of the locality showing the limits of the proposed fishery can be inspected
 - a statement that any objections should be made in writing to the Minister for Natural Resources, with a copy to the applicant, to be received within one month of the date of the advertisement.
16. Please note that you may also need to advertise, at your own cost, some or all of the Environmental Statement which you have had to provide.
17. You must let us know the actual date of the advertisement and confirm that you have complied with our instructions, enclosing copies of the newspapers carrying the advertisements.

Welsh Formal Procedure continued...

Objections and a Public Inquiry

18. Any written objections received by the Minister for Natural Resources will be copied to you. A period, normally not exceeding three months, will be allowed so that you may, if you wish, seek their withdrawal by agreement. Experience has shown that objections to an application may be based on interference with established fishing, yachting or other amenities; or from a misunderstanding of what the proposed Order is meant to achieve.
19. If objections, which are not frivolous or irrelevant, are not formally withdrawn, then the Minister for Natural Resources can appoint an Inspector to hold a local public inquiry to hear and consider objections to the proposed Order. You will be asked to arrange the public inquiry and bear all the costs in connection with the same, including the costs of the Department in providing the Inspector.
20. We will send to you the text of a Notice announcing the proposed inquiry. You must then place the notice in the same newspapers that previously carried the notice of the application. You should also send a copy to all persons who have made objections to the proposed Order. You must immediately notify the Department when this has been done.
21. Although not a statutory requirement, it will help the inquiry if you circulate in advance to the objectors, and to the Department, a written statement of the case you propose to make at the inquiry. Decision by the Minister
22. Following these procedures, the Minister will reach a decision on whether to make the Order (in such form and containing such provisions as the Minister sees fit) or refuse the application. We will notify you of the Minister's decision and the reasons for that decision. Where the decision follows a public inquiry, objectors will also be notified of the decision.
23. If the Minister decides to make an Order, a copy will be sent to you with a public notice and instructions regarding its publication and you will need to advertise (as with the draft Order and Notice of Inquiry) that the Order has been made and will come into operation on the prescribed date.
24. Printing of the Order will be arranged by the Department. A copy of the Order and the plan, map or chart of the locality showing the limits of the fishery must be kept at your local address for anyone who wishes to see it.

Timing

25. Several and Regulating Orders restrict the public right to fish in certain areas. In order to safeguard the rights of all those who have an interest in the area, very careful consideration is given to every application. The procedures outlined above cannot be circumvented and as such they can be lengthy and time consuming. Applicants are asked to bear in mind that the process of obtaining an Order may take up to two years.

Appendix 2: The Northern Irish Shellfish Fisheries License Application Process

NORTHERN IRELAND

Note: this is specifically as outlined in the Fisheries Act (NI) 1966, Section 132 '*Application for shell-fish fishery licence*'ⁱ.

1. An application for a shell-fish fishery licence shall be made to the Department in such form and manner as the Department may direct and shall be accompanied by any consents required by Section 131(4) (a), (c) or (d).
2. On considering an application for a shell-fish fishery licence—(a) If the Department is minded to grant the licence it shall—
 - (i) publish, at the applicant's expense, notice of the application in the Belfast Gazette and in such two or more newspapers as the Department considers appropriate, stating the address to which and the period (not being less than one month from the date of publication) within which objections in writing to the grant of the licence may be sent to the Department; and
 - (ii) if any objections (not being, in the opinion of the Department, vexatious, frivolous or insubstantial) are received within that period and not withdrawn, and are not such as, without further inquiry, to cause the Department to become minded not to grant the licence, cause a local public inquiry to be held
3. if, otherwise than after the holding of a local public inquiry, the Department is minded not to grant the licence
 - (i) the Department shall give to the applicant a written notification of the reasons why it is minded not to grant the licence or has granted it subject to conditions; and
 - (ii) the applicant may, within 28 days from the day on which such notification is given, appeal to the Appeals Commission.

ⁱ <http://www.legislation.gov.uk/apni/1966/17>

Appendix 3: Several and Regulating Orders: English Annual Returns

Data presented here is derived from 'Classified Bivalve Mollusc Shellfishery Production and Landings in England. Data review in support of WFD River Basin Management Planning', Cefas 2016

This report summarises government data available for production, in terms of weight, of bivalve mollusc shellfish from classified harvesting areas in England and estimated value at first sale. In the report data is broken down, where possible, by river basin district (to avoid identification of individual businesses) and by species.

England Several Orders Annual Returns
Production by Weight (Tonnes*) and Value (Pound Sterling**) at first sale (2008-2014)
by River Basin District and Species

River Basin District	Year	Clams		Cockles		Mussels		Native Oysters		Pacific Oysters	
		Mixed Species		(C. edule)		(Mytilus spp.)		(O. edulis)		(C. gigas)	
		tonnes	value	tonnes	value	tonnes	value	tonnes	value	tonnes	value
Anglian	2008	2	2,000			2,098	1,050,625	3	3,400	3	1,360
	2009	1	1,000			3,284	932,874	1	3,445	16	2,960
	2010					2,413	705,528	3	11,000	77	40,460
	2011	1	1,000			1,011		3	7,674	40	11,040
	2012					54	62,000	204	10,388	20	8,331
	2013					38	43,000	2	2,330	5	15,000
	2014					467	236,000	0.3		4	5,000
South East	2008							12	21,508		
	2009							7,972	14,350		
	2010								11,046		
	2011							1,447	3,906		
	2012										
	2013										
	2014										
South West	2008	4	11,000	5	5,000	46	161,000	4	11,000	129	192,000
	2009	5	11,200	6	7,000	118	52,972	8	31,370	198	252,000
	2010	5	16,000	6	7,100	83	120,000	3	10,790	206	240,850
	2011	7	21,000	6	12,000	89†	44,500	1	4,500	211	395,000
	2012	6	22,050	10	19,120	449	156,860	1	6,300	30	360,000
	2013	13	34,494	8	15,000	206	91,000	2	8,120	293	531,900
	2014	5	13,200	9	6,340	719	779,493	1	8,200	305	719,368

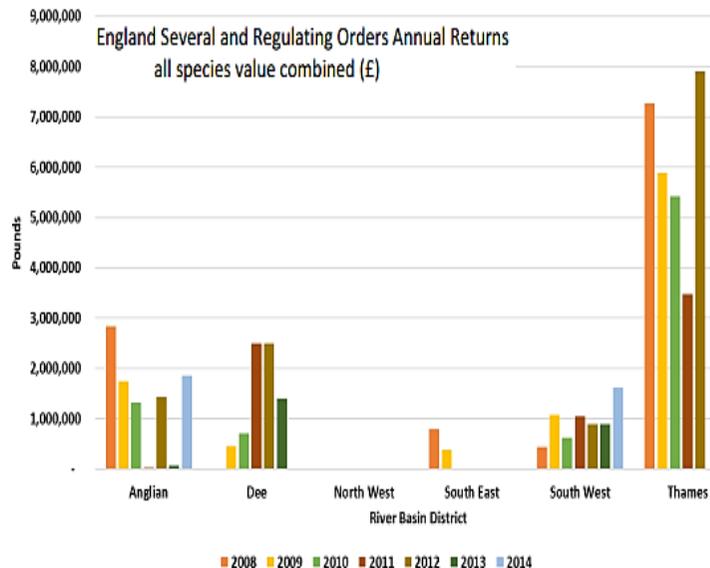
Source: Defra SRO Returns available at time (not all returns may be available so figures may not be accurate totals)
†Plus an additional 550 tonnes
*Weights rounded to nearest tonne
**Values rounded to nearest pound



England Regulating Orders Annual Returns
Production by Weight (Tonnes*) and Value (Pound Sterling**) at first sale (2008-2014)
by River Basin District and Species

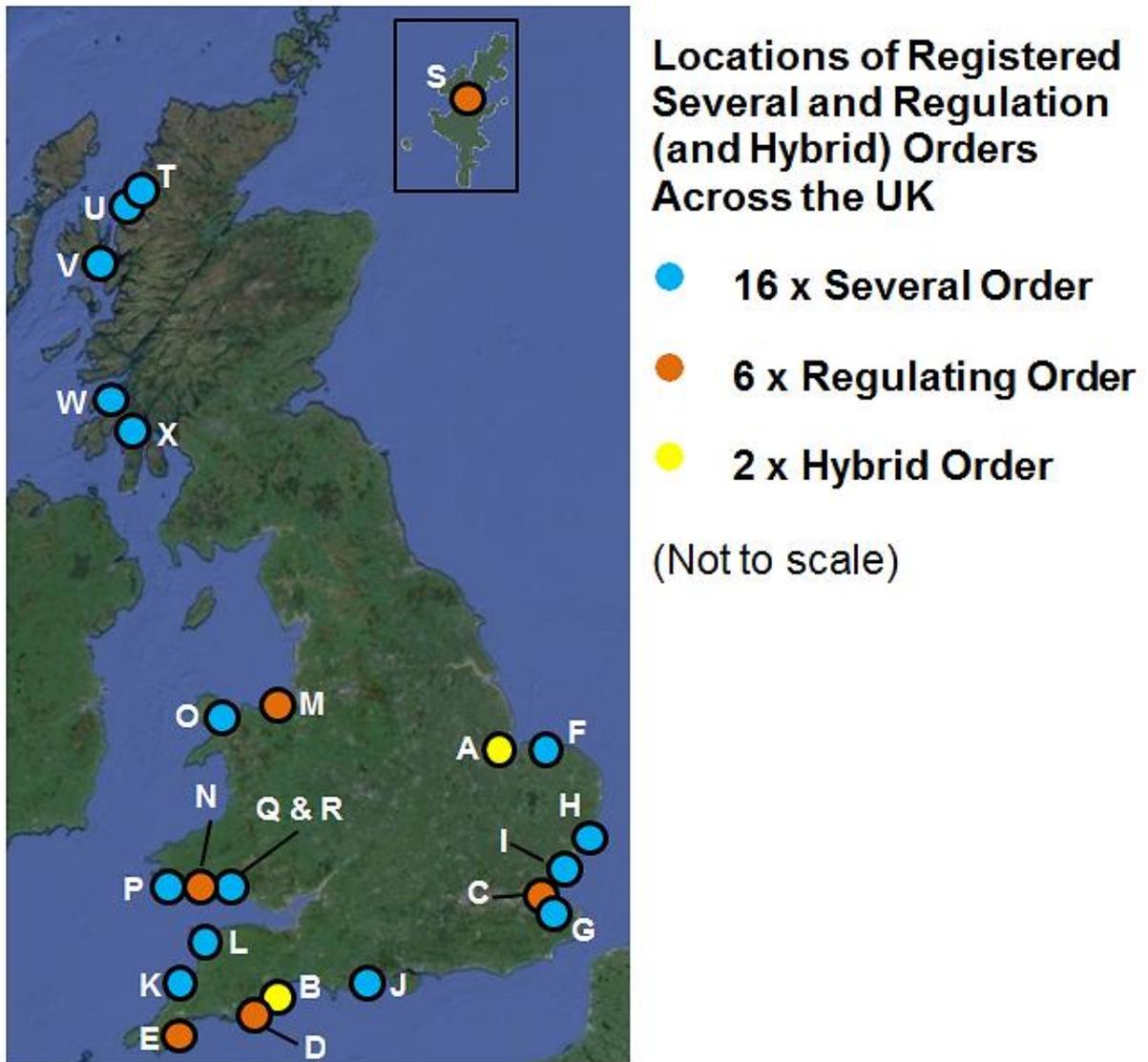
River Basin District	Year	Clams		Cockles		Mussels		Native Oysters		Pacific Oysters	
		Mixed Species		(C. edule)		(Mytilus spp.)		(O. edulis)		(C. gigas)	
		tonnes	value	tonnes	value	tonnes	value	tonnes	value	tonnes	value
Anglian	2008			3,153	1,169,364	1,497	587,400				
	2009			2,053	800,318	14	2,700				
	2010			3,084	557,100	14	2,880				
	2011			2,276							
	2012			1,350	1,350,142						
	2013										
	2014				3,751	1,612,151					
Dee	2009			1,110	444,000						
	2010			1,279	700,000						
	2011			1,250	2,500,000						
	2012			1,250	2,500,000						
North West	2008			820	1,400,000	150†					
	2009					1,440					
South East	2008	2	4,000					600	750,000		
	2009	2	4,000					300	360,000		
South West	2008					50	25,000	25	23,298	21	3,500
	2009	48	120,000	500	600,000			60		17	
	2010	40	99,500	200	120,000			42		25	
	2011	69	172,500	200	400,000	2		31		44	
	2012	69	137,200	100	183,846			55		47	
	2013	47	118,557	50	90,000	100		47		5	
	2014	31						50			
Thames	2008			11,170	7,260,528						
	2009			10,894	5,882,700						
	2010			10,887	5,424,469						
	2011			9,601	3,469,331						
	2012			7,904	7,904,410						

Source: Defra SRO Returns available at time (not all returns may be available so figures may not be accurate totals)
†Recorded as estimated tonnage
*Weights rounded to nearest tonne
**Values rounded to nearest pound

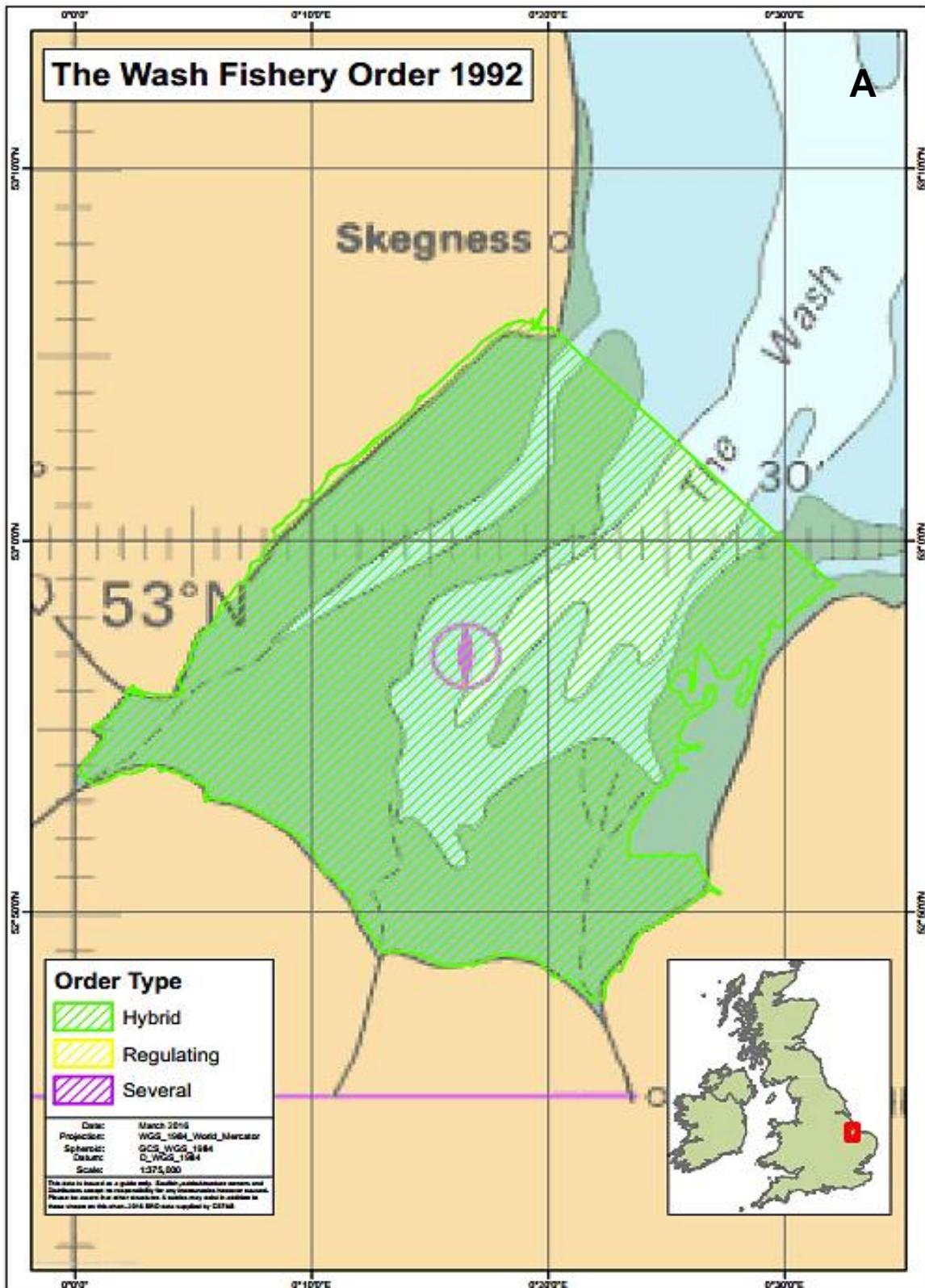


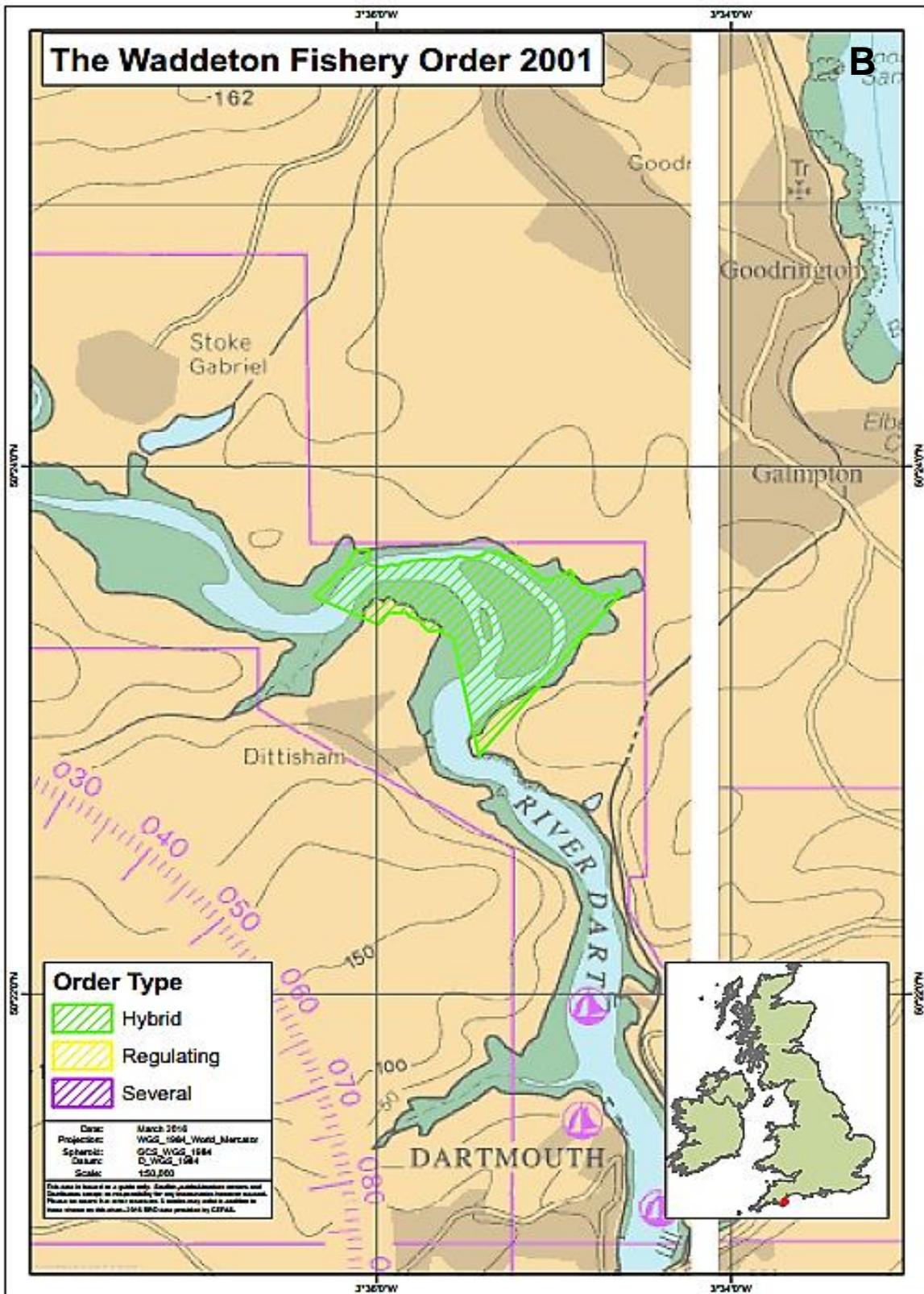
Appendices 4, 5 and 6: Locational Maps of English, Welsh and Scottish Orders

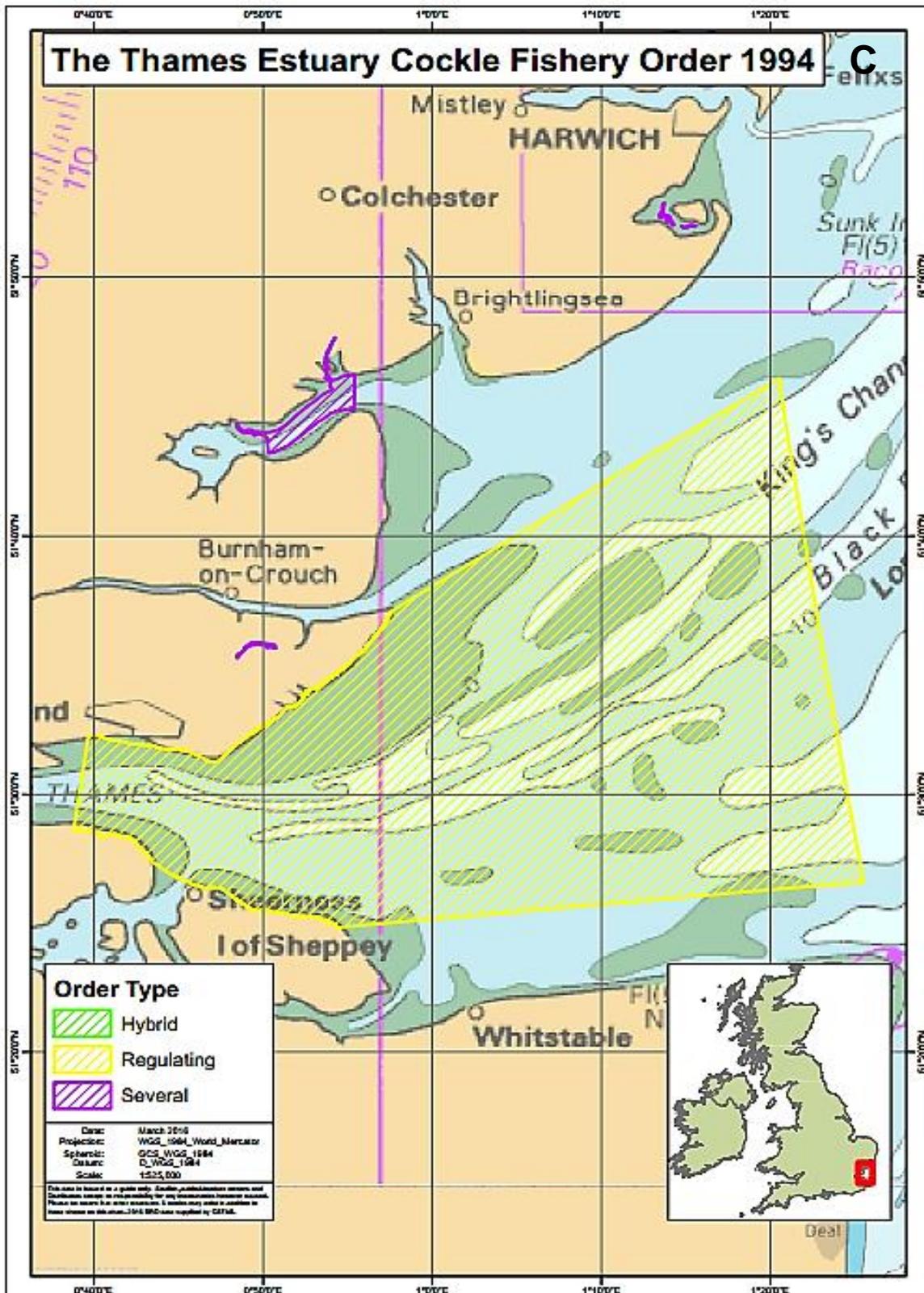
Each individual SRO map given in Appendices 4, 5 and 6 has been assigned a letter (A, B, C etc.) which corresponds to the high level map below.

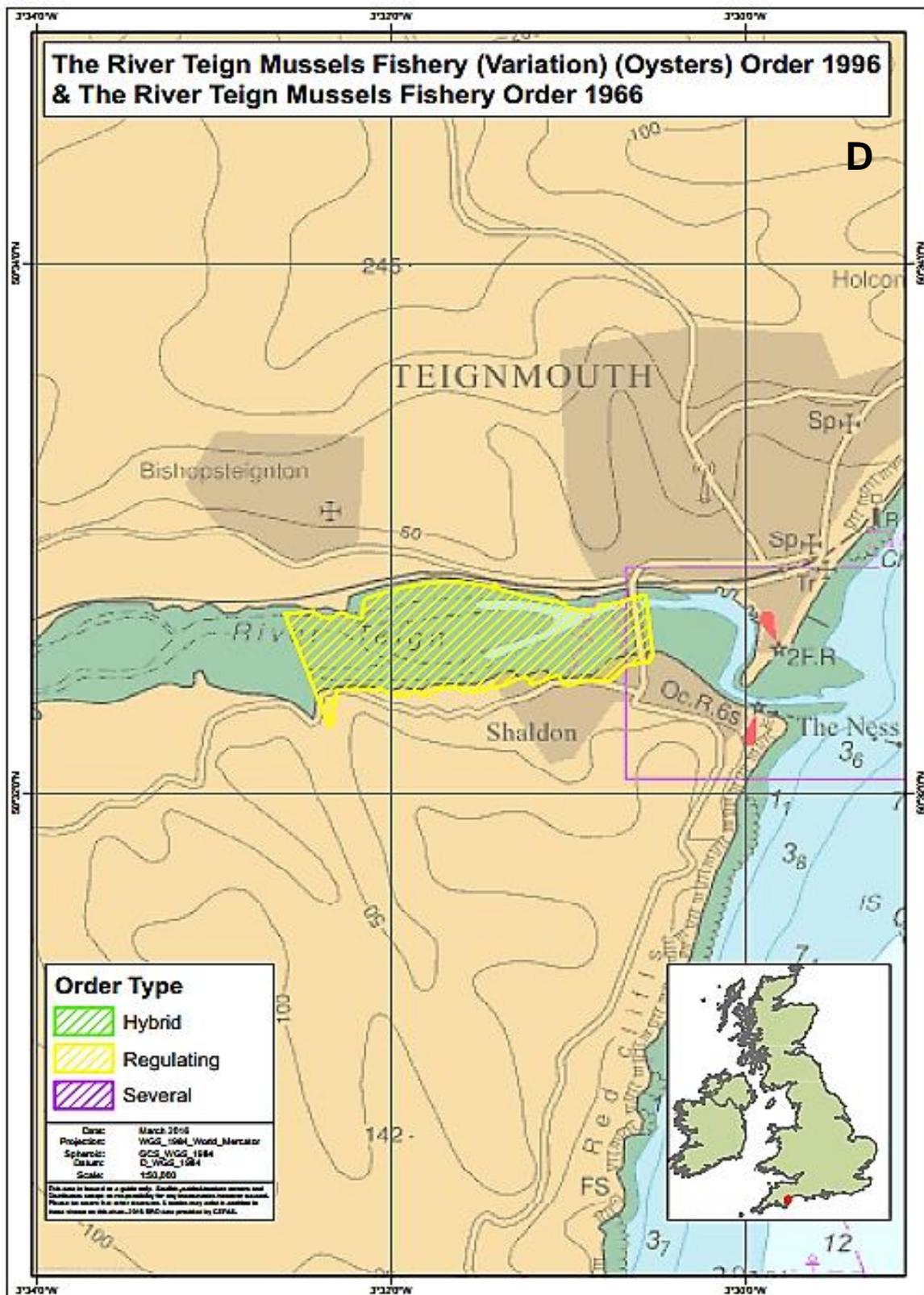


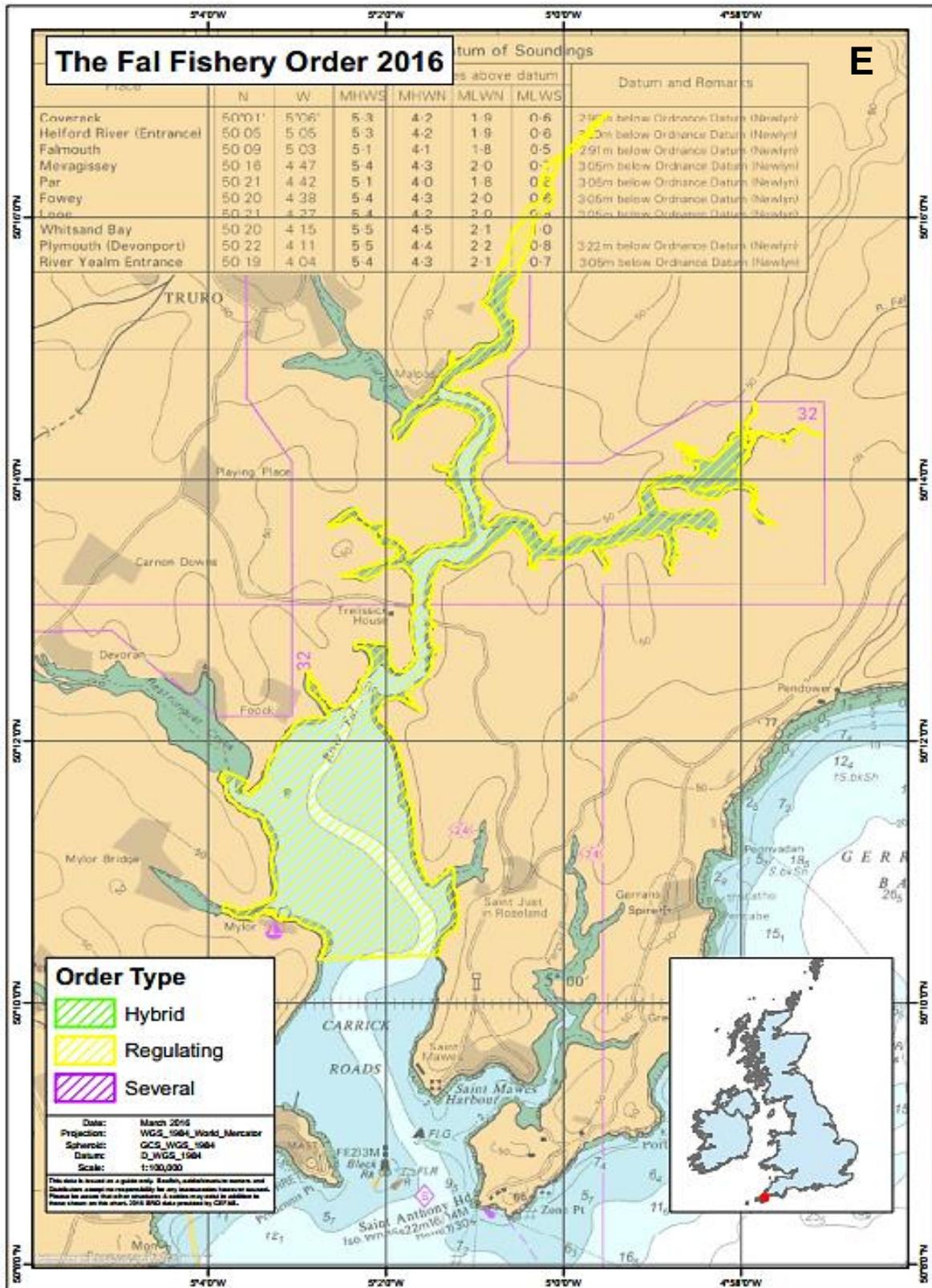
Appendix 4: Several and Regulating Orders in England
 (Shape files to create maps provided by Cefas, 2016)

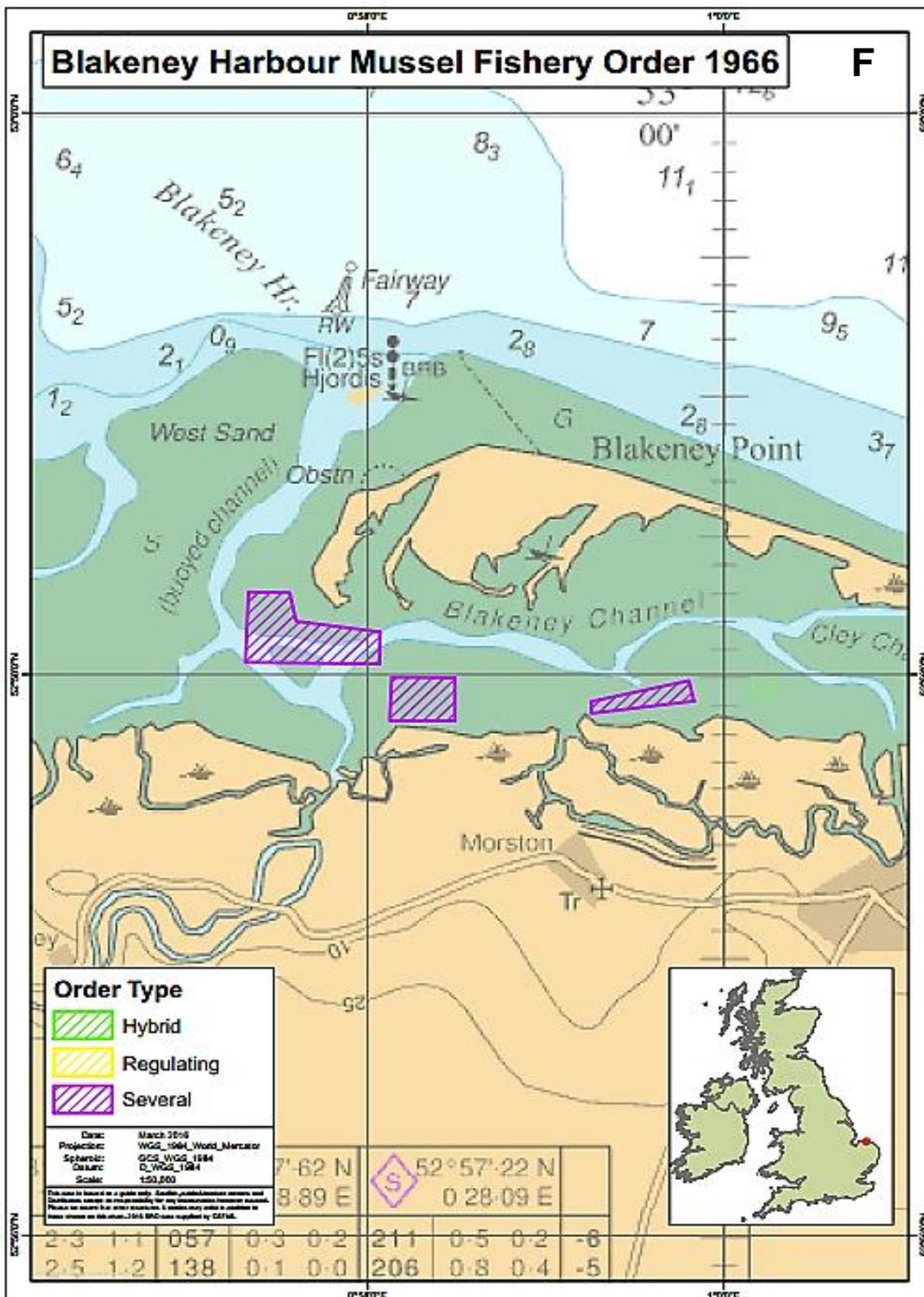


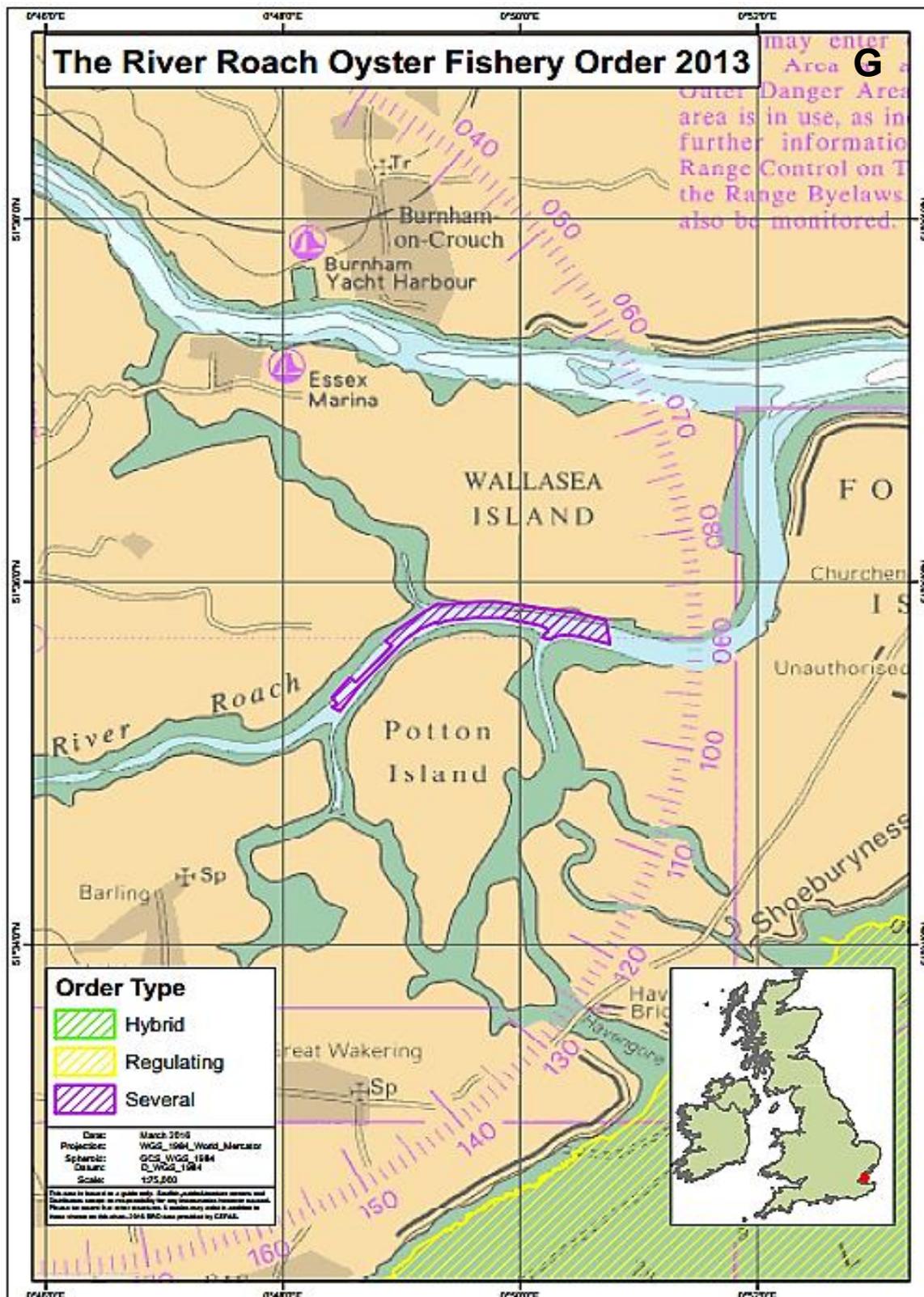


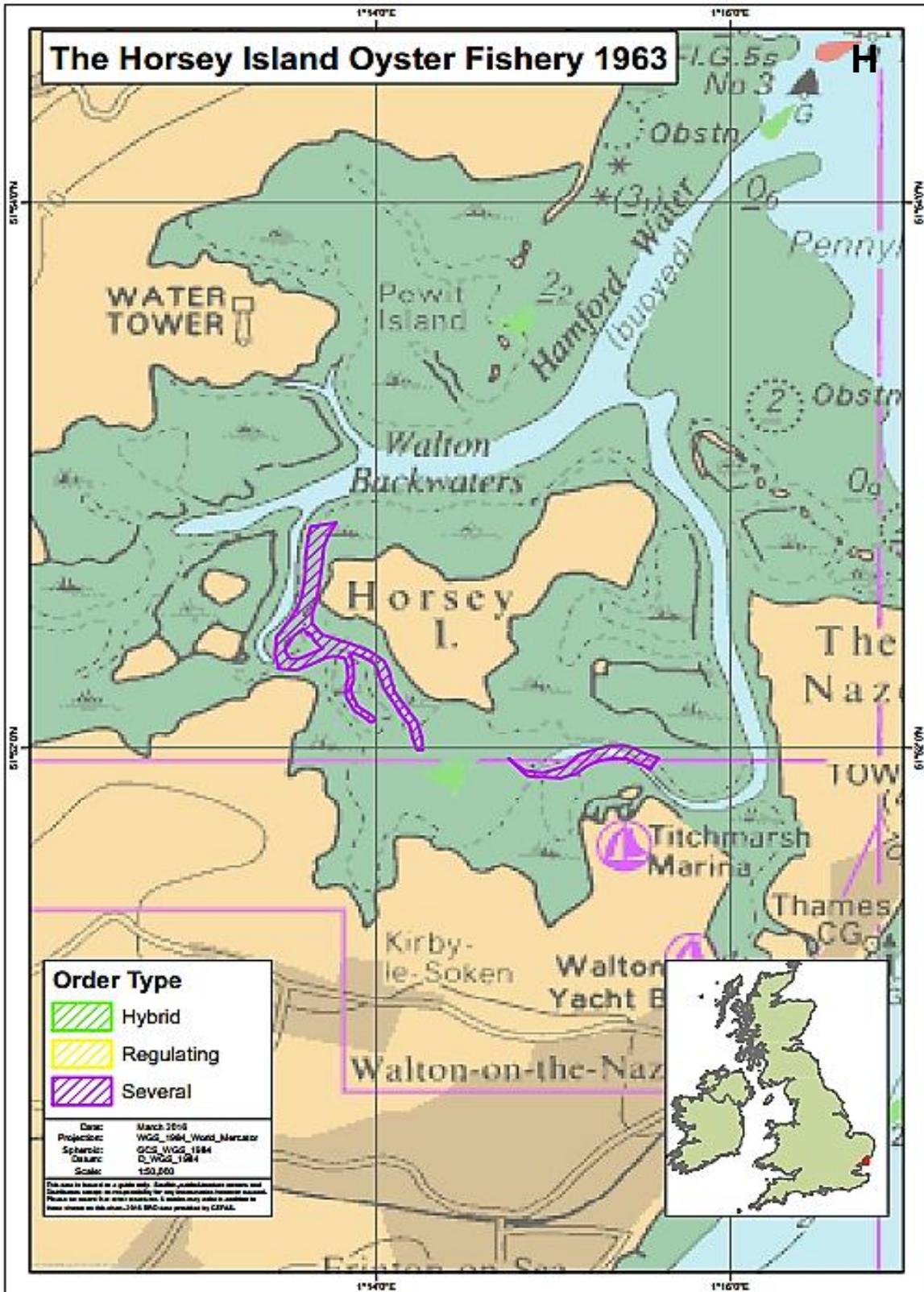


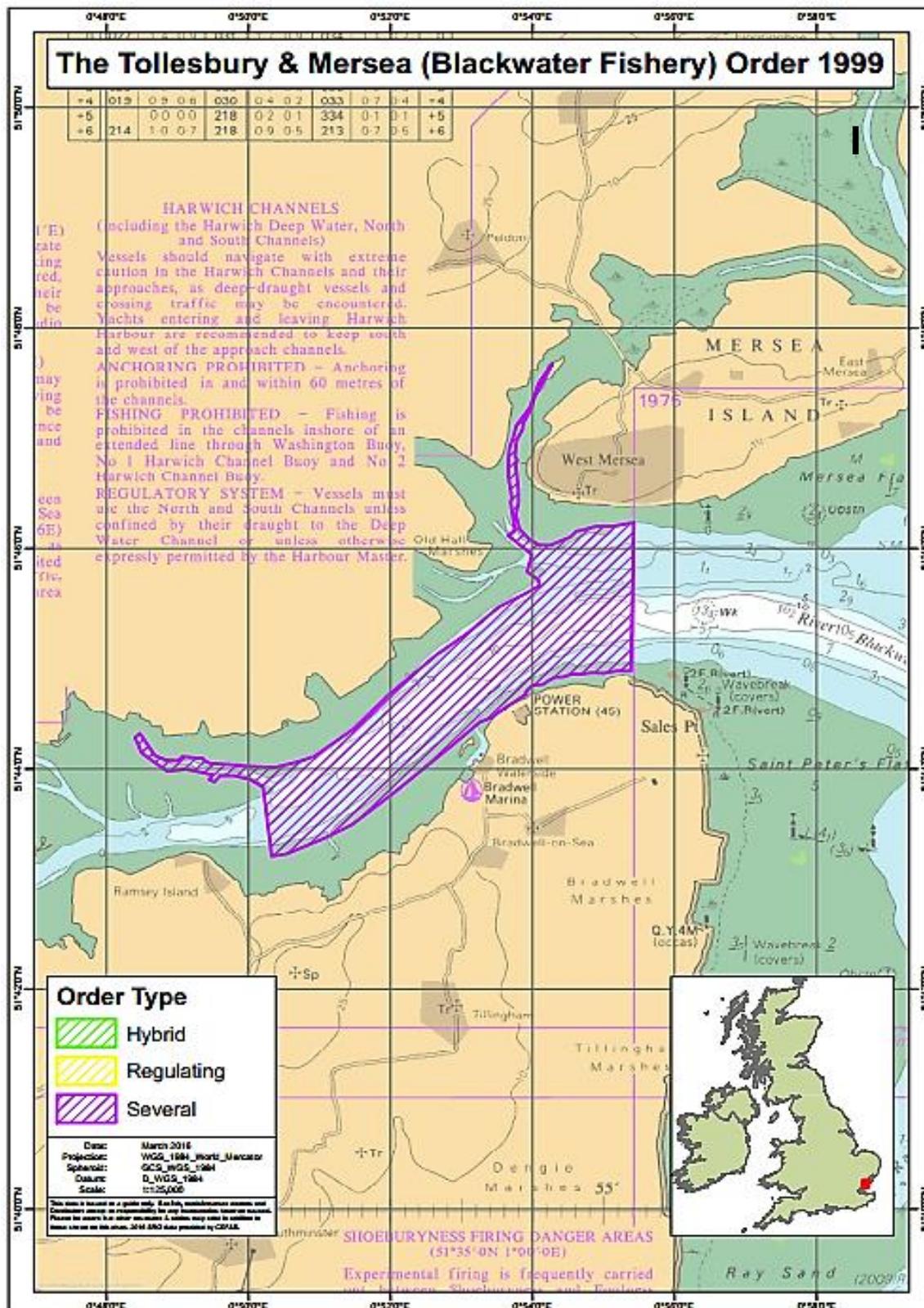


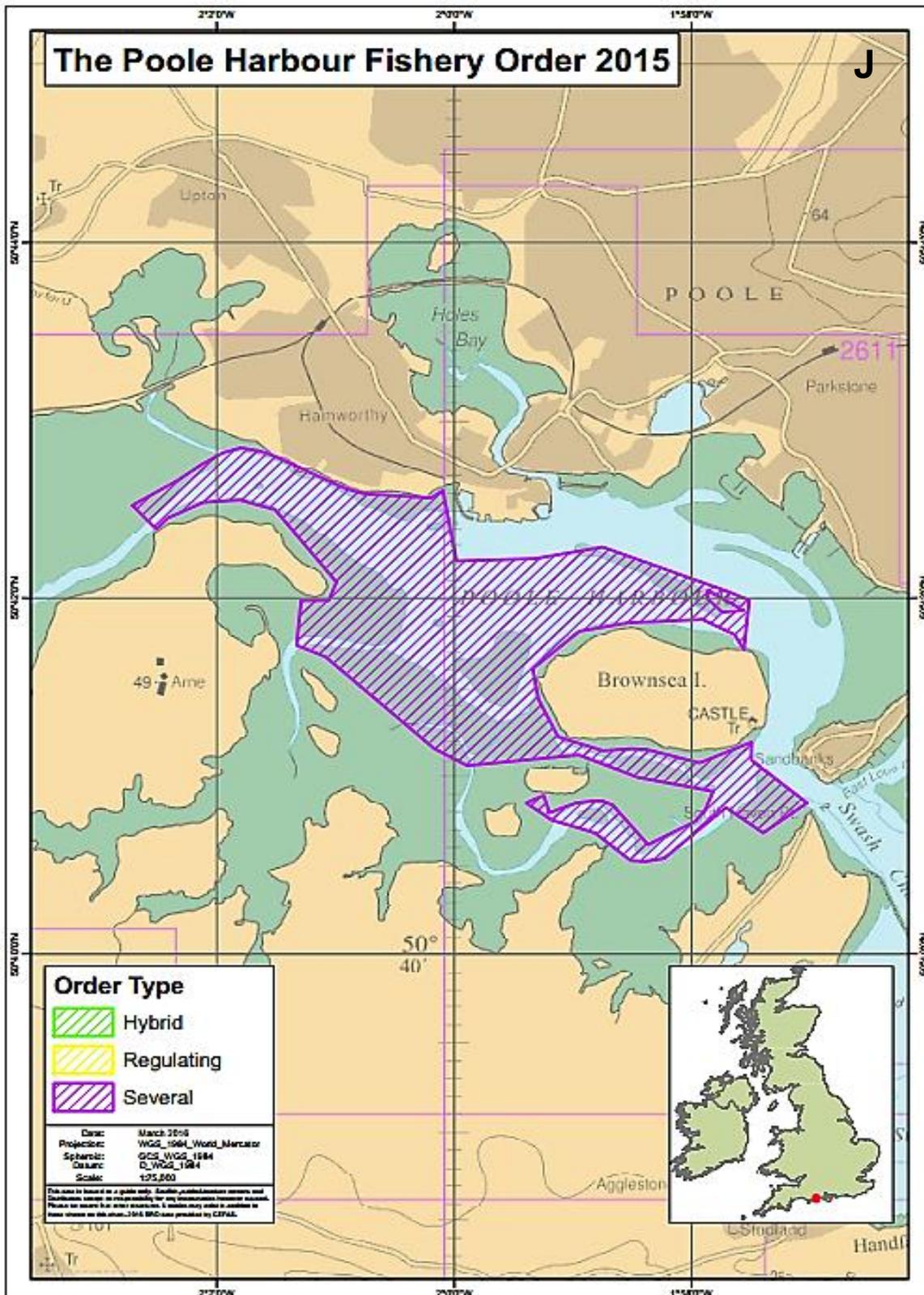


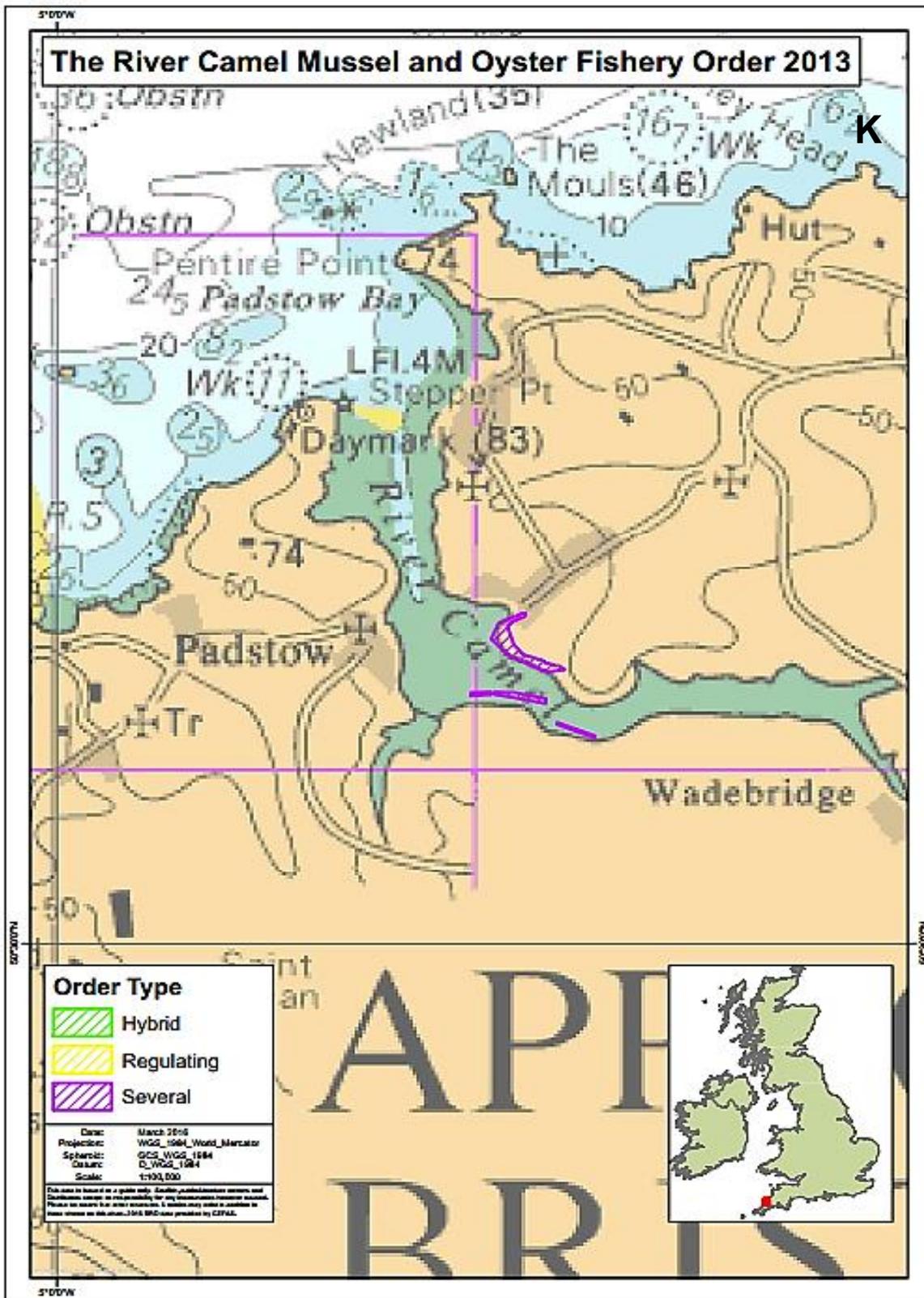


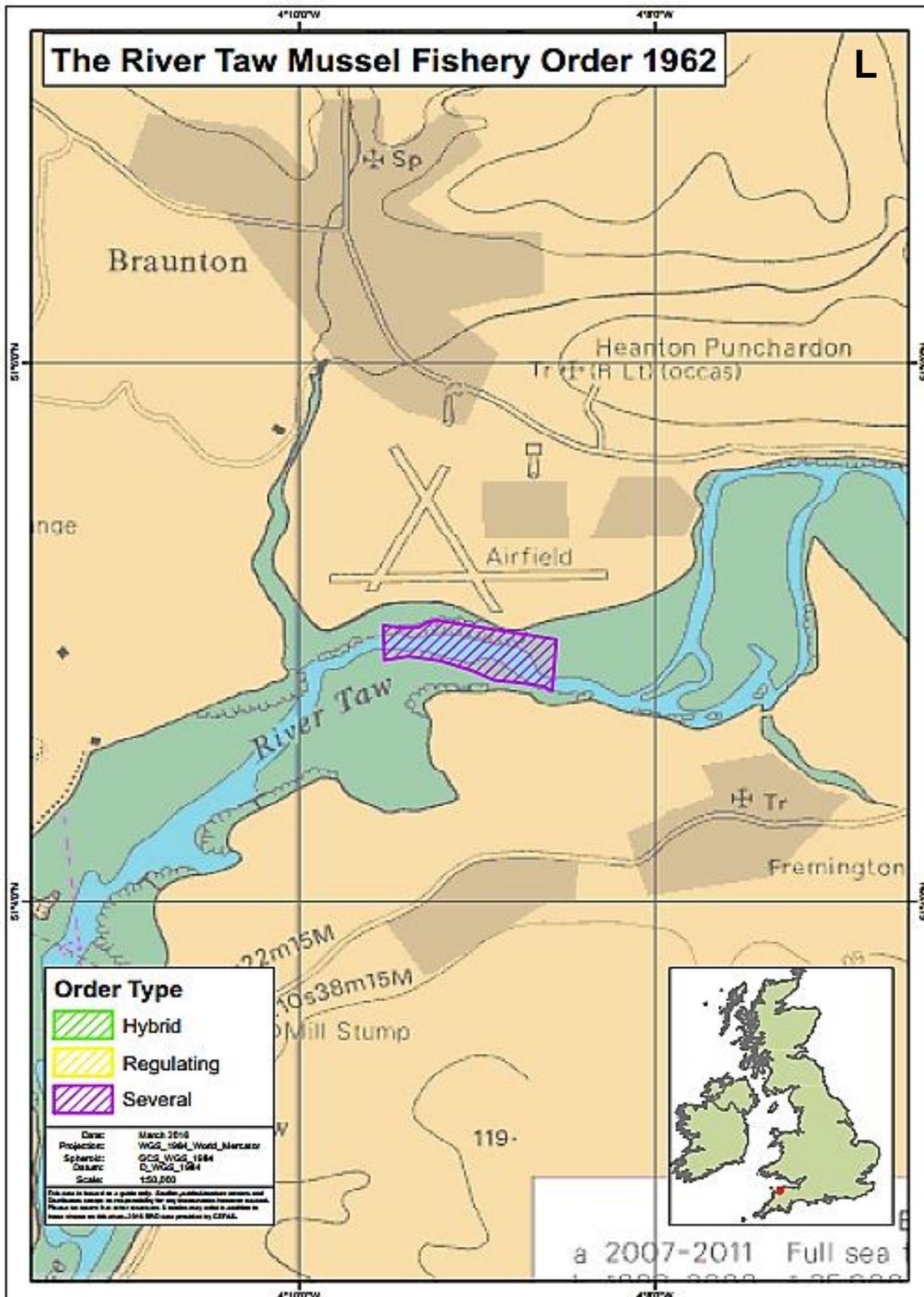


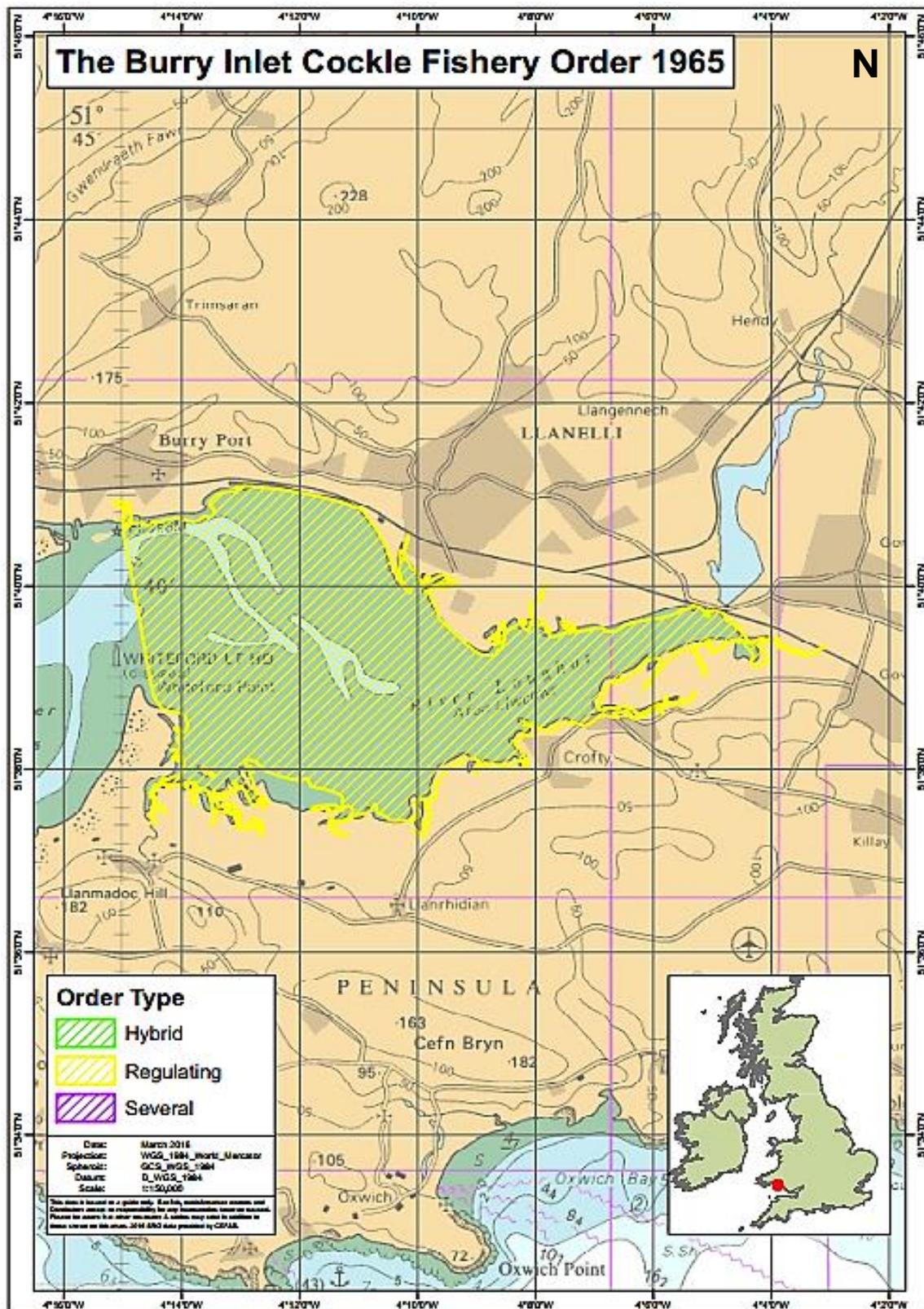


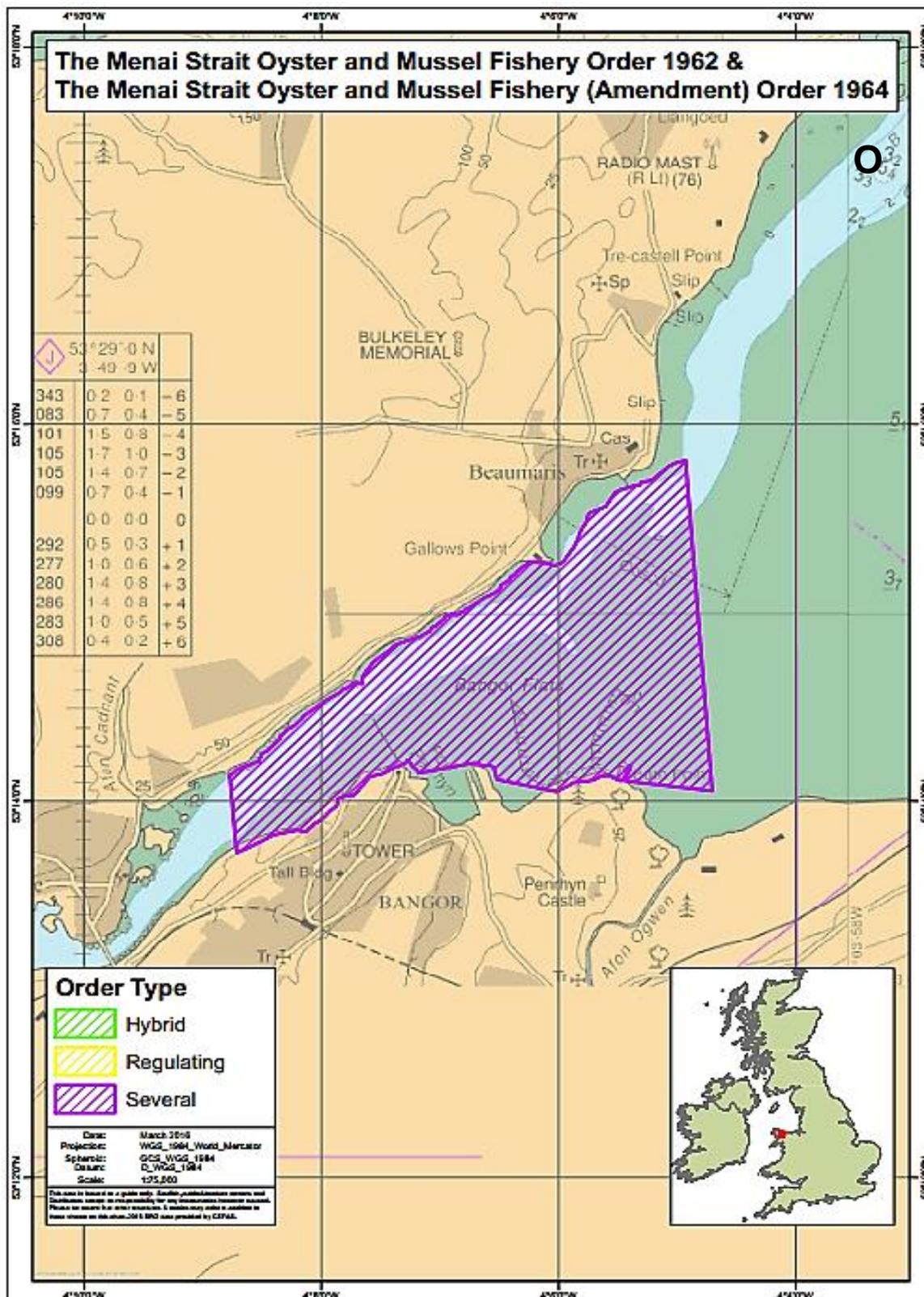


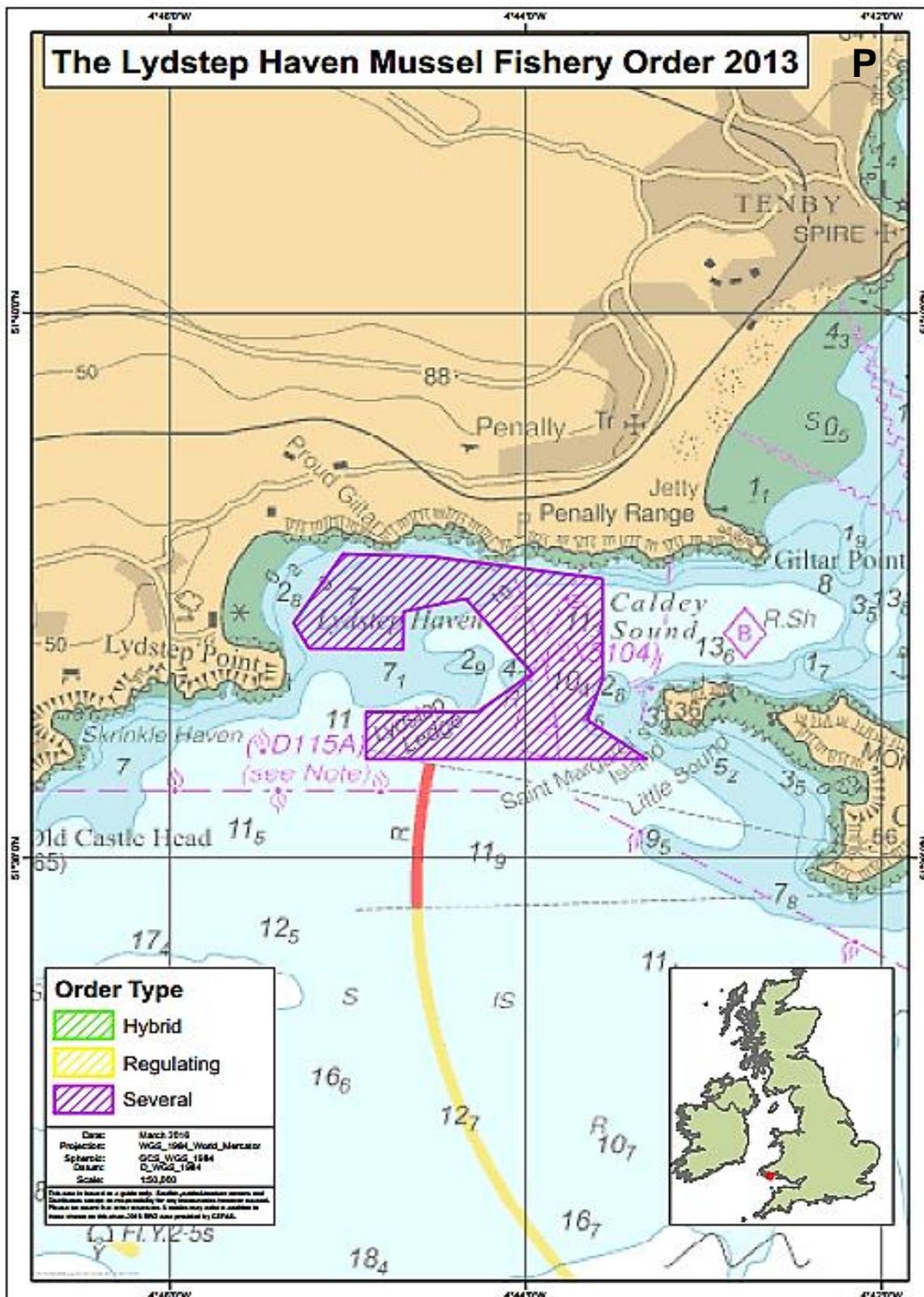


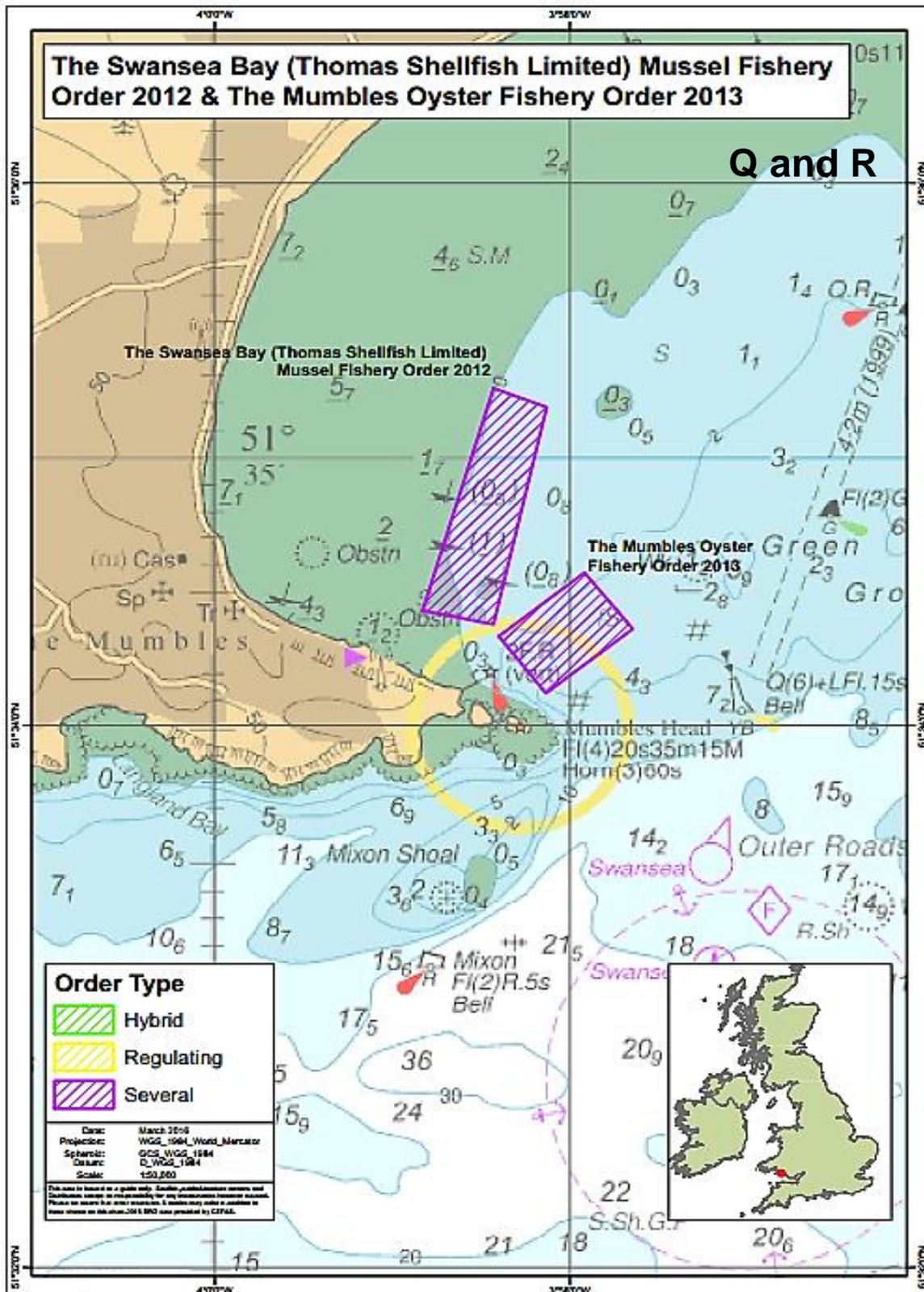










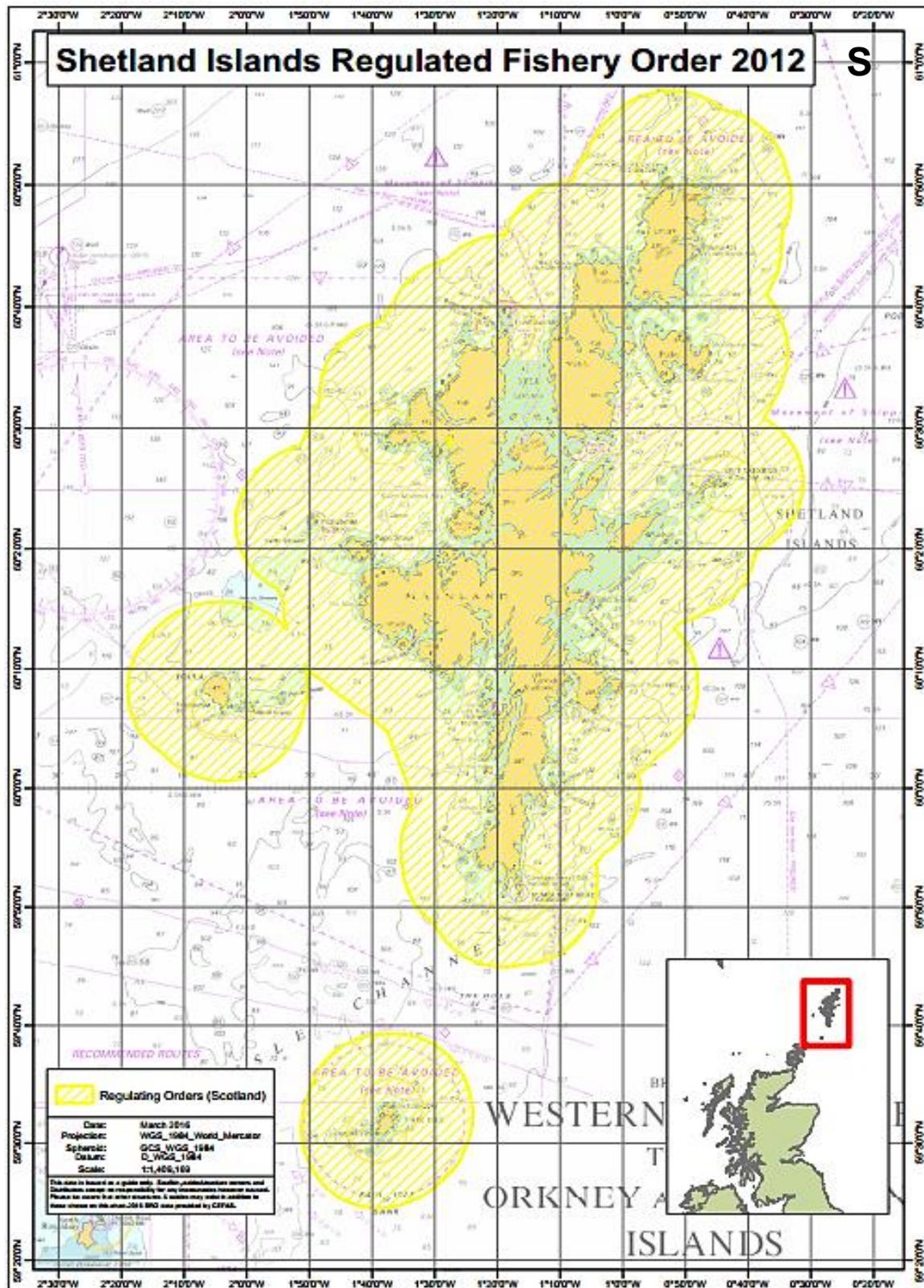


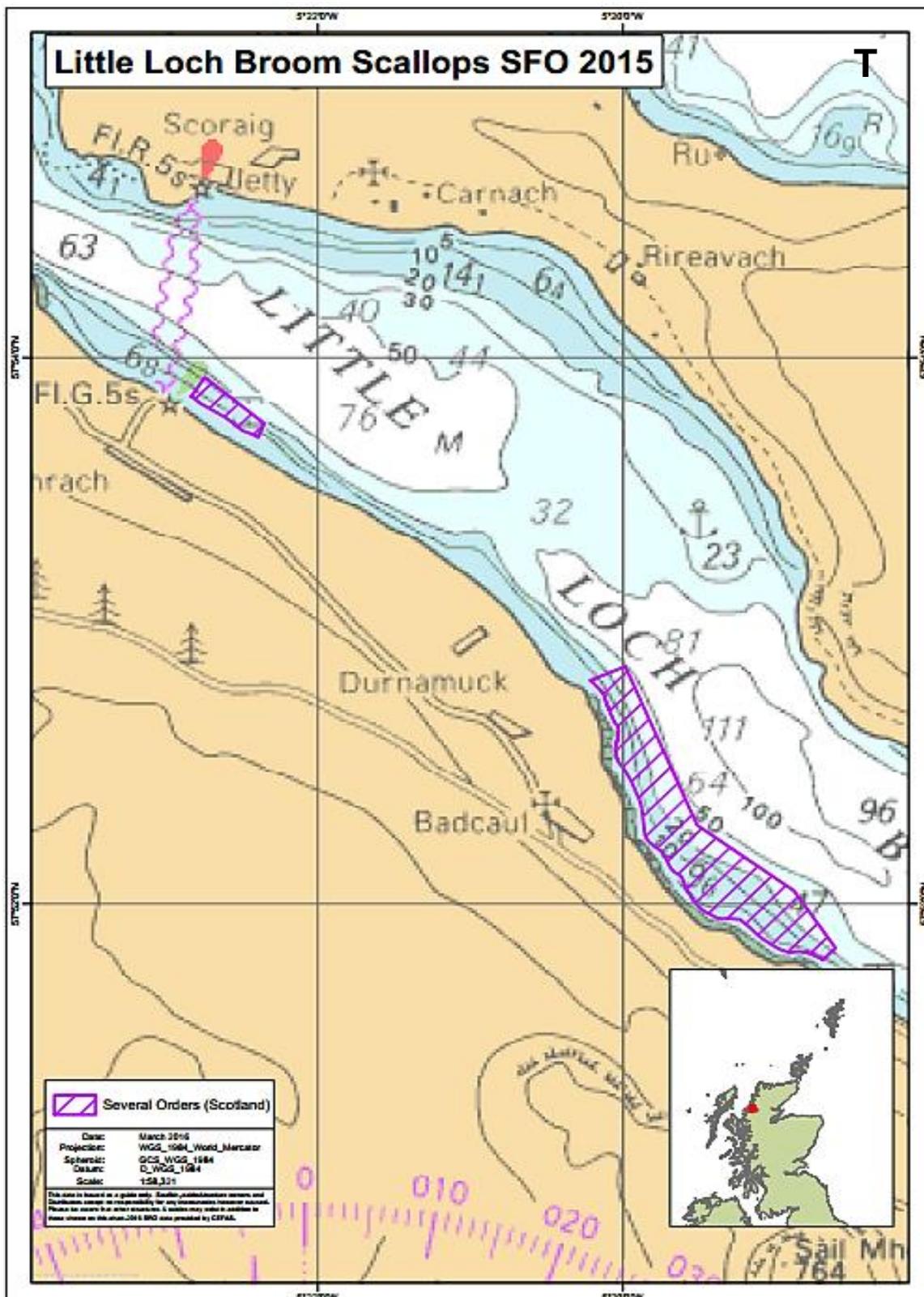
Appendix 6: Several and Regulating Orders in Scotland

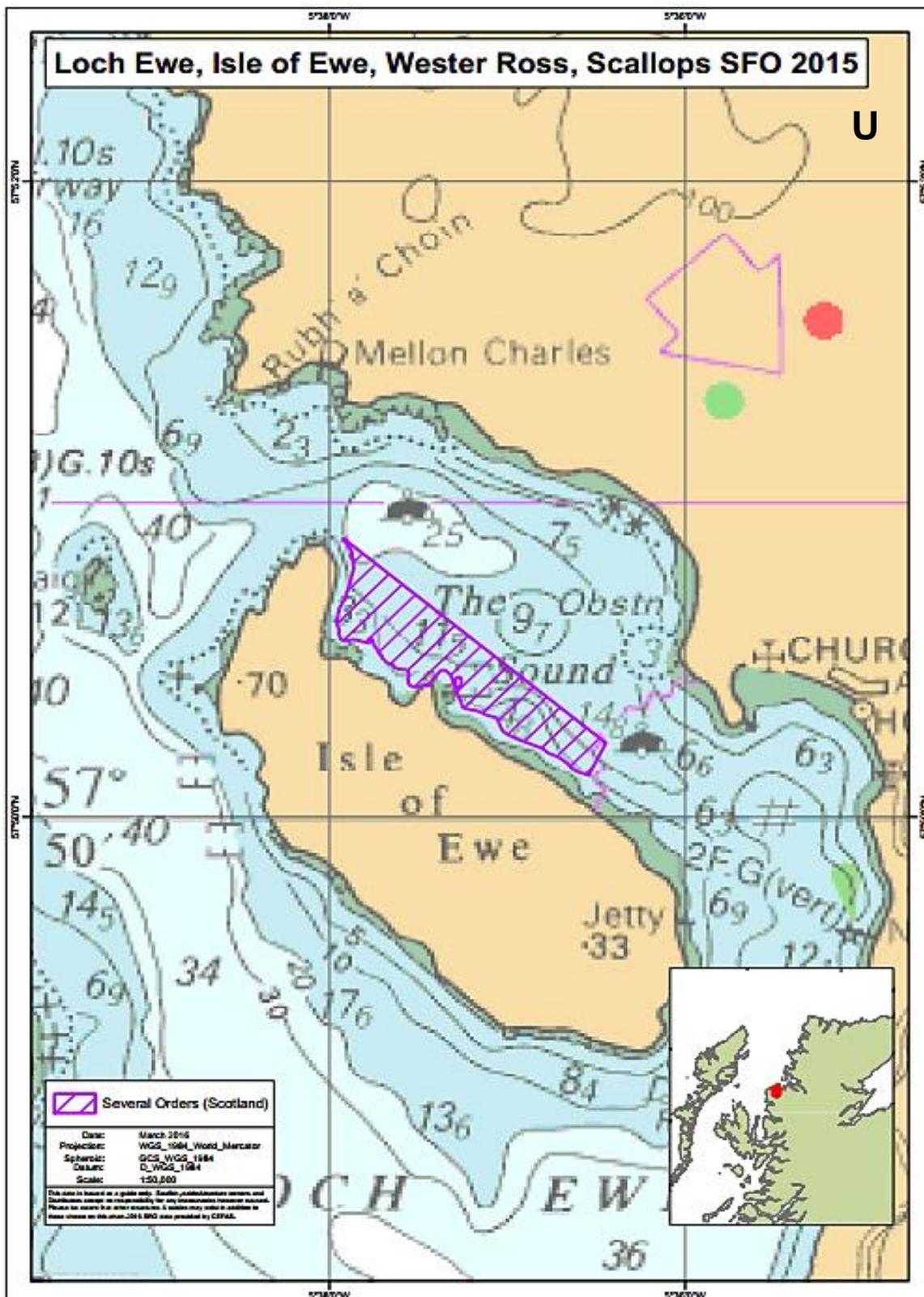
(Data to create maps is downloadable via NMPi at

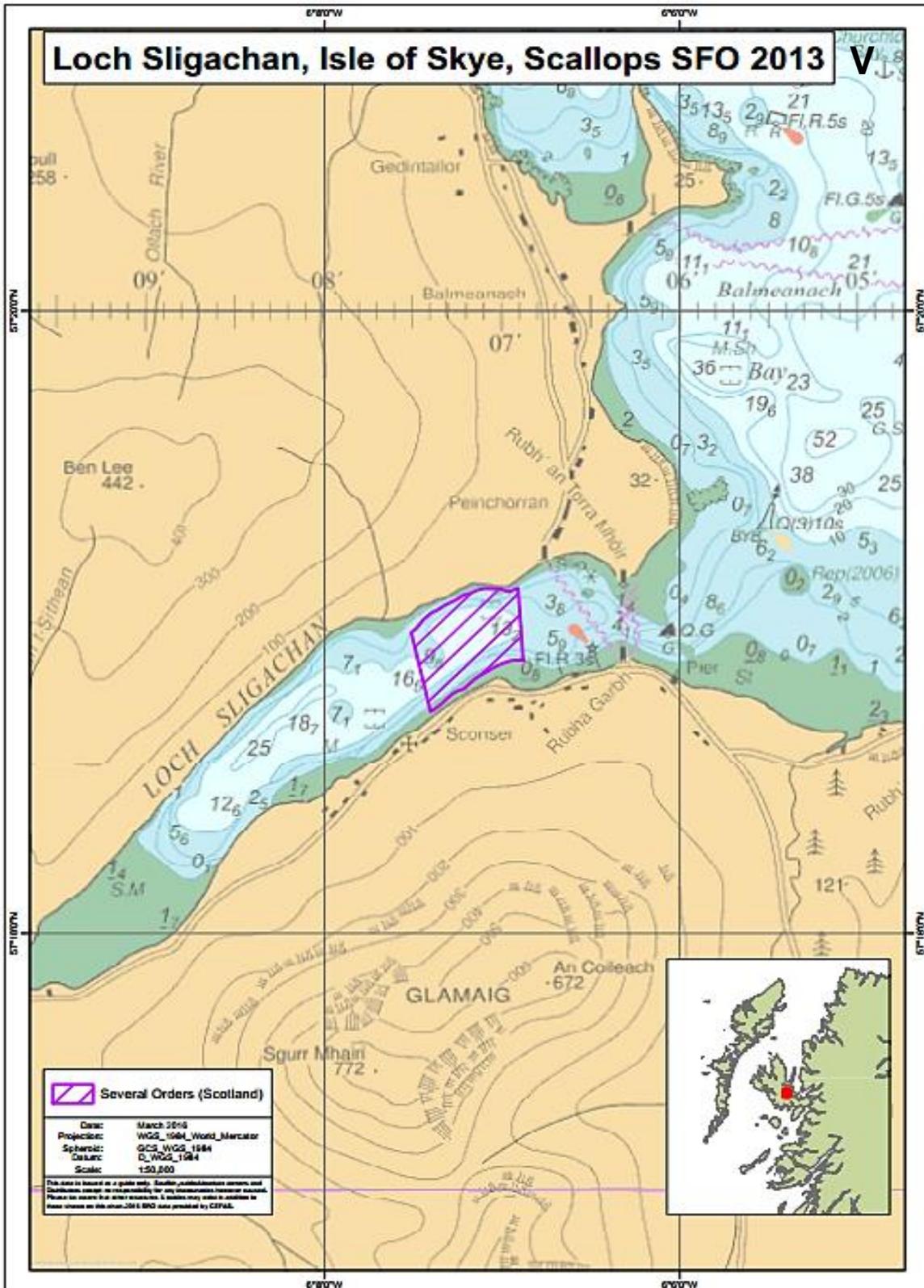
<https://marinescotland.atkinsgeospatial.com/nmpi/default.aspx?layers=850>.

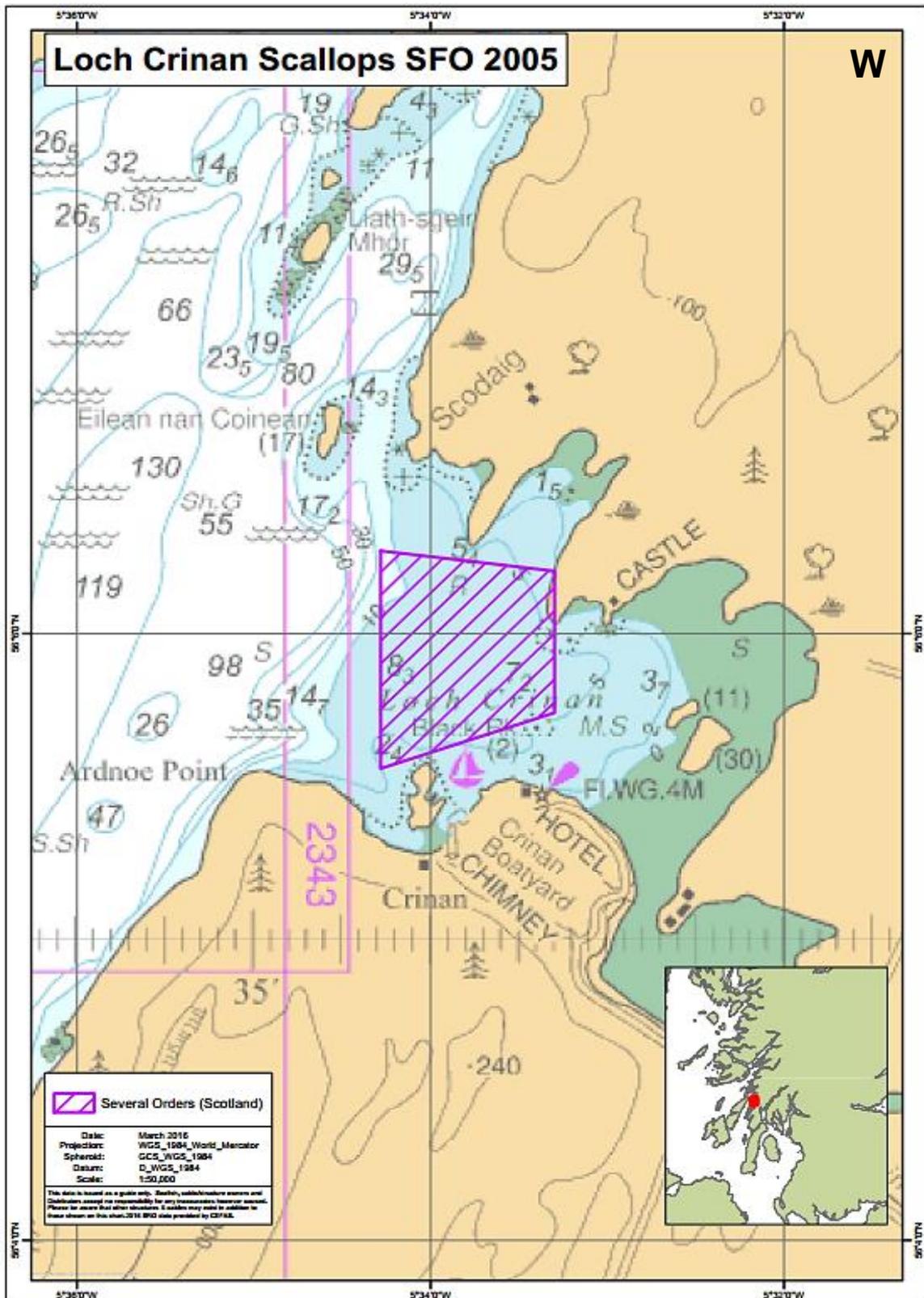
Link provided by Marine Scotland, 2016)

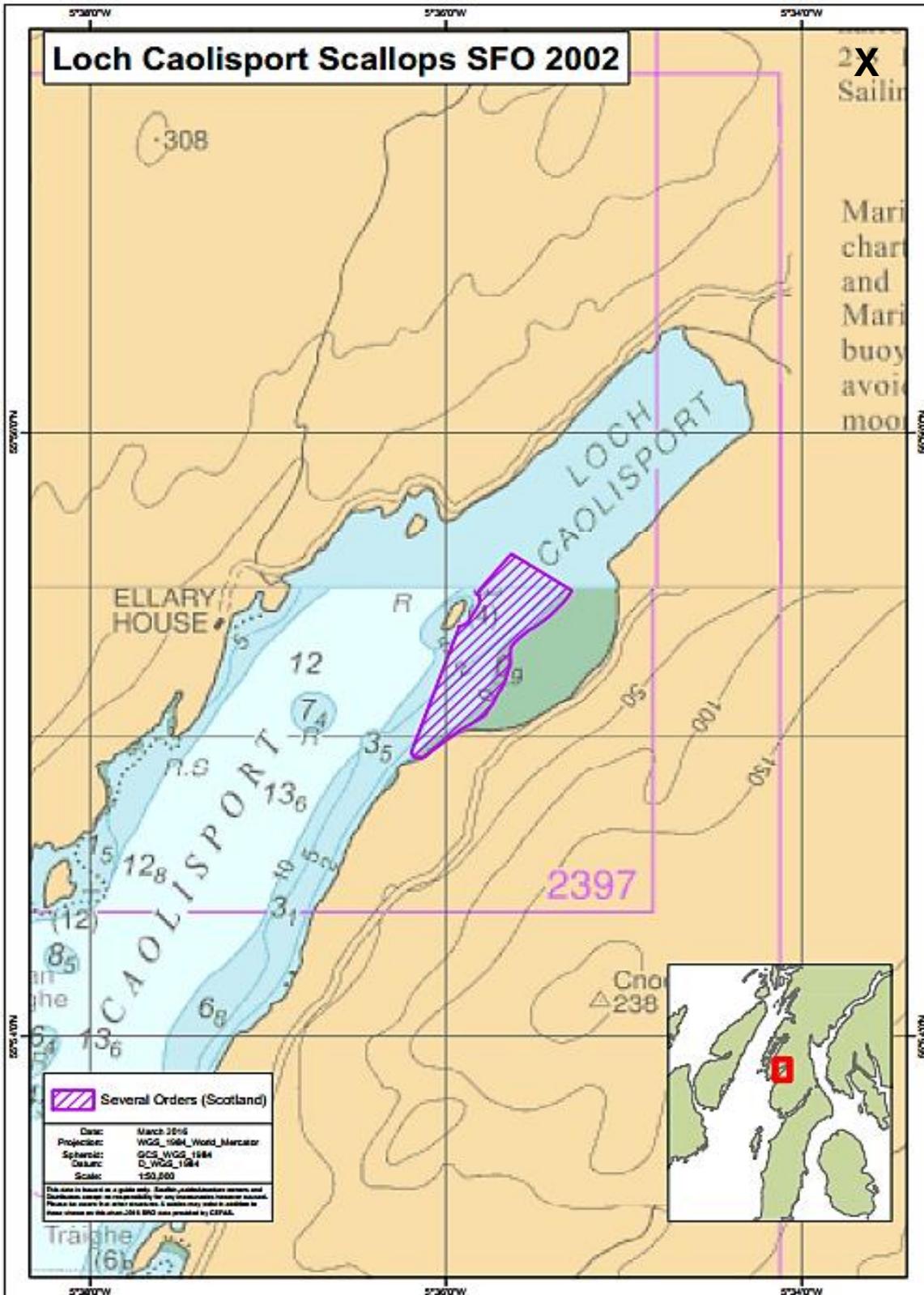












Appendix 7: NWIFCA: Comparing Powers Under the 1967 Act with Byelaw Making Powers Under the 2009 Marine & Coastal Access Act (as presented at the NWIFCA Technical, Science and Byelaw Sub-Committee meeting, 31/10/2014)

	Key Differences	Marine & Coastal Access Act 2009 (2009 Act)	Sea Fisheries (Shell Fish) Act 1967 (1967 Act)
Powers	<p><u>Power to grant several right</u> The 1967 Act provides for power to grant exclusive right of shellfishery. There is no equivalent power to grant proprietorial rights under the 2009 Act.</p> <p><u>Power to regulate</u> There are some key differences between the two Acts in relation to the powers to regulate fisheries:-</p> <p>a) Byelaw regulations have to be consistent with the IFCA's duties of sustainability and protecting MCZs under s.153. These are mandatory duties and the byelaw making power is the principal mechanism for their performance.</p> <p>b) s.156 of the 2009 Act sets out six non-exhaustive Heads of provision, with non-exhaustive sub-provisions under each by way of example. Taken together with the duties under s.153 there is a strong argument that a <u>broad</u> interpretation of what powers are permitted in a byelaw is necessary. That being the case it should be possible to implement those regulations and restrictions which would otherwise be permitted under an SRO (1967 Act) in a byelaw (2009 Act). This is subject to the byelaw being consistent with the IFCA's duties i.e.: - it needs to be clearly justified, in the pursuance of those duties, and the byelaw must specify, as far as possible, what it is controlling.</p> <p><u>Power to sub-delegate regulations</u> c) For SROs there is a power under s.15 (3 & 4) Sea Fisheries Act 1968 which provides for the sub-delegation of powers (with the consent of the minister) in relation to: dredging; fishing for and taking of shellfish; varying tolls and royalties. This power is not replicated in the 2009 Act for byelaws, however, advice from Counsel and from Defra legal is that although there is a risk of challenge to byelaws when sub-delegating powers are used (the greater the delegation, the greater the risk) that risk should be limited provided that it is made clear on the face of the byelaw what conditions are to be dealt with by way of permitting/schedules/ or notices; specific limits are included on the face of the byelaw; the reason for sub-delegation is clearly justified and within the duties of IFCAs, and there are associated with the byelaw formal operational procedures which set out the processes by which the IFCA will review/amend the byelaw.</p> <p><u>Powers of Investigation/monitoring</u> The 2009 Act includes additional powers of monitoring, including requiring vessels to be fitted with specific equipment, as well as powers of obtaining information from those involved in exploiting fisheries. These powers are not available in the 1967 Act in relation to SROs.</p> <p><u>Third Party Rights</u> A byelaw's under the 2009 Act can override other rights if site is a</p>	<p><u>Duties</u></p> <ul style="list-style-type: none"> • Powers should be read in the context of the IFCA duties set out under s.153 which include duty to:- <ul style="list-style-type: none"> ○ ensure that the exploitation of fisheries is carried out in a sustainable way; ○ balance the social and economic benefits with need to protect marine environment; ○ balance the different needs of those engaged with the exploitation of fisheries in the district. <p><u>Powers</u></p> <ul style="list-style-type: none"> • Power to prohibit/restrict the exploitation of sea fisheries resources including in <ul style="list-style-type: none"> ○ specified areas or during specified periods ○ limiting the amount of sea fishery resources a person may take in a specified period - s156 (3) • Power to require use of permits including provision for (i) charging fees for permit; (ii) enabling conditions to be attached to permits; and (iii) limit to be put on the number of permits – s.156 (4) • Power to prohibit certain types of vessels, methods and types of gear – s.156 (5) • Protecting shellfish fisheries – including (i) requiring certain shellfish to be re-deposited in specified localities (ii) provision for protection of cultch and other material for the reception of spat or young shellfish (iii) prohibitions for sale of oysters between certain dates – s.156 (6) • Power to monitor fishing – including requiring (i) vessels to be fitted with specific equipment; (ii)vessels to carry specified persons; (iii) specific items used for the exploitation of fisheries to be marked – s.156 (7) • Power to require information from those involved in exploitation of sea fisheries – s.156 (8) • Powers include power to make different provisions for different cases or circumstances – e.g. different parts of the IFCA district, different times of the year, or different sea fishery resources – s.158 (1). • Byelaw requires consent of person affected if it interferes/restricts right of several fishery or right under a local or special Act of Parliament 	<ul style="list-style-type: none"> • Power to make an order to provide for the <u>establishment and improvement, and for the maintenance and regulation</u> of a fishery for shellfish within 6 miles (including estuaries and tidal rivers) - s.1. <p><u>Several Orders</u></p> <ul style="list-style-type: none"> • Effect of several fishery – exclusive right of shellfishery - s2 (1) <ul style="list-style-type: none"> (i) to make/maintain beds for shellfish; (ii) at any season collect, remove and deposit shell fish; (iii) all other things grantees think proper for obtaining, storing and disposing of their produce. • Any shellfish not specified in the order and all fin fish may be fished by 3rd parties although inability to use most fishing implements reduces scope for fishing opportunities –see s.7 (4) <p><u>Regulating Orders</u></p> <ul style="list-style-type: none"> • Regulating orders regulate the fishing of shellfish. s. 3 provides powers to:- <ul style="list-style-type: none"> (i) enforce restrictions within the limits of the fishery; (ii) levy tolls for the purposes relating to the regulation of the fishery; (iii) Grantees may retain Tolls for the purposes of recouping any costs incurred. (vi) deposit or provide propagating shellfish (v) licence certain individuals to fish/dredge take – s.4 (2); although Minister must be notified of intention to issue licences - s.4 (5) • SRO requires consent of person affected if it abridges or takes away any right enjoyed by a person under a local or special Act of Parliament, any Royal Charter, letters patent, prescription, or immemorial usage – s1 (5). • There is a power under s.15 (3 & 4) Sea Fisheries Act 1968 which provides for the sub-delegation (with the consent of the minister) to the grantee of those powers which impose restrictions or make regulations under s.1 of the 1967 Act in relation to: (i) dredging; (ii) fishing for and taking of shellfish; vary tolls and royalties.

	<p>SSI/Ramsar site, MCZ, or European Marine Site and, in those circumstances, can be made without the consent of those it affects. Otherwise consent is required. By contrast an SRO under the 1967 Act requires the consent of third parties whose rights are infringed.</p> <p><u>Emergency Regulations</u> Under the 2009 Act IFCA's have the power to make an emergency byelaw. This can be made without confirmation from the SoS in circumstances where the IFCA considers there to be an urgent need, and the need to make the byelaw could not have been foreseen – s.157 (1). Such a byelaw is time limited to 12months unless extended by the SoS. No such powers are available under the 1967 Act.</p>	<p>(s.158(3)-(5)) unless it relates to a site of SSI/Ramsar site, MCZ, or European Marine Site in which case no consent is required – s.158(6).</p> <ul style="list-style-type: none"> • Provision for Emergency Byelaw to be made without confirmation from the SoS in circumstances where the IFCA considers there to be an urgent need, and the need to make the byelaw could not have been foreseen – s.157(1). Such a byelaw is time limited to 12months unless extended by the SoS – s.157(3) 	
Offences	<p>Offences and penalties are essentially mirrored under both Acts. One key difference is that the MCAA does not contain the presumption of an offence if the accused is caught within the vicinity of the regulated fishery with equipment. A breach of a byelaw permit condition alone is not an offence under s.163l. A breach of a byelaw would be required for there to be an offence.</p>	<ul style="list-style-type: none"> • A person who contravenes a byelaw is guilty of an offence and liable to a fine up to £50,000 – s.163. • Offence extends to master, owner, charterer of vessel used in contravention of the bylaw – s.163 (2). • Court may order forfeiture of any fishing gear or fishing resources – s.164 (2). • Note - a breach of a byelaw permit condition alone is not an offence under s.163 	<ul style="list-style-type: none"> • Any person who fishes in contravention of restriction/regulation shall be guilty of an offence and a fine not exceeding £50,000 - includes power to forfeit shellfish taken, or if they have been sold a sum equal to their value – s.3(3). • Presumption that accused was in contravention of restrictions s.3 (3A) if it is proved that the accused was (i) within the limits or immediate vicinity of the regulated fishery; (ii) at a time the regulation applied; with equipment for the purposes of fishing/dredging/taking what is prohibited. • Offence and power to fine extends to the master/owner/charter of a fishing boat –s.3 (5). • Protection of fisheries – if person without several right is caught fishing/dredging/depositing ballast/rubbish, he/she will be guilty of an offence and liable to summary conviction with fine up to £50,000 - s.7 (4) – unless area is not properly marked s.7 (5).
Enforcement powers	<p>Since the implementation of the 2009 Act the enforcement powers available to IFC officers in respect of byelaws and SROs are the same.</p>	<ul style="list-style-type: none"> • IFCA may appoint a IFC officer for the purpose of enforcing byelaws – s.166(1) who has the powers to:- <ul style="list-style-type: none"> ○ board and inspect vessels - s.246 ○ enter and inspect premises – s.247 ○ enter and inspect vehicles – s.248 ○ enter and inspect dwellings provided officer has a warrant – s.249 • When exercising powers under s.246,247,248, an officer has powers of search and seizure – s.252 • Power to record evidence of offence –s.255 • Power to require address and production of licence - s.256 & s.257 • Power to require attendance and direct vessel to port – s.258 and s.259 • Power to use reasonable force - s.261 • Power to inspect & seize objects at sea –s.264 	<ul style="list-style-type: none"> • For enforcement SROs have the benefit s.166 (3) MCAA. This allows Inshore Fisheries Conservation Officers (IFC) have to enforce the rules of an SRO in the same manner in which IFCs enforce byelaws.

		<ul style="list-style-type: none"> • Power to seize fish for the purpose of forfeiture – s.268 • Power to seize fishing gear for the purpose of forfeiture – s.269 • Power to require production of certain equipment – s.284 	
Limits of Order/Byelaw	<p>There are slight variations in the limits of SROs and byelaws.</p> <ul style="list-style-type: none"> • The geographical extent of a byelaw is confined to the limits of the IFCA jurisdiction. An SRO is can be made anywhere within 6nm of the seashore. • An SRO cannot exist longer than 60 years whereas a byelaw is not specifically time-limited. However, Defra byelaw guidance stipulates that IFCA's should continually monitor the effectiveness of byelaws and where they are no longer effective, they should be repealed/modified (para 6.5) 	<ul style="list-style-type: none"> • No specified time limit although IFCA Byelaw Guidance stipulates that IFCA's should continually monitor the effectiveness of byelaws and where they are no longer effective, they should be repealed/modified (para 6.5). • Geographical extent is confined to the area <u>within</u> the IFCA district which the byelaw is made – s.155(2) 	<ul style="list-style-type: none"> • Time limit of an order is 60 Years - s.1 (3). • Geographical extent of the order is the area to which the order applies, so long as it is within 6 nautical miles from the seashore – s.1 (1)
Cessation/ Variation		<ul style="list-style-type: none"> • If SoS is satisfied that any provision made by the byelaw is unnecessary; inadequate; or disproportionate, the SoS may revoke or amend the byelaw – s.159 	<ul style="list-style-type: none"> • Any order may be varied or revoked by subsequent order s.1(6) • Minister may make or vary the order by virtue of s.1 (10) in circumstances where permission has been granted to carry out any development for which development has been granted in circumstances where it would be impossible to exercise any right of several fishery. • If minister is not satisfied that order is being properly implemented he may make a certificate determining SRO - s.5 (1).
Licence Register	No requirements for IFCA's to have a licence/permit register.	n/a	<ul style="list-style-type: none"> • Licence register must be maintained – s4ZA
Process of Implementation	<p>The principle difference between an SRO and a byelaw is that the IFCA takes responsibility for consulting on and drafting the byelaw. Once the consultation for a byelaw is complete the IFCA is required to submit the final draft to the MMO for checks and then to the SoS for approval.</p> <p>Another difference is no provision for the SoS to recoup any expenses for approving the byelaw.</p>	<p>IFCA's must have regard to the following procedure when making a byelaw (as per the Guidance)</p> <ul style="list-style-type: none"> => Impact Assessment. =>Notify IFCA Members, SoS, and stakeholders of intention to make byelaw =>consultation with stakeholders. => deal with objections and provide explanation if they cannot be resolved. => once consultation period is complete final byelaw should be submitted to the MMO for checks, amendment or local inquiry. => MMO submits to SoS for final approval. 	<ul style="list-style-type: none"> • Application => draft order => publication => objections/refs within 1 month • where there are relevant objections appoint an inspector to hold an inquiry =>Inspector may take evidence under oath • where there are no objections after the expiry of 1 month then as soon as reasonably practicable the minister will either refuse or make the Order • All expenses shall be paid by the applicant and shall be paid to the minister in such sums he thinks fit.



Seafish

Origin Way, Europarc, Grimsby DN37 9TZ

T: 01472 252300 F: 01472 268792

E: seafish@seafish.co.uk W: www.seafish.org

Supporting a profitable, sustainable and socially responsible future for the seafood industry