



Law Society
of Scotland

Consultation Response

Sustainable fisheries for future generations:
consultation document

September 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Marine Law sub-committee welcomes the opportunity to consider and respond to the Department for Environment, Food and Rural Affairs' (Defra) paper *Sustainable fisheries for future generations: consultation document*¹ (the White Paper). We have the following comments to put forward for consideration.

General comments

In 2016, landings by Scottish vessels contributed around 65% of the quantity of all landings by UK vessels.² Fishing opportunities is consequently a particularly important issue for Scotland. While we welcome the recognition that the Government will work closely with the devolved administrations in pursuing the proposed agreement, it is not clear expressly from the White Paper that the significance of fishing to Scotland is widely acknowledged. It is of crucial importance that Scotland's fishing interests are protected along with those of the other UK jurisdictions, particularly in recognising that positive changes to the UK fisheries position is likely to adversely impact the European fishing fleet and/or impact on trade negotiations, including tariffs.

Following the UK's exit from the EU, regulation of fishing in Scotland should fall within the ambit of the Marine (Scotland) Act 2010. In line with the marine planning envisaged by this Act, we consider that it is important that fishing is not looked at in isolation but that an integrated view is taken. In particular, leaving the Common Fisheries Policy opens up the opportunity for fisheries to be looked at in detail alongside matters such as conservation, fossil fuel and renewable energy developments, aquaculture, and

¹ <https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations>

² Scottish Sea Fisheries Statistics 2016, paragraph 1.1

navigation. This will help to ensure that the system of marine planning envisaged under the Act is comprehensive, rather than having components of use of the sea treated separately.

While we appreciate the use of the phrase “independent coastal state” within the White Paper, it is important to recognise that there will continue to be close co-operation with the EU and coastal states on management of cross-border fish stocks following the UK’s exit from the EU.³ We welcome the express acknowledgement of this within the White Paper. The nature and extent of ongoing negotiations with the EU will depend on the terms of an agreed withdrawal agreement. If no withdrawal agreement is in place, we would expect that bilateral discussions between the UK and EU would be necessary.

Consultation response

Q1: Do you agree with the proposed powers in the Fisheries Bill?

We agree with the proposed powers in so far as they can be ascertained from the White Paper. We consider that the Bill should also address how existing quota and Total Allowable Catch (TAC) are currently allocated – there is unlikely to be another opportunity such as this in the near future to reconsider the existing allocations and to ensure that the system is fair and sustainable.

Q2: What are your priorities for UK negotiations with the EU on fisheries?

The creation of an agreement which sets out a clear legal framework for the management of fisheries between the UK and the EU is a priority for the negotiations. This would assist in producing certainty and consistency for businesses operating in the sector and for consumers, which may in turn assist in ensuring sustainability of the sector. Such an agreement would ensure clarity as to the rights and obligations of the respective parties to the agreement.

Q3. What are your priorities for controlling our waters after exit?

We do not have priorities in terms of controlling the UK’s waters after exit. It is important that there is a clear set of rules concerning fish extraction and allocations of quota, and that these rules cover issues including conservation, aquaculture, environmental impacts and marine and fishery sustainability.

Q4: What are your priorities for the UK’s international role in fisheries (beyond the EU)?

We do not have priorities in terms of the UK’s international role in fisheries. Clear international norms will require to be established to ensure clarity of rights and obligations, as well as ensuring certainty and

³ In line with the UN Convention on the Law of the Sea (UNCLOS) 1982.

consistency for businesses and consumers. The matters referred to in our answer to question 3 will require to be addressed.

Q5: What are the fisheries policy areas where a common legislative or non-legislative approach (framework) across the UK is necessary?

We recognise the October 2017 communique from the JMC(EN) acknowledges the need for common frameworks to be in place and that these will recognise devolution in Scotland, Wales and Northern Ireland. We consider that strong collaboration between the UK Government and the devolved administrations is of considerable importance.

The Cabinet Office published in late 2017 a list of 111 points where EU Law intersects with devolved matters. This has been supplemented by the publication of the UK Government's *Frameworks analysis: breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland on 9 March 2018*. The analysis was published in March 2018 and sets out the UK Government's provisional assessment of areas of EU law that intersect with devolved competence in each devolved administration. 24 of the policy areas in question are subject to more detailed discussion to explore whether legislative common framework arrangements might be needed, in whole or in part. One of these areas identified for further discussion is fisheries management & support.

In order to add further information to the debate, we offer a survey of this policy area (annexed to this paper) which includes details of the EU law concerned and the implementing legislation for Scotland and, where appropriate, for the UK (occasionally on a GB basis) and for England and Wales.

Matters relevant to fishing that will require to be considered include funding, aquaculture and environmental protection, environmental and economic sustainability, and food standards.

Q6: Do you have any further comments relating to the issues addressed in this section?

We have no further comments.

Q7: Do you agree with the measures proposed to ensure fishing at sustainable levels?

In principle, and in so far as they can be established from the White Paper, we agree with the measures proposed.

We note that investment on improved technology may assist with monitoring catches and discards and in turn, support a sustainable fisheries policy. There may be merit in incentivising and supporting fishers to acquire and use such technology.

Q8: Do you agree that existing quota should continue to be allocated on an FQA basis?

We do not seek to make comment on this matter. We note that there may be merit in the existing Fixed Quota Allocation (FQA) system being reviewed as the data used to determine quota allocations is now of some age.

Q9: How should any additional quota that we negotiate as an independent coastal state be allocated?

Any additional quota could be allocated as proportionate to the catch landed in each of the devolved areas.

Q10: Do you agree that Defra should run a targeted scientific trial of an effort system in English inshore waters?

No comment.

Q11: Do you agree with our proposals to explore alternative management systems for certain shellfisheries in England?

No comment.

Q12: Do you agree that there is a case for further integrating recreational angling into fisheries management?

We are not in a position to comment on whether there is a case for this. We note that while there may be a case for it, we do not consider that it should be prioritised over other aims and initiatives.

Q13: Do you agree with the proposed package of measures and initiatives to reduce wasteful discards?

We consider that there would be merit in further analysis to ensure that it is not more cost-effective for stock to be discarded rather than landed and a charge paid. There is a danger that this proposal could result in unanticipated consequences, and so suggest that it be considered further in consultation with the industry. Remote Electronic Monitoring (REM) and adaptive management both appear to be worth exploring further. We suggest that care will need to be taken to ensure that fishers are not disincentivised or prevented from fishing due to increased short-term costs. An increase in short-term costs could have a greater impact on small and medium-sized businesses than on larger businesses.

Q14: Do you agree with the proposed approach to protecting our marine environment in relation to fisheries including the powers proposed in the Fisheries Bill (see section 1.2)?

On the basis that there is an agreed withdrawal agreement between the UK and EU, we agree with the proposed approach.

Q15. What opportunities are there for the sector to become more involved in both the provision and direction of science and evidence development needed for fisheries management?

No comment.

Q16. Do you have any further comments relating to the issues addressed in this section?

We have no further comments.

Q17: What would be your priorities for any future funding for the sector or coastal communities?

We do not make comment on particular priorities in relation to funding. It is important that a detailed financial memorandum on funding is produced to ensure clarity for businesses operating in the sector and for consumers.

Q18. Do you have any further comments relating to the issues addressed in this section?

We have no further comments.

Q19: How far do you agree with our future vision to pursue a partnership approach with industry and others for sustainably managing fisheries?

We agree that a joined-up approach is preferable to industries, science, NGOs and other stakeholders working in silos.

Q20. Do you have any further comments relating to the issues addressed in this section?

We have no further comments.

For further information, please contact:

Alison McNab
Policy Team
Law Society of Scotland
DD: 0131 476 8109
AlisonMcNab@lawscot.org.uk

ANNEX

Notes on fisheries management and support which is subject to more detailed discussion to explore whether a legislative common framework agreement might be needed, in whole or in part

| Responsible UK Government Department | Area of EU Law (Policy Area) | Devolution Intersect | | | Additional Information |
|--------------------------------------|--------------------------------|----------------------|---|---|---|
| | | NI | S | W | |
| DEFRA | Fisheries management & support | x | x | x | <p>Policies and Regulations relating to rules relating to the sustainability of fisheries (quotas), access to waters, conservation measures, enforcement and financial support.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>Article 3(1) (d) TFEU provides that the EU has “exclusive competence” in the “conservation of marine biological resources under the Common Fisheries Policy” (CFP). The CFP is a set of rules for managing European fishing fleets and for conserving fish stocks. It gives all European fishing fleets equal access to EU waters and fishing grounds. EU countries have taken action to ensure the European fishing industry is sustainable and does not threaten the fish population size and productivity over the long term. The CFP was first introduced in the 1970s and went through successive updates, the most recent of which took effect on 1 January 2014. The EU maintains that CFP aims to ensure that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens. Its goal is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities.</p> <p>The current policy stipulates that between 2015 and 2020 catch limits should be set that are sustainable and maintain fish stocks in the long term.</p> <p>The reform also changed the way in which the CFP is managed, giving EU countries greater control at national and regional level.</p> <p>The CFP has 4 main policy areas detailed in these links: Fisheries management, International policy, Market and trade policy and Funding of the policy The CFP also includes rules on aquaculture and stakeholder involvement The new Common Fisheries Policy: sustainability in depth</p> |



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| | | | | <p>The international dimension of the EU Common Fisheries Policy The European Maritime and Fisheries Fund 2014-2020 Regulation (EU) No 1380/2013 on the Common Fisheries Policy</p> <p><u>Scottish Law</u></p> <p>The Scotland Act 1998 schedule 5 paragraph C6 provides that the regulation of sea fishing outside the Scottish Zone is reserved to the UK. Therefore the Scottish Parliament has legislative competence over sea fishing within the Scottish zone, subject to the EU competence: Aquaculture and Fisheries (Scotland) Acts 2007 and 2013.</p> |
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