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# The revised UK Fisheries Bill

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This briefing considers the UK Fisheries Bill 2019-20 from a Scottish perspective. The Bill was introduced in the House of Lords on 29 January 2020. It follows on from the Fisheries Bill 2017-2019 introduced in the previous UK parliament on 25 October 2018 but which fell at the end of the parliamentary session. The Bill will provide the legal framework for the UK to operate as an independent coastal state now that the UK has left the European Union and will leave the Common Fisheries Policy after the transition period. Many parts of the Bill apply in Scotland.



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# Executive Summary

The UK Fisheries Bill was introduced in the House of Lords on 29 January 2020. It follows on from the Fisheries Bill introduced in the previous parliament on 25 October 2018. The Bill will provide the legal framework for the UK to operate as an independent coastal state now that the UK has left the European Union and will leave the Common Fisheries Policy (CFP) after the transition period

The first section of this briefing provides general information on Brexit-related legislation, of which this is one example, and what this means for Scotland.

Fisheries is generally a devolved matter - Devolved Administrations regulate fisheries in their waters and regulate their vessels wherever they fish.

The first clause of the Bill sets out fisheries objectives. These set out priorities for the [Fisheries Administrations](#) once the UK is out of the CFP. These partly mirror the objectives of the CFP. Two new objectives - the 'national benefit' objective and 'climate change' objective - have been added to the revised Bill, and the 'discards' objective has been changed to a 'bycatch' objective.

Clauses 2-11 of the Bill create a [Common UK Framework](#) requiring the four UK Fisheries Administrations to develop a 'Joint Fisheries Statement' detailing policies for contributing to the achievement of the fisheries objectives. The revised Bill contains new clauses requiring the development of 'Fisheries Management Plans' setting out policies for restoring or maintaining fish stocks at sustainable levels.

Clauses 12-13 revoke EU legislation allowing the automatic right of foreign vessels registered in the EU to access UK waters. It requires foreign vessels fishing in UK waters to be licensed by one of the UK's Fisheries Administrations.

Clauses 14-20 detail the powers and provisions for Ministers to license UK and foreign vessels fishing in UK waters and the powers available to Ministers to punish vessels for committing offences.

Clauses 23-27 provide the Secretary of State the power to determine the quantity of fish that may be caught by British fishing boats. The Secretary of State must consult Scottish Ministers in determining this. The UK Government views determination of fishing opportunities as a reserved function. The Scottish Government disagrees.

Clauses 28-32 grant the Secretary of State powers to introduce regulations for a scheme to charge English vessels for unauthorised catches. The purpose is to set charges to deter overfishing and to incentivise more sustainable fishing practices and avoid unwanted catches.

Clauses 33-35 provide Ministers with powers to make grants to the industry and to charge the industry for services provided. Clause 33 aims to provide for a scheme to replace grants that were previously available through EU funding via the European Maritime Fisheries Fund (EMFF).

Clauses 36-42 provide broad powers to make provision through secondary legislation on matters currently regulated by the EU under the CFP. Not all of these powers were

conferred on Scottish Ministers in the previous version of the Fisheries Bill but have now been extended to Scotland under Schedule 8 of the Bill.

Schedule 9 provides powers for Scottish Ministers to make orders relating to the impact of fishing on marine conservation. This is to replace EU measures for the protection of the marine environment in the offshore region.

This briefing examines the Bill from a Scottish perspective. [The House of Lords Library published a briefing](#) on the Bill ahead of its Second Reading. The Bill has completed the Committee stage. A date for the Report stage has yet to be announced.

# Author contributions

This briefing was led by Damon Davies and Anna Brand in the Scottish Parliament Information Centre (SPICe), in collaboration with [James Harrison, Professor of Environmental Law at the University of Edinburgh](#) through the SPICe Framework Agreement for Research Services in Relation to Brexit.

Professor Harrison teaches on a number of international law courses, including specialist courses in the international law of the sea, international environmental law, and international law for the protection of the marine environment. His research interests span these areas, considering how the legal rules evolve and interact, as well as examining how international law and policy influences the domestic legal framework.

# 1. Brexit-related UK legislation

This section of the briefing provides some information on the impact of the UK's exit from the EU on law-making in devolved areas. It also examines the powers that Ministers have to make laws in devolved areas.

## 1.1 What does the UK leaving the EU mean for law making?

Many of the laws in the UK derive from its membership of the EU. These laws cover issues from workers' rights to the labelling of food.

The UK left the EU on 31 January 2020. However, EU law will continue to apply during a transition period which will end on 31 December 2020.

For the purposes of legal continuity, the UK Government wishes to preserve, as far as possible, the legal position which exists immediately before the end of the transition period. This will be achieved by taking a "snapshot" of all of the EU law that applies in the UK at that point and bringing it within the UK's domestic legal framework as a new category of law, known as "retained EU law".

The creation of this new category of UK law was one of the main purposes of the [European Union \(Withdrawal\) Act 2018](#). The Act aims to ensure that the UK has the laws it needs after the end of the transition period. This could include, for example, the law on the nutrition and health claims made on food, or on ensuring environmental protection in marine areas.

The UK will be able to amend the policy underlying this retained EU law after the end of the transition period (i.e. with effect from 1 January 2021) by making new domestic laws (laws which apply to the whole of the UK or to any part of it.).

For more on how domestic laws will be made see

## 1.2 Making new laws in devolved areas after EU exit

Some areas of law have always been determined at a UK level. For areas of law which are derived from the EU, the UK must continue to comply with that EU law until the end of the transition period on 31 December 2020.

From 1 January 2021, the UK will no longer require to comply with EU law. Responsibility for policy in areas which were previously dealt with at an EU level will lie with the UK Government and/or the devolved governments.

Scottish Ministers will continue to have powers in devolved areas and the Scottish Parliament will continue to legislate for Scotland in respect of devolved matters. The UK Parliament has the power to pass law in all policy areas for the whole UK and it will continue to have that power.



The UK Parliament will not normally pass primary legislation (an Act of Parliament) in devolved areas without seeking the consent of the devolved legislatures. This is through [the process of legislative consent](#).

Prior to 2018, UK Ministers generally only had powers to make regulations (secondary legislation) in devolved areas for the purpose of giving effect to EU law. That law, and the policy behind it, had been decided through the EU legislative process.

[The European Union \(Withdrawal\) Act 2018](#) gives UK Ministers power to make regulations in devolved areas for the purpose of amending laws so that they work effectively after the UK leaves the EU. The aim of these kinds of regulations is to achieve legal continuity after the end of the transition period.

Some UK legislation, like the [European Union \(Withdrawal Agreement\) Act 2020](#) goes further and gives UK Ministers the power to make secondary legislation (regulations) which is capable of changing policy in devolved areas.

UK Ministers will not normally make such regulations in devolved areas without the consent of the Scottish Ministers. In some cases, such agreement is a legal requirement but not in all. The Scottish Parliament cannot scrutinise secondary legislation laid before the UK Parliament. However, it has a clear interest in such legislation where it relates to devolved matters.

The Scottish Parliament can scrutinise Scottish Ministers' decisions to consent to regulations which are made by UK Ministers in devolved areas. A process for this is being agreed between the Scottish Government and the Scottish Parliament. A [protocol is already in place for statutory instruments](#) made to fix deficiencies (gaps, errors and unintended consequences) as a result of powers given to UK and Scottish Ministers under the European Union (Withdrawal) Act 2018.

## 1.3 Do Ministers have new powers to make law in devolved areas as a result of EU exit?

The [European Union \(Withdrawal Act\) 2018](#) gives Scottish Ministers powers to amend the law in devolved areas by regulations (secondary legislation) so that Scottish laws work effectively after the UK leaves the EU and the transition period is complete. UK Ministers have powers under the [European Union \(Withdrawal Act\) 2018](#) to amend the laws in the UK, including Scottish laws, so that they work effectively after the UK leaves the EU. These powers have been conferred concurrently, meaning that either UK Ministers or the Scottish Ministers can make the regulations.

In some cases where the UK Government and the Scottish Government wish to pursue the same policy objective, the Scottish Government can ask the UK Government to lay statutory instruments that include proposals relating to devolved areas of responsibility. The UK Government can also make regulations in devolved areas without Scottish Ministers asking them to. UK Ministers will not normally make such regulations in devolved areas without the consent of the Scottish Ministers. That agreement is a legal requirement in some cases, but not in all.

The changes made by these kinds of regulations are often technical and are there, in many cases, to achieve legal continuity. In some cases, the changes are very minor –



removing references to EU institutions, for example. In other cases, they are more significant - such as changes in regulatory requirements. The powers to make these kinds of regulations are mainly time limited.

The [European Union \(Withdrawal Agreement\) Act 2020](#) does, however, give UK and Scottish Ministers a suite of new powers in devolved areas that go beyond correcting deficiencies to achieve legal continuity. These powers have been conferred concurrently, meaning that either UK Ministers or Scottish Ministers can make the regulations. The suite of concurrent powers includes:

- powers to implement long term obligations for the recognition of citizens' rights under the Withdrawal Agreement
- powers to deal with separation issues such as the regulation of goods placed on the market
- powers to implement the Ireland/Northern Ireland protocol.

There are other powers created or amended in the regulations made under the [European Union \(Withdrawal\) Act 2018](#) and also powers in other Brexit related legislation, such as the [Direct Payments to Farmers \(Legislative Continuity\) Act 2020](#). Some of these powers may be used to make regulations which change policy. The powers are generally not time limited.

## 1.4 What is the significance of this Bill in the post EU exit legislative landscape?

This Bill is a direct result of the UK's exit from the EU, because policy in this area was previously set at EU level.

If new law was not made in this area, then the legal position from 1 January 2021 would be as provided for under retained EU law.

This Bill puts forward a proposal for a new policy to apply from 1 January 2021.

## 1.5 Does this legislation relate to common frameworks?

In many policy areas, EU laws have ensured that there is a consistent approach across the UK, even where these policy areas are devolved. This is because the UK Government and all of the devolved governments have had to comply with EU law. In effect, this compliance has meant that the same policy has been followed.

The UK left the EU on 31 January 2020. There is now a transition period until 31 December 2020. Through the transition period the UK will continue to comply with EU law. After the end of the transition period, there is the possibility of policy divergence because the UK Government and the devolved administrations within the UK will no longer need to

comply with EU law. Common frameworks can be developed so that rules and regulations in certain areas remain the same, or at least similar, across the UK.

A common framework is an agreed approach to a policy, including the implementation and governance of it. Common frameworks will be used to establish policy direction in areas where devolved and reserved powers and interests intersect. Developments in common frameworks will be one of the factors which determines how Scotland and the rest of the UK will interact post-EU exit.

Some common frameworks may be legislative, but it is anticipated that the majority will be non-legislative. That means that they will be agreed through memorandums of understanding, concordats and so on, rather than being set out in primary legislation.

There may, however, be provision made in primary legislation which relates to a common framework. It is likely that some provisions made in this Bill will form part of common frameworks on fisheries. Similarly, some regulations (secondary legislation) are likely to make provision which is linked to common frameworks. Until a common framework is explicitly developed, and details are shared by the UK and Scottish Governments, it is unclear what the broader extent of a fisheries common framework will be. This is a challenge for parliamentarians across portfolios.

As part of its scrutiny role, the Parliament needs to be able to consider the Scottish Government's approach to, and development of, common frameworks. The Scottish Government and the Scottish Parliament are therefore working together to produce a protocol for the sharing of information on common frameworks.

The committees of the Scottish Parliament will lead on scrutiny of common frameworks in their policy area.

Further information on common frameworks can be found on [SPICe's post-Brexit hub](#).

## 2. Devolution of fisheries and marine policy

Fisheries is generally a devolved matter. In Scotland, the Scottish Parliament has competence to regulate all fishing activity within the Scottish Zone and to regulate Scottish fishing boats wherever they fish.

The Scotland Act 1998 defines the "the Scottish zone" as "the sea within British sea fishery limits...which is adjacent to Scotland" (section 126(1)). British sea fishery limits coincide with the boundaries of the United Kingdom Exclusive Economic Zone (EEZ) as laid down by the [Exclusive Economic Zone Order 2013](#) and they include the Special Area shared between the United Kingdom and the Faroe Islands (see Box 2).

According to [schedule 5 of the Scotland Act 1998](#), the following are reserved:

“ Regulation of sea fishing outside the Scottish zone (except in relation to Scottish fishing boats). ”

(section C6)

In the past, the powers of the Scottish devolved institutions have also been limited by the involvement of the EU in fisheries management under the Common Fisheries Policy (CFP). However, within 12 nautical miles, the CFP recognised that Member States had greater leeway to regulate fishing.<sup>1</sup>

Once the implementation period has expired (likely on 31 December 2020), these limits will no longer apply to Scotland. The European Union (Withdrawal) Act 2018 recognises that the Scottish Parliament will have the power to amend retained EU law<sup>2</sup>, unless particular provisions of retained EU law are protected from modification by regulations made by the UK government under section 30A of the Scotland Act 1998. This means that the devolved institutions in Scotland may have greater discretion as to how fisheries are managed in Scottish waters, for example in relation to the quantity of sea fish that may be caught, or the amount of time that fishing boats may spend at sea. However, other policy areas related to fisheries may be reserved.

International relations (see Box 7) and the regulation of marine transport are two other reserved policy areas which may have implications for fisheries management.

Subject to certain exceptions (e.g. defense, marine transport), the Scottish Parliament has devolved competence in relation to marine conservation, marine planning and marine licensing in the inshore region (out to 12 nautical miles) and the Scottish Ministers have executive competence to make orders in relation to marine conservation, marine planning and marine licensing in respect of the offshore region (12-200 nm).

As UK vessels fish throughout UK waters, the UK Fisheries Administrations (see Box 1 below) may need to work together to ensure a common or consistent approach to fisheries management where necessary or appropriate. This is reflected in various provisions of the Fisheries Bill discussed in further sections of this briefing.

### Box 1. UK Fisheries Administrations

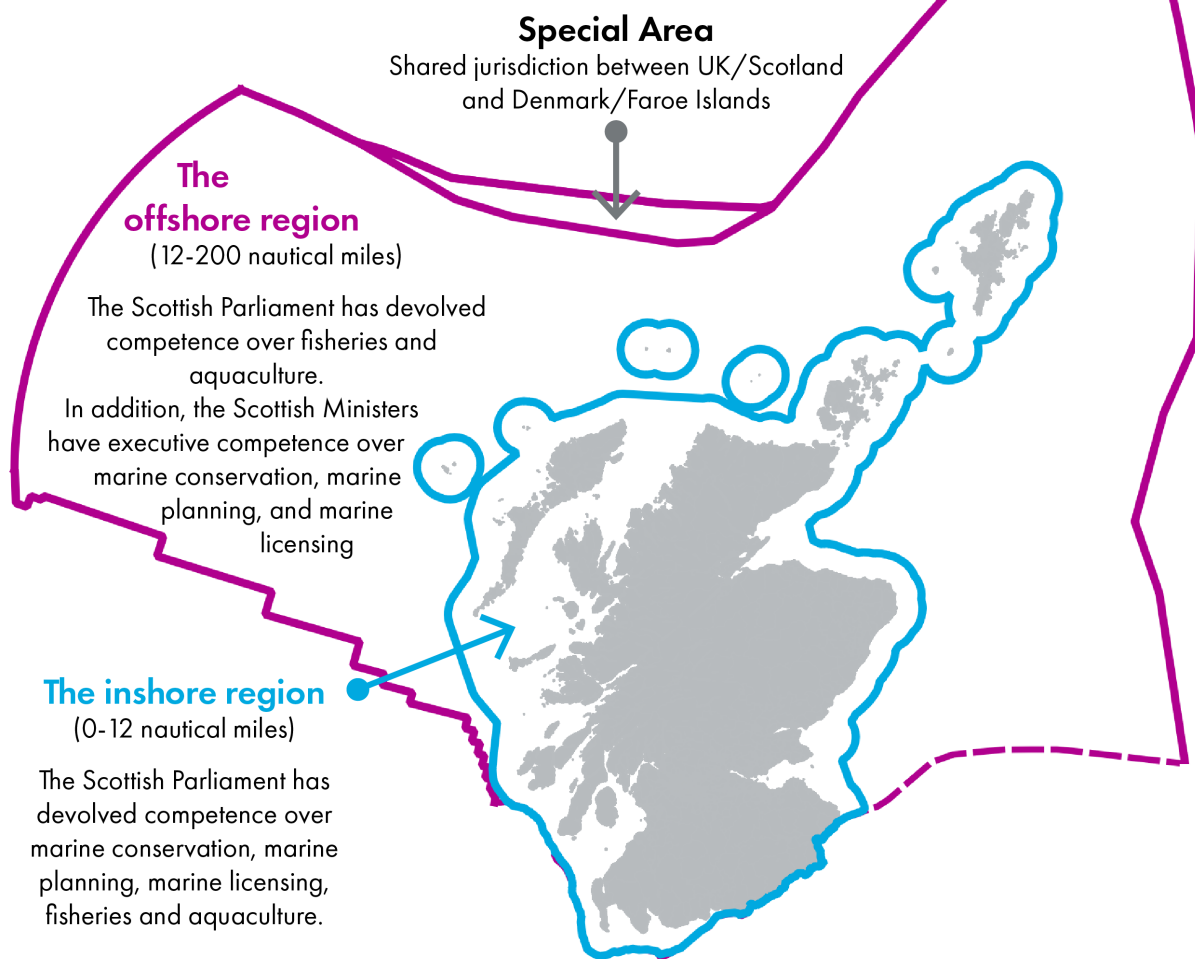
- **The Marine Management Organisation (MMO)** -An executive, non-departmental public body of the UK Government responsible for, among other things, fisheries management in England.
- **Marine Scotland** - a directorate within the Scottish Government responsible for fisheries management in Scotland.
- **The Welsh Government.**
- **The Department of Agriculture, Environment and Rural Affairs (DAERA)** Marine and Fisheries Division - a department of the Northern Ireland Government responsible for fisheries management in Northern Ireland.

### Box 2. Special Area

The Special Area is established under a treaty between the United Kingdom and Denmark, on behalf of the Faroe Islands, in which the two parties have agreed to share jurisdiction over a number of maritime activities, including fishing, in an area defined in a schedule to the treaty. The Special Area is included within the limits of the UK EEZ, but it is subject to special rules reflecting the fact that activities within the area may also be managed by the Faroe Islands.

Within the Special Area, each party may apply its rules and regulations concerning the management of fishing, including the issuing of fishing licences, but it must refrain from action which would infringe upon the exercise of fisheries jurisdiction by the other party; in particular, it must refrain from the inspection or control of fishing vessels which operate in the Special Area under the authority of the other party. Special “hail-in” and “hail-out” rules are also applied to fishing vessels entering and leaving the Special Area. Whilst the UK was part of the EU, access to the Special Area was available not only to UK fishing vessels, but also fishing vessels from other Member States under the equal access principle of the CFP. When the transition period ends, EU vessels will no longer have automatic access to the Special Area, but they may be authorized to fish in these waters by either the UK or the Faroe Islands.

# Devolved competence of Scottish waters



### 3. UK Fisheries Bill 2019-20

The [revised UK Fisheries Bill](#) was introduced in the House of Lords on 29 January 2020.

According to the [Explanatory Notes](#) the Bill will:

“...provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union (EU) and the Common Fisheries Policy (the CFP). The Bill creates common approaches to fisheries management between the Secretary of State for Environment, Food and Rural Affairs (the "Secretary of State") and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management in England. It also confers additional powers on the Marine Management Organisation ("the MMO") to improve the regulation of fishing and the marine environment in the UK and beyond.”

#### **The UK Fisheries Bill 2017-19**

A [previous version of the UK Fisheries Bill](#) was introduced to the House of Commons on 25 October 2018 but failed to complete its passage through Parliament before the end of the session.

The Bill reached the Committee stage but fell prior to Report Stage. The Bill as amended during the committee stage is available here:

<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0305/Fisheries%20Comparision.pdf>

#### **Prior to publication of the 2017-19 Bill**

The Fisheries White Paper, Sustainable Fisheries for a Future Generation, was published for consultation in July 2018<sup>3</sup>. On 25 October 2018 the UK Government published a summary of responses to the White Paper at the same time the Bill was published<sup>4</sup>. It includes some commentary on the Bill in the context of responses.

SPICe published a blog on the white paper - [The future for fish – issues in the UK White Paper](#).

## 3.1 Fisheries objectives - Clause 1

Until the end of the implementation period (until 31 December 2020), fisheries policy in the UK is set via the [Common Fisheries Policy \(CFP\)](#). This includes a set of policy objectives for fisheries. These are set out in [Article 2 of Regulation 1380/2013](#) (the CFP regulation).

The first clause of the Fisheries Bill sets out new fisheries objectives for the UK as a non-EU independent coastal state. These largely, but not wholly, mirror current objectives in the CFP Regulation. A comparison of the objectives in the 2019-2020 Bill, the 2017-2019 Bill, and Article 2 of the CFP Regulation can be found in the [table below](#).

The objectives of the Bill will apply to the whole of the UK, including Scotland. The joint fisheries statement provided for by Clause 2 of the Bill (explored [below](#)) will set out how these objectives will be met. The new objectives are the:

- (a) sustainability objective,
- (b) precautionary objective,
- (c) ecosystem objective,
- (d) scientific evidence objective,
- (e) bycatch objective,
- (f) equal access objective,
- (g) national benefit objective, and
- (h) climate change objective.

Most objectives apply to “fish activities”, which broadly covers the catching, transportation and processing of fish, whether or not carried out in the course of business and so includes not only commercial fishing, but also recreational fishing.

### Box 3 - Provisions on aquaculture

Scottish and UK officials worked together on an amendment to Clause 1 of the 2017-2019 UK Fisheries Bill “to ensure aquaculture is appropriately incorporated into the drafting of the joint fisheries objectives”<sup>5</sup>. The version of the Bill as amended in Public Bill Committee<sup>6</sup> did not yet include additional references to aquaculture in Clause 1, and the Bill fell at the end of the parliamentary session, prior to reaching the report stage. The 2019-20 Bill includes a number of additional references to aquaculture in the definitions of the objectives, notably the sustainability objective, ecosystem objective, scientific evidence objective, and climate change objective.

The UK Government have stated in the [Explanatory Notes](#) to the Bill, that “objectives (a) to (d) replace equivalent objectives in Article 2 of the Common Fisheries Policy Basic Regulation, while (e) to (h) reflect other priorities for the UK after it leaves the CFP.”<sup>7</sup>



### 3.1.1 New objectives: National benefit and climate change

The "national benefit objective" and "climate change objective" are new for this iteration of the Bill.

The outcomes for the national benefit objective are partially mirrored in the CFP, in that both UK and European objectives set out the need for fishing to bring social and economic benefit.

The climate change objective is not mirrored in the CFP. In introducing the Bill at [second reading](#) on 11 February 2020, Lord Gardiner of Kimble stated that the purpose of the climate change objective is to:

“ ensure that the impacts of the fishing industry on climate change are minimised while ensuring that fisheries management adapts to a changing climate <sup>8</sup> ”

Overall, this addition was welcomed during second reading. However, some MPs raised the need to go further. Baroness Young of Old Scone (Lab) noted:

“ I welcome the new climate-change objective in the Bill. We must ensure that it is about not just low-carbon fishing technology but the importance of recovering fish populations and restoring marine habitats, such as kelp forests, deep sediments and coastal seagrass meadows, as effective natural solutions to tackling the twin emergencies of climate change and biodiversity together. <sup>8</sup> ”

### 3.1.2 New objectives: Bycatch

The "bycatch objective" has been amended from a "discards objective" since the last iteration of the Bill.

#### Comparison of the bycatch objective and discards objective between 2017-19 and 2020 Bills

Bycatch objective (2019-20)	Discards objective (2017-19)
(a) the catching of fish that are below minimum conservation reference size, and other bycatch, is avoided or reduced,	(a) avoiding and reducing, as far as possible, unwanted catches, and
(b) catches are recorded and accounted for, and	(b) gradually ensuring that catches are landed.
(c) bycatch that is fish is landed, but only where this is appropriate and (in particular) does not create an incentive to catch fish that are below minimum conservation reference size	

This change suggests a shift away from the EU focus on prohibiting discards through the so-called landing obligation, which has been fully in force since January 2019 (see Box 4).

During the second reading, Lord Gardiner of Kimble (Con) gave the following explanation for the change:

“ While of course we are committed to ending wasteful discards, discarding is a symptom of bycatch, and this objective aims also to address the root causes of the issue. That is why it is now called the bycatch objective.”

House of Lords Hansard, 2020<sup>8</sup>

#### **Box 4 - What does it mean to discard, and what is the landing obligation?**

Quotas are allocated to fishers to control the amount of fish that is landed to protect fish stocks from overfishing. Quota is only monitored against what is landed, and therefore fishers were previously able to discard any catch that they didn't have quota for. However, with the obligation to land all caught regulated species (with some exceptions), fishers would more quickly reach their quota with fish that cannot be sold, if they do not change fishing practices to avoid bycatch. The so-called discards ban (or alternatively landing obligation) was introduced under Article 15 of the reformed CFP Regulation, adopted in 2013, and the measures were phased in over a number of years.

As set out by the European Commission:

"Discarding is the practice of returning unwanted catches to the sea, either dead or alive, because they are undersized, due to market demand, the fisherman has no quota or because catch composition rules impose this. The reform of the Common Fisheries Policy (CFP) of 2013 aims at gradually eliminating the wasteful practice of discarding through the introduction of the landing obligation. [...]

"The landing obligation requires all catches of regulated commercial species on-board to be landed and counted against quota. These are species under TAC (Total Allowance Catch, and so called quotas) or, in the Mediterranean, species which have a MLS (minimum landing size such as mackerel which is regulated by quotas; and gilt-head sea-bream regulated by size). Undersized fish cannot be marketed for direct human consumption purposes whilst prohibited species (e.g. basking shark) cannot be retained on board and must be returned to the sea." <sup>9</sup>

The landing obligation came fully into force on 1 January 2019 after a four-year phasing in period.

In practice, there have been problems with the landing obligation. A House of Lords European Union Select Committee inquiry found that, while the UK fishing industry and government enforcement agencies should have been preparing for the obligation to come into force since 2015, there was "little evidence that fishers had adhered to the new rules during the phasing in period, or that there had been any meaningful attempt to monitor or enforce compliance. And witnesses were virtually unanimous in their view that the UK was not ready to implement or enforce the landing obligation from 1 January." <sup>10</sup>

The landing obligation will continue to apply as retained EU law, until measures are taken to repeal or replace it within the UK. Though it does not apply to Scotland, as an alternative to the landing obligation, the Bill makes provision for "discard prevention charging schemes" to be brought forward in relation to England. Under this provision, unauthorised bycatch by holders of an English sea fishing license or a producer organisation that has at least one member who is the holder of an English sea fishing

license could be subject to a charge. Authorities may only charge fishers who are registered under the scheme, and registration is voluntary.

The UK Government's [Sustainable Fisheries for Future Generations White Paper](#) further explains how such a scheme might work through the use of reserve quota which can effectively be bought for a charge if additional fish is landed:

“ We will also consider allocating part of any new quota in the reserve to underpin a new approach to tackle the problem of choke species, so that the crucial discard ban works in practice as well as in theory. We will consider the development of new ways to deter fishers from catching or discarding fish caught in excess of quota, drawing on the experience of other fishing states such as New Zealand. Such fish could be subject to a charge related to the market value of the fish landed, with the landings covered by quota retained in the reserve for such purposes. These charges could be recycled back into the sector to help develop measures to help them further change behaviour and thus reduce the need for the scheme over time. <sup>11</sup> ”

In its Future Fisheries Management Discussion Paper, the Scottish Government has indicated a similar approach to using quota in reserve. However, they do not mention a discards charging scheme for Scotland:

“ We continue to support the principle of a discard ban - it is unacceptable to return good fish back to the sea dead. But we must, in partnership with stakeholders, develop a management system that supports this and can work in practice. We will consider ring- fencing quota to help fishers to operate legally within such a system, as well as using it to reward and/or incentivise best practice in innovative fishing techniques or methods. <sup>12</sup> ”

### 3.1.3 Other changes to fisheries objectives since the 2017-19 Fisheries Bill

The box [below](#) sets out a comparison between the objectives set out in the 2017-19 Bill, the 2019-20 Bill, and Article 2 of the [Common Fisheries Policy Regulation](#). Notable changes include:

- **Ecosystem objective:** the addition of an objective to, where possible, reverse impacts on marine ecosystems, and minimise or, where possible, eliminate incidental catches of sensitive species. This is related to the bycatch objective. The definition of "sensitive species" is partially linked to other EU law relating to nature conservation:
  - (a) any species of animal or plant listed in Annex II or IV of Directive 92/43/EEC of the Council of the European Communities on the conservation of natural habitats and of wild flora and fauna (the "habitats directive")
  - (b) any other species of animal or plant, other than a species of fish, whose habitat, distribution, population size or population condition is adversely affected by pressures arising from fishing or other human activities, or
  - (c) any species of bird;

- **Scientific evidence objective:** the addition of an objective to collect scientific data relevant to the management of fish and aquaculture activities, for fisheries policy authorities to work together on collecting and sharing this data, and for the management of fish and aquaculture activities to be based on the best available scientific advice.

### **3.1.4 The Fisheries Bill and the Common Fisheries Policy - Comparison**

## Comparison of objectives in the Fisheries Bill 2017-19, 2019-20 and the CFP Regulation (key differences are highlighted in bold text)

UK Fisheries Bill 2019-20 (Clause 1)	UK Fisheries Bill 2017-19 (Clause 1)	Common Fisheries Policy Regulation (Article 2)
<p>(2) The “sustainability objective” is that—</p> <p>(a) fish and aquaculture activities are—</p> <p>(i) environmentally sustainable in the long term, and</p> <p>(ii) managed so as to achieve economic, social and employment benefits and contribute to the availability of food supplies, and</p> <p><b>(b) the fishing capacity of fleets is such that fleets are economically viable but do not overexploit marine stocks.</b></p>	<p>(2) The “sustainability objective” is to ensure that fishing and aquaculture activities are—</p> <p>(a) environmentally sustainable in the long term, and</p> <p>(b) managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.</p>	<p>1. The CFP shall ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.</p>
<p>(3) The “precautionary objective” is that—</p> <p>(a) the precautionary approach to fisheries management is applied, and</p> <p>(b) exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.</p>	<p>(3) The “precautionary objective” is—</p> <p>(a) to apply the precautionary approach to fisheries management, and</p> <p>(b) to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.</p>	<p>2. The CFP shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.</p> <p><b>In order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.</b></p>
<p>(4) The “ecosystem objective” is that—</p> <p><b>(a) fish and aquaculture activities are managed using an ecosystem-based approach so as to ensure that their negative impacts on marine ecosystems are minimised and, where possible, reversed, and</b></p> <p><b>(b) incidental catches of sensitive species are minimised and, where possible, eliminated.</b></p>	<p>(4) The “ecosystem objective” is—</p> <p>(a) to implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and</p> <p>(b) to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.</p>	<p>3. The CFP shall implement the ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and shall endeavour to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.</p>
<p>(5) The “scientific evidence objective” is that—</p> <p><b>(a) scientific data relevant to the management of fish and aquaculture activities is collected,</b></p> <p><b>(b) where appropriate, the fisheries policy authorities work together on the</b></p>	<p>(5) The “scientific evidence objective” is—</p> <p>(a) to contribute to the collection of scientific data, and</p> <p>(b) to base fisheries management policy on the best available scientific advice.</p>	<p>4. The CFP shall contribute to the collection of scientific data.</p>

UK Fisheries Bill 2019-20 (Clause 1)	UK Fisheries Bill 2017-19 (Clause 1)	Common Fisheries Policy Regulation (Article 2)
<p>collection of, and share, such scientific data, and</p> <p>(c) the management of fish and aquaculture activities is based on the best available scientific advice.</p> <p>(6) The “bycatch objective” is that—</p> <p>(a) the catching of fish that are below minimum conservation reference size, and other bycatch, is avoided or reduced,</p> <p>(b) catches are recorded and accounted for, and</p> <p>(c) bycatch that is fish is landed, but only where this is appropriate and (in particular) does not create an incentive to catch fish that are below minimum conservation reference size.</p>	<p>(6) The “discards objective” is to gradually eliminate discards, on a case-by-case basis, by—</p> <p>(a) avoiding and reducing, as far as possible, unwanted catches, and</p> <p>(b) gradually ensuring that catches are landed.</p>	<p>5. The CFP shall ... gradually eliminate discards, on a case-by-case basis, taking into account the best available scientific advice, by avoiding and reducing, as far as possible, unwanted catches, and by gradually ensuring that catches are landed.</p> <p>There are also provisions in 5) on use of unwanted catch, economic viability, aquaculture, standard of living of coastal communities etc.</p>
<p>(7) The “equal access objective” is that the access of UK fishing boats to any area within British fishery limits is not affected by:</p> <p>(a) the location of the fishing boat’s home port, or</p> <p>(b) any other connection of the fishing boat, or any of its owners, to any place in the United Kingdom.</p>	<p>Not included in 2017-2019 Bill</p>	<p>Not mirrored in Article 2. However, Article 5 of the CFP Regulation sets out the principle of equal access for EU Member State Vessels in EU waters.</p>
<p>(8) The “national benefit objective” is that fishing activities of UK fishing boats bring social or economic benefits to the United Kingdom or any part of the United Kingdom.</p>	<p>Not included in 2017-2019 Bill</p>	<p>A number of the objectives under Article 2(5) touch on the topic of social or economic benefits of fishing:</p> <p>(c) provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity;</p> <p>(f) contribute to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects;</p> <p>(h) take into account the interests of both consumers and producers;</p> <p>(i) promote coastal fishing activities, taking into account socioeconomic aspects;</p>
<p>(9) The “climate change objective” is that—</p> <p>(a) the adverse effect of fish and aquaculture activities on climate change is minimised, and</p>	<p>Not included in 2017-2019 Bill</p>	<p>Not mirrored in the CFP</p>



UK Fisheries Bill 2019-20 (Clause 1)	UK Fisheries Bill 2017-19 (Clause 1)	Common Fisheries Policy Regulation (Article 2)
(b) fish and aquaculture activities adapt to climate change.		

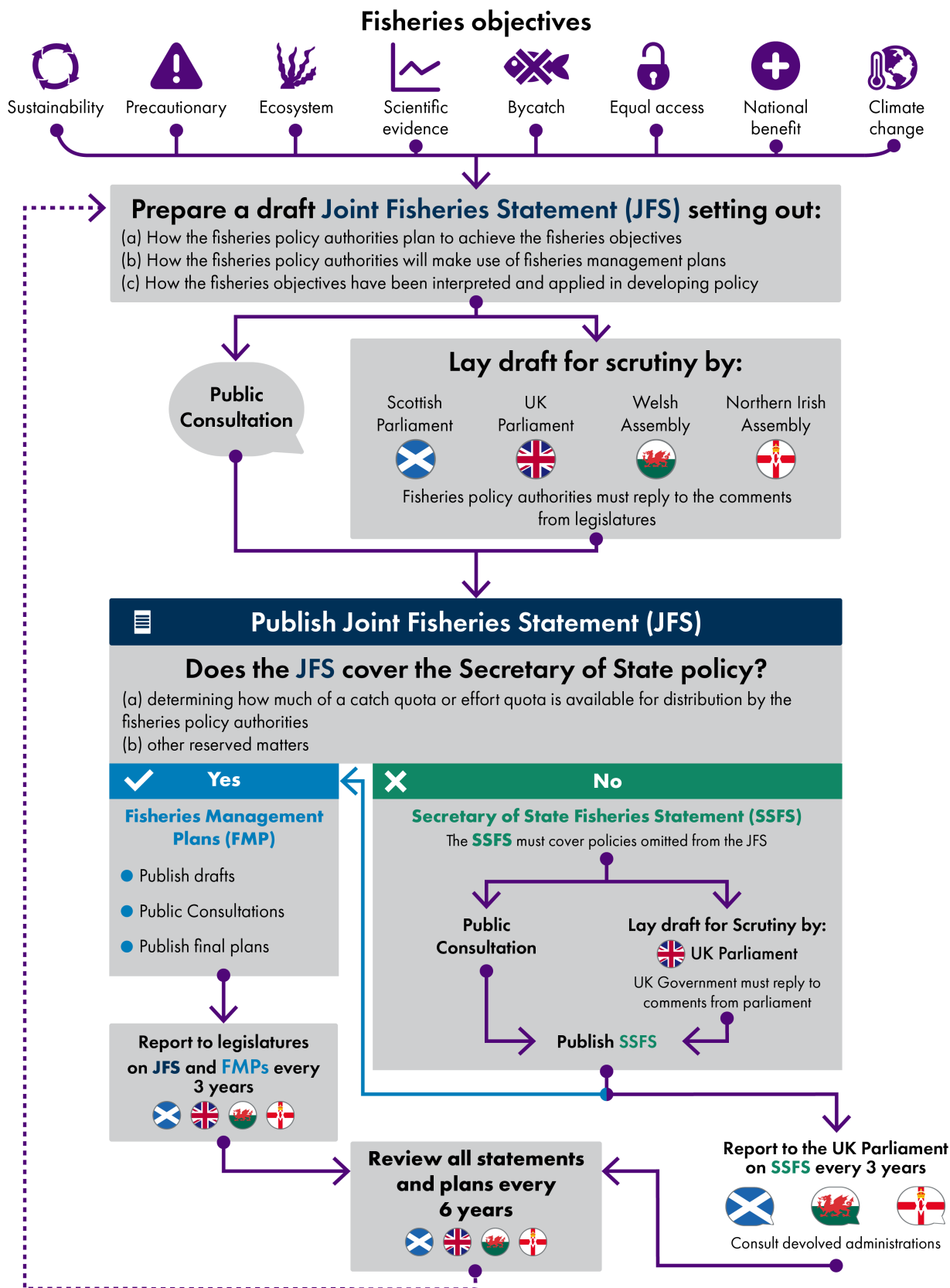
### 3.1.5 Achieving fisheries objectives

A number of peers raised concerns about the lack of a specific and legally binding **duty** to achieve the fisheries objectives. This was discussed at the second reading; more information on this can be found [below](#).

## 3.2 Fisheries Statements - Clauses 2-5

Clauses 2 to 5 of the Bill require two fisheries statements to be prepared and published. These statements will explain how the fisheries objectives have been interpreted by the UK fisheries authorities (the relevant fisheries authorities are set out in Box 1 [above](#)) and they will also set out policies for achieving, or contributing to the achievement of, the fisheries objectives. The process for how fisheries policy will be coordinated across the UK is set out in the flow chart below.

# Statements & Management Plans: How will it work?



### 3.2.1 Joint Fisheries Statement

A Joint Fisheries Statement (JFS) must be prepared by all fishery policy authorities **acting jointly**.

The fishery policy authorities are the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Northern Ireland department.

A draft of the JFS must be laid before all of the relevant legislative bodies, including the Scottish Parliament, prior to adoption and the Scottish Ministers are required to make a statement responding to any resolutions or recommendations made by the Scottish Parliament or its committees on the draft JFS during the scrutiny period.

A public consultation must also be carried out. The Bill requires that a JFS is prepared and published within 18 months from the date on which the Act is passed.

### 3.2.2 Secretary of State Fisheries Statement

The Bill also provides for a Secretary of State Fisheries Statement (SSFS).

Whereas in the 2017-19 UK Fisheries Bill, the SSFS appeared to be directed at developing policies relevant to England, the role of the SSFS in the new version of the Bill has significantly changed.

Clause 4 of the Bill requires the Secretary of State to prepare a SSFS on a "relevant Secretary of State policy" if those policies have been omitted from the JFS by the fisheries policy authorities. The two "relevant" Secretary of State policies identified in the Bill are:

- the determination and distribution of catch quotas and effort quotas to the various fisheries administrations in the UK (the UK quota function); and
- any reserved functions relevant to fisheries management.

The language of the Bill suggests that these matters may be addressed in the JFS, rather than in a SSFS, and Lord Gardiner (Con) confirmed during the second reading of the Bill that it was the "intention [of the Government] for all policies that achieve the objectives to be included in the [JFS]." <sup>8</sup> Nevertheless, it is possible that the fisheries policies authorities will not be able to reach agreement on these specified matters, in which case the Secretary of State is under a duty to produce a SSFS.

The Bill contains no express requirement for the Secretary of State to consult the Scottish Ministers or to lay a draft SSFS before the Scottish Parliament. Rather, it is the UK Parliament which performs this scrutiny function.

The Secretary of State is, however, required to consult interested persons; i.e. such persons who they deem to be interested in, or affected by, the consultation draft, and members of the general public. The SSFS must be prepared and published within 6 months from the date on which the JFS is published.

### 3.2.3 Practical implications

All national fisheries authorities, including the Scottish Ministers, must exercise their functions in accordance with the policies contained in the JFS and the SSFS, unless a relevant change of circumstances indicates otherwise. Clause 10 applies the same requirement in relation to Fisheries Management Plans ([see section 3.3 below](#)). The Bill lists a number of relevant circumstances, including the international obligations of the United Kingdom, available scientific evidence, available evidence relating to social, economic or environmental elements of sustainable development, and the acts of other states that affect the marine and aquatic environment. This list is not exhaustive, and it is open to national fisheries authorities to invoke other relevant changes of circumstances, although they are required to publish a document describing the decision and the relevant changes of circumstances and how the relevant change of circumstances affected their decision.

Although not in the Bill, it may be possible for Scotland to prepare its own fisheries statement in addition to the JFS, for policies relevant to Scotland. Scotland's National Marine Plan already includes certain policies relating to sea fisheries which will continue to be relevant to fisheries management in Scotland and these national policies may be supplemented by policies contained in regional marine plans.

Reports on the implementation of the JFS must be laid before the Scottish Parliament every three years. It must also be reviewed at least every six years. The same is required of Fisheries Management Plans ([see section 3.3 below](#))

## 3.3 Fisheries Management Plans - Clauses 6-11

The JFS prepared under clause 2 of the Bill will also explain how the fisheries policy authorities propose to make use of fisheries management plans (FMPs) in achieving the fisheries objectives. The inclusion of FMPs is a new element of the Fisheries Bill introduced in January 2020 and they were not included in the previous version of the Bill.

A FMP is defined by the Bill as

“ a document, prepared and published under this Act, that sets out policies designed to restore one or more stocks of sea fish to, or maintain them at, sustainable levels.”

FMPs may relate to one or more stocks of sea fish and they may be adopted for particular geographical areas. Where it is proposed to prepare a FMP, the JFS must specify which fisheries policy authorities will be responsible for this task; FMPs may either be prepared jointly by two or more fisheries policy authorities or the task of preparing a FMP may be delegated to a single fisheries policy authority. A fishery policy authority must carry out a public consultation on a proposed FMP prior to its adoption.

Further details of what is expected from FMPs are found in clause 6 of the Bill. The Bill explicitly requires a fisheries policy authority to specify whether the available scientific evidence is sufficient to make an assessment of the relevant stock's maximum sustainable yield and if it is not, the FMP must either specify the steps to be taken to obtain such scientific evidence or state the reasons why it does not propose to obtain further scientific evidence. Alongside policies for maintaining stocks at, or restoring stocks to, sustainable levels, each FMP must also include indicators to be used for monitoring the effectiveness of the plan. Subsection 4 requires fisheries authorities to take a precautionary approach where scientific evidence is deemed not to be sufficient.

A form of FMP, known as a multi-annual plan (MAP), is already used in the CFP for certain stocks (Articles 9-10).<sup>13</sup> MAPs for demersal stocks in the North Sea<sup>14</sup> and stocks fished in Western Waters and adjacent waters<sup>15</sup> have both been incorporated into domestic law as retained EU law and these instruments will continue to apply, subject to any modifications to make them workable as a matter of national law<sup>16</sup>, until replaced or amended. A recovery plan is also in place for European eel.<sup>i</sup>

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<sup>i</sup> [Council Regulation \(EC\) No 1100/2007](#) of 18 September 2007 establishing measures for the recovery of the stock of European eel. See modifications introduced by [The Common Fisheries Policy \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), Regulation 14.

## 3.4 Access to British fisheries and fishing licences - Clauses 12-22

Whilst in the EU, EU vessels have equal access to UK waters to fish and vice versa ([Article 5 of the Common Fisheries Policy Regulation](#)). Annex I also provides special access for certain vessels to UK waters within 6-12 nautical miles based on traditional fishing grounds.

These provisions of the CFP are revoked in Schedule 10 of the Bill, meaning that EU vessels will no longer have automatic access to UK waters at the end of the transition period.

In July 2017, the UK Government also [announced it was withdrawing from the London Fisheries Convention](#) which also allowed access for vessels from France, Belgium, Germany, Ireland and the Netherlands to UK waters within 12 nautical miles; this took effect on 1 February 2020.

### Box 5. Access to UK waters under the Common Fisheries Policy

**0-6 Nautical Miles** - Non-UK vessels do not have access to the 0-6 nm area

**6-12 Nautical Miles** - fishing by non-UK vessels is restricted to those with historic rights, subject to quota of their flag state, under Common Fisheries Policy exemptions in Annex I of the CFP Regulation.

**12-200 Nautical Miles** - EU vessels and vessels from countries with which the EU has agreements, have access subject to quota.

Clause 16 sets out that a foreign boat is prohibited from fishing within British fisheries limits unless it has a licence. Subsection (3) and (4) of this clause provides the Secretary of State the power to add, remove or vary exceptions by regulations but only with the consent of the Scottish Ministers, Welsh Ministers and the Northern Ireland Department. Foreign vessels do not currently require such a licence. This will enable the regulation of foreign vessels through the imposition of licence conditions when fishing within British fishery limits<sup>17</sup>. Foreign vessels will continue to be allowed to enter British fisheries limits without a license for purposes recognised by international law, e.g. to exercise the right of freedom of navigation.

British fishing boats<sup>ii</sup> must also have a licence under Clause 14 to fish. The licensing scheme under Clause 14 and paragraph 7 of schedule 3 of the Bill replaces the existing licensing scheme under section 4 of the Sea Fish (Conservation) Act 1967 and associated regulations.

In terms of paragraph 7(1) of schedule 3, the Scottish Ministers may make provision about how licensing functions are to be exercised. They may also make provision as to the time when a sea fishing licence (or a variation, suspension or revocation of a sea fishing

ii "British fishing boats" are defined in the Bill as a fishing boat - a) which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995, b) which is British-owned, or c) which is registered under the law of Jersey, Guernsey or the Isle of Man.



licence) has effect, or a condition attached to a sea fishing licence (or addition, removal or variation of such a condition) has effect. This replaces the powers conferred on Scottish Ministers under section 4 of the 1967 Act.

Furthermore, under paragraph 7(5) of schedule 3, the Scottish Ministers may by regulations make provision about the principles relating to conditions attaching to the licensing of fishing boats relating to the time spent at sea. This provision restates the power in section 4(6C) of the 1967 Act. Existing licenses will continue to have effect by virtue of Schedule 4 of the Bill.

Scottish Ministers may grant a licence to Scottish fishing boats to fish in any UK waters and to foreign fishing boats to fish in Scottish waters. Other UK fisheries administrations are responsible for licensing their own vessels and for licensing foreign vessels in their own waters. Therefore, on the face of the Bill, a foreign vessel may need a licence from more than one fisheries administration if it intends to fish in different parts of the UK, although Lord Gardiner confirmed during the second reading that

“ the fisheries administrations have agreed that the [Marine Management Organisation] will act as a single licensing authority and issue licenses to foreign boats on behalf of the four fishing administrations. <sup>8</sup> ”

British and foreign licences are different, but they may both impose conditions such as:

- where a boat may fish,
- periods of time a boat may fish ,
- the type and quantity of fish that may be caught, and
- the method of fishing that can be used.

Allocation of quota is managed separately.

In practice, licensing of foreign vessels is likely to take place within the broader framework of access arrangements agreed with other states through international negotiations (see Box 6).

## 3.5 Fishing opportunities for UK boats - Clauses 23-26

Clause 23 gives the Secretary of State the power to determine:

- the maximum quantity of fish that may be caught by British fishing boats (catch quota)
- the maximum number of days that British fishing boats may spend at sea each year (effort quota).

This provision refers to the total catch or effort of the UK fishing fleet as a whole. The Secretary of State must consult Scottish Ministers in determining this. Determination of fishing opportunities must also be carried out in accordance with the relevant Joint Fisheries Statement or Secretary of State Fisheries Statement; see sections [above](#) on this.

The Bill states:

“ A determination under subsection (1) may be made only for the purpose of **complying with an international obligation** of the United Kingdom to determine the fishing opportunities of the United Kingdom. ”

(bold added)

The Explanatory Notes say:

“ The provisions set out the Secretary of State function of determining the UK’s fishing opportunities, in accordance with the UK’s international obligations. These might arise under an agreement with the EU or with another coastal state. They might also arise because of the UK’s obligations under UNCLOS [United Nations Convention on the Law of the Sea] or as a member of a RFMO [Regional Fisheries Management Organisation]. ”

Clause 26 imposes a duty on national authorities (i.e. Scottish Ministers) to ensure that fishing opportunities are not exceeded.

### Box 6. Fishing opportunities for foreign boats

The Bill does not address fishing opportunities for foreign boats in UK and Scottish waters. A SPICe blog series discusses international fisheries negotiations in more detail.

- [How are fishing quotas set? Stage 1: Scientific advice \(Scottish Parliament, 2018\)](#)<sup>18</sup>
- [How are fishing quotas set? Stage 2: coastal State negotiations, \(Scottish Parliament 2018\)](#)<sup>19</sup>
- [How are fishing quotas set? Stage 3: EU Agriculture and Fisheries Council \(Scottish Parliament 2019\)](#)<sup>20</sup>

### 3.5.1 Fishing opportunities and legislative consent

The UK Government views determination of fishing opportunities as a reserved function. The UK Government explained its position in relation to clause 18 (now clause 23) in a [letter to the Rural Economy and Connectivity Committee on 4 March 2019](#) regarding the 2017-2019 UK Fisheries Bill:

“ The UK Government's view that the power in clause 18 does not relate to devolved matters is based on the fact that the determination of a UK amount cannot be within devolved competence because the power is not exercisable separately in or as regards Scotland. It could only be after the determination of the UK's fishing opportunities at a UK level and their division between the UK fisheries administrations that there would be an international obligation that related to Scotland which would then be within the competence of the Scottish Parliament and the responsibility of the Scottish Government to implement.”

The Scottish Government disagreed. In the legislative consent memorandum of the previous version of the Bill, the Scottish Government states:

“ Whilst the United Kingdom is responsible in international law for compliance with its international obligations, it does not follow that it is the UK Government alone which is responsible for the measures required to implement and comply with those obligations in domestic law. Paragraph 7(2) of Schedule 5 to the Scotland Act 19987 explicitly provides that observing and implementing international obligations are not reserved matters. ...it would appear that clause 18 is a provision which legislates with regard to devolved matters and for a purpose which is within the legislative competence of the Scottish Parliament – namely, in this case, the regulation of sea fisheries inside the Scottish zone and the regulation of Scottish fishing boats, whilst observing the UK's international obligations in that regard... <sup>17</sup> ”

Giving evidence to the Environment Climate Change and Land Reform Committee on [4 December 2018](#), Mike Palmer, a Scottish Government official, explained the Scottish Government's view that -

- making an international agreement is reserved, but
- complying with and implementing an international agreement is devolved.

In a [letter to the UK Government](#) published on 4 December 2018, Fergus Ewing MSP, Cabinet Secretary for Rural Economy and Connectivity, states -

“ ...this clause, as drafted, will have an unacceptable impact on the existing powers of Scottish Ministers. Therefore, to ensure that devolved competence is respected, I would ask that an amendment be made to Clause 18 to provide that any decisions made under Clause 18, insofar as they relate to Scotland, should only be taken with the **consent** of the Scottish Ministers.”

(bold added)

The revised Bill makes no changes to clause 18 (now clause 23). In an [article published by The Scotsman](#) on 29 January 2020, the Cabinet Secretary is quoted as stating the following in response to the revised Bill:

“ [Ministers are] seriously concerned that Scotland still does not have its own place at international fisheries negotiations as a matter of right, something that we have long called for.”

[Schedule 5, Part 1, of the Scotland Act 1998](#) contains the following reservation (and exception) -

#### **Box 7. Reserved functions in the Scotland Act 1998**

7(1) International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

(2) Sub-paragraph (1) does not reserve—

(a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law,

(b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

## **3.5.2 Distribution of fishing opportunities**

After receiving fishing opportunities from the UK, each of the four UK Fisheries Administrations allocates quota to its fishing boats.

Clause 25 corrects [Article 17 of the Common Fisheries Policy Regulation](#) to make it operable in UK law. Article 17 requires that Member States distribute fishing opportunities domestically according to transparent and objective criteria including those of an environmental, social and economic nature. The previous version of the Bill only applied this requirement to the Secretary of State and the Marine Management Organisation. The revised version of the Bill expressly extends this obligation to the other fisheries administrations, including the Scottish Ministers.

The new provision will read:

“ Criteria for the distribution of fishing opportunities for use by fishing boats”

1. When distributing fishing opportunities for use by fishing boats, the relevant national authorities shall use transparent and objective criteria including those of an environmental, social and economic nature. The criteria to be used may include, inter alia, the impact of fishing on the environment, the history of compliance, the contribution to the local economy and historic catch levels. Within the fishing opportunities available for distribution by them, the relevant national authorities shall endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage.”
2. In this Article, “the relevant national authorities” means – a. The Secretary of State, b. The Marine Management Organisation, c. The Scottish Ministers, d. The Welsh Ministers, and e. The Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”

This obligation still leaves a large amount of leeway for fisheries administrations to determine how to allocate quota to individual vessels. Some coordination between UK fisheries administrations is achieved under the [UK Concordat on Fisheries Management](#).

The Concordat is an agreement between the UK Administrations that sets out a number of arrangements for UK fisheries management. These include which UK fishing vessels each Administration will license and how UK quotas are allocated to, and may be transferred between, the four UK countries.

## 3.6 Grants - Clause 33

Clause 33 creates new powers for the Secretary of State to make grants or loans to the fishing and aquaculture industries. The purpose of the clause is to allow grant and loan schemes to be established to replace those previously provided by the [European Maritime and Fisheries Fund \(EMFF\)](#) (see Box 8).

In the previous version of the Bill, these powers were extended to Wales and Northern Ireland but not to Scotland. Equivalent powers under clause 33 have now been conferred on Scottish Ministers in Schedule 6 of the revised Bill.

### **Box 8. The European Maritime and Fisheries Fund**

The Common Fisheries Policy provides funding to support a transition to more sustainable fisheries and support for coastal communities through the [European Maritime and Fisheries Fund \(EMFF\)](#). This runs from 2014 to 2020 and covers fisheries and aquaculture. The UK investment package for this period is €309m with an EU contribution of €243m <sup>21</sup>. This funding had been allocated as follows <sup>22</sup> -

- Scotland - €108 million
- England - €97 million
- Northern Ireland - €24 million
- Wales - €15 million.

## 3.7 Charges - Clauses 34 & 35

Clause 34 creates new powers for the Secretary of State to allow the Marine Management Organisation (MMO) to impose charges on the fishing industry in England or on English boats. Scottish boats would be subject to the charges when carrying out activities subject to the jurisdiction of the MMO.

In the previous version of the Bill, these powers were extended to Wales and Northern Ireland but not to Scotland. Equivalent powers have now been conferred on Scottish Ministers in Schedule 7 of the revised Bill.

The powers enable Scottish Ministers to impose charges in respect of the operation of relevant marine functions relating to -

- fishing quotas;
- ensuring that commercial fish activities are carried out lawfully;
- the registration of buyers and sellers of first-sale fish (fish which is marketed for the first time);
- catch certificates for the import and export of fish.



## 3.8 Power to make provision about fisheries - Clause 36

Clause 36 enables the Secretary of State to make regulations on a wide range of technical matters currently regulated by the EU under the CFP. The Explanatory Notes state that the purpose of the power is "to allow the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation, including the approximately 100 regulations of the CFP incorporated into UK law by the EU (Withdrawal) Act 2018."

The regulation making powers are very broad and make provision for -

- implementing an international obligation of the UK relating to fisheries, fishing or aquaculture,
- for a conservation purpose, or
- for a fish industry purpose.

The Secretary of State can make regulations for the whole of the UK. This may be relevant, for example, on control issues where a level playing field may be required. The Secretary of State's power to legislate in areas within the competence of the Scottish Parliament or which modify functions of the Scottish Ministers is limited by the requirement to obtain the consent of the Scottish Ministers. However, regulations can be made by the Secretary of State that relates to the regulation of Scottish fishing boats within the British fishery limits but outside the Scottish zone without the consent of the Scottish Ministers.

Any regulations made under this power require the Secretary of State to consult with Scottish Ministers, Welsh Ministers, the Northern Ireland Department and such other persons likely to be affected by the regulations.

In the previous version of the Bill, these powers were extended to Wales and Northern Ireland but not to Scotland. Equivalent powers have now been conferred on Scottish Ministers in Schedule 8 of the revised Bill. The Scottish Ministers must consult the Secretary of State, the other Devolved Administrations, and such other persons as they consider appropriate before exercising these powers.

Any Scottish Statutory Instruments (regulations) made by the Scottish Ministers under the power in paragraph 1 of Schedule 8 would be subject to the affirmative procedure in the Scottish Parliament if they:

- amend or repeal primary legislation;
- amend article 17 of the Common Fisheries Policy Regulation;
- impose fees;
- create a criminal offence, increase penalties for criminal offences, or widen the scope of a criminal offence; or
- confer functions or modify functions related to the regulation of UK producer or inter-branch organisations

In any other case regulations made under Schedule 8 would be subject to the negative procedure in the Scottish Parliament.

## 3.9 Power to make provision about aquatic animal diseases - Clause 38

Clause 38 provides an equivalent power to that in Clause 36 for the Secretary of State to make regulations about aquatic animal diseases. This is to allow for amendments to be made to retained EU law and other UK law by secondary legislation.

As with the power in clause 36, the Secretary of State's power to legislate in areas within the competence of the Scottish Parliament or which modify functions of the Scottish Ministers is limited by the requirement to obtain the consent of the Scottish Ministers. However, regulations can be made by the Secretary of State that relates to the regulation of Scottish fishing boats within the British fishery limits but outside the Scottish zone without the consent of the Scottish Ministers.

Any regulations made under this power require the Secretary of State to consult with Scottish Ministers, Welsh Ministers, the Northern Ireland Department and such other persons likely to be affected by the regulations, as the Secretary of State considers appropriate.

Schedule 8 gives equivalent regulation making powers to devolved administrations; i.e. the Scottish Ministers in Scotland. As with the power in clause 36, the Scottish Ministers must consult the Secretary of State, the other Devolved Administrations, and such other persons as they consider appropriate before exercising these powers.

Any Scottish Statutory Instruments (regulations) made by the Scottish Ministers under the power in paragraph 3 of Schedule 8 would be subject to the affirmative procedure in the Scottish Parliament if they:

- amend or repeal primary legislation;
- amend article 17 of the Common Fisheries Policy Regulation;
- impose fees;
- create a criminal offence, increase penalties for criminal offences, or widen the scope of a criminal offence; or
- confer functions or modify functions related to the regulation of UK producer or inter-branch organisations

In any other case regulations made under Schedule 8 would be subject to the negative procedure in the Scottish Parliament.

## 3.10 Powers relating to the exploitation of sea fisheries resources - Clause 44

Clause 44 refers to Schedule 9 which confers powers on Scottish Ministers (as well as the Marine Management Organisation and Welsh Ministers) to make rules relating to the impact of fishing on marine conservation. This is to replace EU measures for the protection of the marine environment in the offshore region.

This area is executively devolved (see Box 9). In this case, the Bill provides powers for Scottish Ministers to make orders relating to the exploitation of sea fisheries resources in the Scottish offshore region for conserving -

- marine flora or fauna,
- marine habitats, or
- geological features.

### Box 9. What does it mean to be executively devolved?

This means the Bill provides powers to Scottish Ministers to execute functions in a reserved area, for example, to make orders in relation to marine conservation, marine planning and marine licensing in respect of the offshore region (12-200 nm).

Under the [Marine \(Scotland\) Act 2010](#), Scottish Ministers have powers to make [Marine Conservation Orders \(MCOs\)](#) to further the objectives of [Marine Protected Areas \(MPAs\)](#) in the Scottish marine area ([up to 12 nautical miles from baselines](#)). This can include prohibiting, restricting or regulating certain activities such as:

- vessel movements and activity
- interference or disturbance/damage to the seabed, or
- the use of certain equipment and exploration activities.

However, at present, similar powers do not exist under the Marine and Coastal Access Act 2009 in relation to MPAs in the offshore region. The powers conferred under Clause 44 will allow Scottish Ministers to prohibit or restrict the exploitation of sea fisheries in the offshore region ([12 nautical miles to 200 nautical miles or to the maritime boundary with a neighbouring state](#)) for conservation purposes. Failure to comply with any order is a criminal offence.

Before making an order using these new powers, the Scottish Ministers must consult the Secretary of State and any other person they think fit (including any other fishery administration if the order may affect sea fisheries resources in an adjacent region). As well as orders to protect existing MPAs in the offshore region, the Bill permits the Scottish Ministers to make an interim order for the purpose of protecting any feature in a particular area if there are reasons to consider designating the area as a MPA and there is an urgent need to adopt conservation measures pending designation. Such an interim order may remain in force for up to 12 months and the need for the order must be kept under review.

These new powers replace the current process for establishing conservation measures in MPAs under [Article 11 of the CFP](#) Regulation, which is considered by some as being unsatisfactory.<sup>23 24</sup>

#### **Box 10. Article 11 of the Common Fisheries Policy**

Article 11 of the CFP sets out two scenarios for introducing conservation measures for the conservation of marine biological resources in offshore waters.

**Scenario 1 (Article 11(1)):** If measures to be adopted exclusively affect vessels of the Member State, the Member State can adopt measures under conditions set out in Article 11(1) of the CFP.

**Scenario 2 (Article 11(2)-11(3)):** If measures to be adopted affect a fishery where more than one Member State has a management interest, the Member State must submit a joint recommendation to the European Commission.

The joint recommendation should include the proposed measures, their rationale, scientific evidence in support and details of their practical implementation and enforcement.<sup>25</sup>

The current process for establishing conservation measures under the CFP is lengthy due to the requirement for consultation and approval from other Member States. There are currently [proposals for 18 offshore sites](#), published by Marine Scotland in April 2017. Development of these proposals began in 2013 and are currently awaiting approval from other Member States before the 6-month period for formal negotiation (Article 11(3)) can begin. A [timeline for the proposals](#) published in June 2017 anticipated the measures would be in place by 31 January 2018.<sup>26</sup>

Outside the CFP there is no requirement to seek approval from other Member States. Therefore, the new process under Clause 44 will likely facilitate measures to be adopted on shorter timescales, like those implemented under the Marine (Scotland) Act 2010.

Orders made by the Scottish Ministers under new section 137A(1) (power to make orders for marine conservation in the Scottish offshore region) and 137C(11) (power to make interim orders for marine conservation in the Scottish offshore region) of the Marine and Coastal Access Act 2009, as inserted by paragraph 21 of Schedule 9 of the Bill, are subject to the negative procedure in the Scottish Parliament.

## 3.11 Clauses not applicable to Scotland

Some clauses are **not** applicable to Scotland. They are mentioned here for completeness.

- **Clause 27 on the sale of English fishing opportunities.** Clause 27 of the Bill allows the Secretary of State to make provision for the sale of English catch quota or effort for the calendar year, including through a competitive tender or auction scheme.
- **Clause 28-32 on discard prevention charging schemes in England.** This will allow the Secretary of State to set up a scheme whereby fish caught in excess of quotas by holders of an English sea fishing license or a producer organisation that has at least one member who is the holder of an English sea fishing license could be subject to a charge. Authorities may only charge fishers who are registered under the scheme, and registration is voluntary. The Explanatory Notes state that this extends and applies to Scotland and the UK Government are therefore seeking consent. This is because there may be cases where English licensed vessels are members of Scottish producer organisations. This does not affect Scotland's ability to determine how it will deal with bycatch and discards. However, it is worth noting that currently all UK fishers are subject to the landing obligation; it is not clear how this will interact with a Scottish approach to bycatch and discards.
- **Clause 43 on legislative competence of the National Assembly for Wales,** which amends the Government of Wales Act 2006.

## 4. Second reading

[Second reading of the Bill](#) took place in the House of Lords on 11 February 2020. Sustainability and conservation of the marine environment featured heavily in the debate. The section below summarises key issues raised.

### 4.1 Climate Change and Sustainability

Lord Grantchester (Lab), Baroness Young of Old Scone (Lab), Baroness Jones of Moulsecoomb (GP) and Baroness Jones of Whitchurch (Lab) all highlighted a lack of legally binding duties and targets for achieving fisheries objectives, including sustainable fish stocks and net-zero emission fishing fleets and duties to fish at sustainable levels.

Baroness Young of Old Scone (Lab) stated:

“ somewhere in the mix we need a legal duty on relevant public authorities to achieve these objectives and be accountable by publishing specific regular reports on their achievement of the objectives, not just on their activities. <sup>8</sup> ”

This is an issue that has carried over since the 2017-19 Fisheries Bill, and was also raised during second reading of that Bill in November 2018, as well as by commentators. <sup>27</sup>

Specific issues were raised regarding a number of the fisheries objectives related to climate change and sustainability.

#### **Precautionary objective**

Article 2(2) of the CFP Regulation states -

“ the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.”

In the UK Fisheries Bill, achieving the precautionary objective means that "exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield [MSY]" . Therefore, the UK objective does not incorporate the duty in the CFP to achieve MSY.

Peers commented on this during the second reading. Baroness Bakewell of Hardington Mandeville (LD) noted:

“ There is concern that a legal maximum sustainable yield for each stock...will not be achieved if scientific evidence is not used to determine what an individual stock’s MSY should be. Since there is currently no fail-safe mechanism for ensuring that the total allowance catch is not exceeded, just how will the MSY be arrived at and how will it be monitored and policed? <sup>8</sup> ”

Baroness Young (Lab) noted:

“ In the Bill we simply have an aspirational objective to achieve a healthy biomass of stocks, a rather woolly objective that is neither legally enforceable nor subject to any deadline, to be taken forward by way of a policy statement that the Bill says can be disregarded in a wide variety of circumstances. All that represents a potential regression in environmental standards. <sup>8</sup> ”

The UK Government, by contrast, has stated that:

“ The Bill commits the UK to sustainable fishing and setting legally binding plans to achieve Maximum Sustainable Yield (MSY) for all fish stocks. The UK is seeking a fairer share of quota, as a proportion of the existing sustainable catch, not an increase in fishing pressure on fish stocks. <sup>8</sup> ”

However, others have expressed concern that "seeking a fairer share of quota" could still lead to unsustainable fishing pressures. Griffin Carpenter, Senior Researcher at the New Economics Foundation [commented](#) in an article for *The Ecologist* regarding the 2017-19 Fisheries Bill:

“ But what if the EU’s concept of a ‘fair share’ and the UK’s concept of a ‘fair share’ exceed the available budget? It is possible that neither party is overfishing from their own perspective - but adding 70 percent and 70 percent equals systematic overfishing. [...] As Norway, Iceland, the EU, and other parties have the power to set their own ‘fair share’, northern fish stocks are frequently overfished when negotiations break down, as seen more recently in the so-called cod, mackerel and herrings wars.”

## **Sustainability objective**

Baroness Worthington (CB) and Lord Teverson (LD) highlighted the contradictory aims of the sustainability objective (environmental and socio-economic) and expressed concern that short-term socio-economic aims have priority over long-term environmental sustainability.

This issue was also raised by Lord Dunlop (Con) who said:

“ The argument for going beyond the scientifically recommended quotas is that, by adhering to these quotas, the livelihoods of fishermen and communities are put at risk. In other words, in the trade-off between the different elements of sustainability, short-term gain has taken precedence over longer-term pain. By fishing more now, fishermen have good livelihoods today, but their descendants will not have this tomorrow. I therefore ask the Minister, in his reply, to explain to us how the trade-off between these elements of sustainability in the Bill will be calculated, and to assure us that short-term interests will not be placed ahead of the longer-term objective of ensuring that fish stocks are there for future generations. <sup>8</sup> ”

Lord Teverson (LD) suggested that the sustainability objective should be a stand-alone objective with other objectives moved elsewhere in the Bill including a separate socio-economic objective.

Lord Gardiner of Kimble's response states:



“ we have worked extremely closely with the devolved Administrations to establish fisheries objectives for the whole United Kingdom, for which we will set policies in the joint fisheries statement. [...] These policies will focus on key areas of fisheries management, both to protect the environment and to enable a thriving fisheries industry. It is important, in the Government's view, that each of the objectives is applied in a proportionate and balanced manner, when formulating policies and proposals. We have therefore committed to the joint fisheries statement explaining how the objectives have been interpreted and proportionately applied. <sup>8</sup> ”

### **Climate objective**

The new climate objective was largely welcomed; however, some peers raised the question of whether the objective is comprehensive. Baroness Young of Old Scone (Lab) and Baroness Worthington (CB) both argued that in addition to low-carbon fishing technology, the climate change objective (clause 1(1)(h)) should acknowledge the wider importance of restoring marine ecosystems for tackling the twin climate and biodiversity crises.

Baroness Worthington (CB), stated:

“ [A]nother thing that we ought to think about strongly is the fact that our oceans, in terms of climate change, are a natural sink of carbon. They can help us in meeting our carbon budgets in the sense that they store carbon and lock up carbon in our waters...I see no reason why we cannot think now about some of the methodologies we could introduce that would encourage fishermen, the fishers and stewards of our coastal communities, to be rewarded for doing the right thing in terms of climate change. <sup>8</sup> ”

## **4.2 Fisheries Statements**

Lord Thomas of Cwmgiedd (CB) sought more detail on how governments would work together to achieve common policies:

“ the Bill is lacking much detail, particularly regarding how the policies are to be agreed between the various Governments and legislatures. It would be far better, sooner rather than later, to spell out the mechanisms that are intended to be deployed to try to reach consensus, to say what is to happen if there is not consensus, and to do everything possible to reach common policies. <sup>8</sup> ”

## **4.3 Fisheries Management Plans**

### **Duties vs powers**

As with the fisheries objectives, peers questioned the lack of duty to produce Fisheries Management Plans (FMPs). Baroness Young of Old Scone (Lab) expressed concern that the Bill provides too much flexibility for national fisheries authorities to decide not to introduce Fisheries Management Plans, which are a key part of the process for achieving the objectives. She said:

“ The national authorities have a “get out of jail free” card. The Bill specifies that they can disregard the policy statement where evidence changes. That might be regarded as admirable flexibility but it risks meaning that the fisheries objective will take priority, especially where the interests of the UK fishing industry are at stake. It can shout at the expense of fish stocks and biodiversity, which of course cannot shout...There must be a legal requirement for authorities to introduce fisheries management plans where stocks are currently fished above sustainable levels or for data-deficient stocks. There are no timescales for laying out or achieving the plans. We need statutory timescales.  
8 ”

The Earl of Devon (CB) also stated:

“ We must also ensure that the fisheries management plans not only become compulsory but are localised in their requirements. What may be good for the North Sea fleet may not be good for the south-west, where conditions are so different. How will the Government ensure, post CFP, that quota is allocated more smartly, providing benefit to the fish and the fishers? 8 ”

### **Management of shared stocks**

The UK Government's press release introducing the Bill stated:

“ The [fisheries management] plans will also recognise that many of our fish stocks are ‘shared stocks’ as they will swim in both the UK’s and other coastal states’ waters. For these stocks, negotiation with other coastal states is crucial as sustainable catches cannot be achieved through UK action alone. 28 ”

However, the Bill does not expressly address how FMPs will be developed for those fish stocks that are transboundary in nature. As noted by Lord Teverson (LD) during the second reading,

“ some 80% of our precious stocks swim outside our EEZ, and quite a few of the spawning grounds for those stocks are also outside it. It is therefore impossible to have a credible fisheries plan ... for one’s own territorial waters. 8 ”

As noted [above](#), unilaterally setting quota limits has led to overfishing in the past, with each party feeling that they have set out their “fair share”.

Other peers expressed similar concerns. Lord Hannay of Chiswick (CB) noted:

“ There is then the hugely important issue of shared management and conservation of stocks. That must be a shared responsibility with the EU and with Norway, given the inconvenient tendency of fish not to know when they are crossing a boundary. In the earlier years of the common fisheries policy, that issue was badly mishandled and stocks were grievously damaged, with decisions taken that rode roughshod over scientific advice. That must not happen again, and I recognise that it is one of the aims of the Government in this legislation, which I welcome. We must not slip back into that period where the politics of allocating shared stocks gained over the science. Neither, again, should we take an all-or-nothing approach. 8 ”

Environmental stakeholders have also raised similar concerns. [Greener UK](#) noted in their briefing on the Bill that:

“ the bill falls short of the promise in the Conservative manifesto of a “legal commitment to fish sustainably” and requires the following improvements: [...] A commitment to ensure stocks shared with other countries are managed sustainably. <sup>29</sup> ”

## 4.4 Access, fishing opportunities and licensing

Lords also questioned the new licensing arrangements and access to the UK's waters for foreign vessels and fishing opportunities.

Lord Grantchester (Lab) said:

“ While we accept the need for a new licensing regime and a new power to set annual fishing quota opportunities, there is very little information on the interplay between the two. Will a boat need a licence to secure quota, or will having quota be a precondition of receiving a licence? How will the quota regime operate? What will happen with regard to the UK's share of UK quotas on 1 January 2021? With Britain now an independent coastal state, will the Government unilaterally take back 100% of the quota on day one, before redistribution, or will they adopt a phased approach? Will Ministers seek continued access to non-British distant waters where some of the UK fleet has such an interest? <sup>8</sup> ”

## 4.5 Remote electronic monitoring (REM)

A number of Lords called for the use of onboard cameras (known as 'remote electronic monitoring') on UK and foreign vessels to aid compliance and enforcement.

The Earl of Devon (CB) said:

“ the recent debate on the EU fisheries landing obligation concluded that compliance with the discard ban has been impossible to evaluate, through a lack of data. The consensus in favour of remote electronic monitoring in UK waters is shared by fishermen, but they are concerned that this must apply to all vessels fishing in UK waters, not just those landing in UK ports. A level playing field is essential. <sup>8</sup> ”

Lord Krebs (CB) said:

“ The only way to get real data on what is being taken out of the sea, as other noble Lords have said, is to have remote electronic monitoring or CCTV cameras on board all fishing vessels. Why is that not part of the deal? <sup>8</sup> ”

Baroness Jones of Whitchurch (Lab) said:

“ As we discovered with the rollout of the discard ban and our wonderful debate on the Lords committee report on it, there is far too little real evidence of whether it is working. That is why, along with several noble Lords this evening, we support the use of compulsory surveillance technology on board boats, and an increase in inspection and enforcement vessels. We welcome the Government’s proposal in the Bill for charging those who land over-quota or unauthorised fish, and we think that will help to address this matter. <sup>8</sup> ”

Lord Gardiner of Kimble’s response stated the following:

“ The Bill provides the powers to introduce the remote electronic monitoring—REM—of fishing vessels at sea. We continue to explore the potential use of REM [...] alongside other monitoring and enforcement tools, as a cost-effective and efficient way of monitoring fishing activity. In future we will be able to specify the requirement that foreign vessels wishing to fish in our waters have to comply with the conditions of access. <sup>8</sup> ”

## 4.6 Socio-economic benefits

Lords sought further detail on how the Bill would benefit UK fishing fleets and coastal communities.

Lord Grantchester (Lab) indicated lines of questioning for the Committee stage and proposed amendments:

“ the clause does not include the necessary objective to land fish from British waters at British ports if it is to bring prosperity back to coastal communities [...] In Committee, we will be probing the Government’s plans to ensure that a fair quota is allocated to small boats, facilitating the creation of new jobs at sea, in ports and in the food supply chain. There will be amendments to ensure that a majority of catch in UK waters is landed at UK ports, that UK-registered boats have the first option to take up further quota, that the Government retain a strategic reserve of quota to assist with achieving maximum sustainable yield and that foreign vessels cannot undercut UK boats on safety or employment standards. <sup>8</sup> ”

Baroness Jones of Whitchurch (Lab) said:

“ The Bill could provide an impetus for regeneration, providing new jobs in commercial and recreational fishing at sea, and support services on shore. However, it will happen only if the socioeconomic concerns identified in the Bill are turned into something positive. [...] That is why we will propose amendments to require the majority of the catch caught in UK waters to be landed in UK ports.[...] That could provide the crucial sea change that makes our ports and harbours live again and turns around the fortunes of many of those communities. <sup>8</sup> ”

## 4.7 Financing

The Earl of Caithness (Con) highlighted the challenges of replacing EU funding with an appropriate UK-wide mechanism, saying:

“ On Clause 33, I am concerned that the power for devolved authorities to help fisheries might lead to an intra-UK state [aid] war. I hope this can be avoided, and I hope that by working with the devolved authorities we will all do roughly the same thing, but it would be sad if one devolved Administration used state aid in a way that was detrimental to the rest of the UK. <sup>8</sup> ”

## 5. Committee Stage

The Bill passed through the House of Lords committee stage between the 2-11 March 2020. No amendments were made to the text of the Bill. Debated amendments can be found in the House of Lords Hansard; links to each session can be found here:

<https://services.parliament.uk/Bills/2019-21/fisheries/stages.html>

## 6. Legislative consent

As the Institute for Government explain,

“ Devolution to Scotland, Wales, and Northern Ireland does not formally alter the principle of parliamentary sovereignty, meaning that Westminster is still able to pass legislation for all parts of the UK, including in relation to devolved policy areas. However, since 1999 the UK government has followed a convention, known as the Sewel Convention, that the UK Parliament “will not normally legislate with regard to devolved matters without the consent” of the devolved legislatures. <sup>30</sup> ”

To grant consent, the devolved legislatures vote on a legislative consent motion (LCM). Usually, this occurs before the last amending stage in the House of the UK Parliament in which the Bill was introduced. In the case of the Fisheries Bill, this would be before the third reading in the House of Lords. At the time of publication, the Bill is at the report stage; the Scottish Government is still to bring forward a recommendation for consent or refusal.

## 7. Key issues and outstanding questions

### 7.1 Sustainable fisheries

[As discussed earlier in this briefing](#), the revised Bill makes some important changes to the Fisheries Objectives (clause 1) in relation to sustainability. This includes reference to reversing the negative impacts of fisheries on marine ecosystems where possible in the "ecosystem objective" and the addition of a "climate change objective".

#### Duties to fish at sustainable levels

[Environmental groups have welcomed these changes](#) but expressed concern over a lack of clear duties and commitments to ensure sustainability. The objectives of the Bill set out the UK Government's intentions, but much of the detail of how these objectives will be achieved will come down to negotiations between the UK Government and the devolved administrations when developing fisheries statements and Fisheries Management Plans ([clauses 2-11](#)).

[A briefing](#) on the Bill by Greener UK, [a coalition of 13 environmental organisations](#), calls for the following improvements to the Bill:

- A commitment to ensure public authorities are accountable for and achieve the fisheries objectives.
- Binding commitments not to fish above independent scientifically recommended sustainable levels.
- A binding commitment to introduce ambitious fisheries management plans for all stocks not currently fished at sustainable levels, including a timeframe for when all fisheries will be managed under such plans and a timeframe for implementing the plans.
- A commitment to roll out CCTV cameras on all vessels fishing in UK waters to record what is being caught, ensuring full and verifiable documentation of catches and robust monitoring and enforcement.
- A fairer and more sustainable approach to distributing fishing opportunities.
- A commitment to ensure stocks shared with other countries are managed sustainably.

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#### Climate change

The "climate change objective" focusses on minimising the adverse impact of fisheries and aquaculture activities on climate change (clause 1(9)). However, it is not clear how this objective relates to how these industries will adapt to, and mitigate against, the impacts of climate change on shifting distributions of fish stocks and the wider resilience of marine ecosystems, nor how the objective relates to carbon sequestration and storage in the marine environment.

#### Conflicting aims



The second reading of the Bill highlighted issues over the conflicting aims of socioeconomic benefits vs sustainability and raised questions over their relative importance. The introduction of an additional “national benefits” objective only further complicates the balancing exercise that must be performed by fisheries authorities in complying with the complex framework created by the Bill. In practice, it is not known how this balance will be struck until the JFS has been produced. However, a JFS may still leave significant leeway to fisheries administrations to determine detailed fisheries measures.

### **A precautionary approach?**

Fisheries Management Plans must include policies for maintaining or increasing stock levels. Clause 6(3) requires the FMP to specify whether the available scientific evidence is sufficient to enable the relevant authority to make an assessment of the stock's maximum sustainable yield.

However, authorities can omit steps taken to obtain sufficient scientific evidence as long as they specify the reasons for doing so. In these circumstances, subsection (4) of the Bill requires authorities to adopt the precautionary approach when setting out policies.

In clause 1, the "precautionary objective" refers to the "precautionary approach to fisheries management". The following definition is provided in clause 1(10) of the Bill:

“ "precautionary approach to fisheries management" means an approach in which the absence of sufficient scientific information is not used to justify postponing or failing to take management measures to conserve target species, associated or dependent species, non-target species or their environment.”

The definition of the 'precautionary objective' in clause 1(3)(b) also states:

“ [The "precautionary objective" is that] exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.”

Scientific advice for catch limits in the Northeast Atlantic are provided to fisheries management authorities by the International Council for the Exploration of the Seas (ICES). [ICES categorises how it applies advice on the basis of available knowledge](#). Where the available knowledge is insufficient to set a catch limit at [Maximum Sustainable Yield \(MSY\)](#), ICES provides advice based on the precautionary approach.

However, uncertainty over scientific assessments of fish stocks [sometimes leads to calls for an increase in catch limits](#), rather than a reduction. Furthermore, fisheries management authorities are not bound by this scientific advice. [Catch limits can be set above scientific advice](#) and is ultimately a political decision reached through negotiations.

Therefore, it remains to be seen what impact the provisions of the Bill will have on how the precautionary approach is applied in practice and what duties, if any, will be applied for setting catch limits for stocks where there is insufficient scientific information. This may depend on the outcome of consultations with stakeholders in the development of a JFS and FMPs.

The reporting and scrutiny procedures will be vital in ensuring that progress is made in achieving the set of objectives contained in the Bill. The Scottish Parliament will play a key role in this process in devolved areas.

### Outstanding questions:

- How should the "climate change objective" be interpreted in relation to how the fishing industry should adapt activities to the impacts of climate change on the marine environment and to support carbon sequestration in the marine environment?
- What is the relative importance of sustainability and socioeconomic objectives in the Bill? Should there be a hierarchy of objectives?
- How will the Bill's ecosystem and sustainability objectives work in practice? Is it anticipated that a JFS will provide clearer duties on sustainability that are absent in the Bill?
- With a duty to take a precautionary approach in the absence of clear scientific data, will fisheries management plans be deferring to ICES advice on the precautionary approach where data is insufficient?

## 7.2 Intergovernmental relations

Many peers taking part in the second reading of the Bill welcomed the apparent close cooperation of the UK Government and the devolved administrations in the development of this version of the Bill, but underlined that the ultimate success of the Bill would depend upon continued coordination between the various fisheries administrations in the United Kingdom. Cooperation between the UK Government and the devolved administrations will also be critical for the negotiation of a UK-EU fisheries agreement, as well as arrangements with other regional coastal states, such as Norway and the Faroe Islands.

Existing practice of cooperation between the UK Government and devolved administrations could be built upon, including the involvement of Scottish Government representatives in EU fisheries negotiations. Contributing to a [debate on fisheries in the Scottish Parliament on 19 November 2019](#), Fergus Ewing MSP, the Cabinet Secretary for the Rural Economy and Connectivity, spoke of his "workmanlike relationship with the Minister of State at the Department for Environment, Food and Rural Affairs, George Eustice, as well as with UK officials" and he praised "the collaborative approach that is being taken with negotiations."

Conversely, the Scottish Government has expressed some concern over the potential for Scottish interests to be overridden in any future fisheries negotiations; in a [document outlining preparations for a no-deal Brexit in Scotland](#), the Scottish Government stated:

“ In relation to fisheries negotiations, whilst Marine Scotland is a core part of the UK delegation, there may be pressure on Defra as UKG lead on the fisheries delegation to prioritise English issues. Furthermore, there is a risk that wider negotiations with the European Union will lead UKG to reach an unsatisfactory deal on fisheries or to concessions regarding such matters being made out with the usual fisheries negotiations. We will, however, continue to seek to ensure SG is appropriately represented in the UK delegation at the point we become a separate coastal state. e.g. through Interim Working Arrangement or Memorandum of Understanding. Our preferred outcome to reasonably protect Scottish interests in a sector where Scotland has the predominant interest within the UK, would be agreement from UKG to Scotland having a joint head of delegation role in Coastal States negotiations where Scottish interests are dominant. <sup>32</sup> ”

There is little indication in the Bill to suggest how potential disagreements between the UK Government and the devolved administrations will be resolved in practice and there is a danger that deadlock will result in a failure to adopt the measures that are necessary to ensure the sustainability of stocks. However, Lord Gardiner (Con) suggested, during the second reading of the Bill that -

“ for elements that need resolutions that are more difficult to manage, the Government are developing a memorandum of understanding with the devolved Administrations [which] will enshrine co-operative ways of working, and a mechanism for escalating and resolving disputes, should they arise. <sup>8</sup> ”

The precise details of such an arrangement and how it balances the interests of different fisheries administrations remains to be seen.

## Outstanding questions

- Was the Scottish Government involved at an early stage in development of the provisions of the Bill where they apply to Scotland, or where they may have an impact on Scotland?
- If powers are concurrent (exercisable by either UK or Scottish Ministers) has there been discussion as to how this will be managed?
- Is the Scottish Government content with the powers granted to UK Ministers?
- Is the Scottish Government content with the powers granted to Scottish Ministers?
- Under this Bill, would policy divergence in Scotland be possible in areas that are within devolved competence?
- What role will the Scottish Government play in negotiations on fishing opportunities between coastal states and the EU?
- Are there any additional elements beyond the provisions in this Bill that will need to form part of common frameworks on fisheries between the four UK nations?
- How will potential disagreements between the UK Government and devolved administrations in agreeing fisheries policies be resolved?
- How will the UK Fisheries Bill interact with any future Scottish Fisheries Bill?

## 7.3 Grants

Clause 33 creates powers to make grants, but does not address the issue of funding, where funds will come from, and how they will be allocated.

On introduction of the previous version of the Bill, the Scottish Government said that the Bill should be used to honour promises made during the EU referendum campaign regarding future funding. It proposed an amendment that would require the Secretary of State "to make available to the Scottish Ministers sums which are at least equivalent to the sums made available to the Scottish Ministers under the European Maritime and Fisheries Fund (EMFF) in the year prior to Exit Day." <sup>5</sup>

In an announcement on 10 December 2018, Defra said -

“ Mr Gove has ... committed that the Government will put in place new, domestic, long-term arrangements to support the UK's fishing industry from 2021, through the creation of four new schemes comparable to EMFF to deliver funding for each nation. The Devolved Administrations will lead on their own schemes. <sup>33</sup> ”

In a letter to the Environment, Climate Change and Land Reform Committee, Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change and Land Reform stated the following regarding replacement funding for EU Structural funds:

“ In light of the lack on information from the UK government on [sic] the Scottish Government has published its own consultation on the replacement for the EU structural Funds to give stakeholders the opportunity to input their experience and expertise to the development of any successor funding vehicle. The consultation was launched on 5 November 2019 and will close on 12 February 2020. The work will be overseen by a Steering Group, chaired by Professor David Bell of the University of Stirling and the lead Minister is Ivan McKee. To accompany the written consultation, stakeholder engagement events will be held across the country. A report with recommendations will be made in Spring 2020 to the Minister and Cabinet.”

### Outstanding questions

- How will the UK and Scottish Government use provisions in the Fisheries Bill to maintain grants to support for the fisheries industry and developments in coastal communities?

## 7.4 Fishing Opportunities

The catching sector of the UK fishing industry hopes that leaving the EU will also mean leaving the principle of "relative stability" (see Box 10) as codified in the CFP Regulation, replacing it with a more equitable allocation of fishing opportunities between UK and other European countries.<sup>34</sup>

### Box 11. Relative Stability

In fisheries terms, "relative stability" is one of the main principles for dividing quota between EU countries. Under this principle, quota is divided largely based on historical fishing activities, dating back to the 1970s.

In its July 2018 White Paper on Sustainable Fisheries, the UK Government stated:

“ we will be seeking to move away from relative stability towards a fairer and more scientific method for future Total Allowable Catch (TAC) shares as a condition of future access. Initially, we will seek to secure increased fishing opportunities through the process of ‘annual exchanges’ as part of annual fisheries negotiations.<sup>11</sup> ”

Industry representatives have welcomed the Bill for this reason. The National Federation of Fishermen's Organisations' Chief Executive Barry Deas stated:

“ The central purpose of the Bill is to give UK Ministers powers to manage UK fisheries after we leave the Common Fisheries Policy. We very much welcome that.<sup>35</sup> ”

Likewise, Elspeth MacDonald, Chief Executive of the Scottish Fishermen's Federation noted that:

“ The Fisheries Bill is the key piece of legislation needed to help deliver the benefits that the sea of opportunity presents.”

However, the question then arises as to who should benefit from this additional quota within the UK. The established system of allocating existing fishing opportunities between the four UK fisheries administrations is based upon so-called [Fixed Quota Allocations \(FQAs\)](#) (themselves based upon the historical fishing record of particular vessels during a defined reference period). Whether or not this system is extended to any new quota is up for negotiation.

The UK government raised the question of moving away from FQAs in its White Paper, saying:

“ Defra intend to begin a conversation with the Devolved Administrations, Crown Dependencies and stakeholders to allocate these on a different basis, including the potential use of alternative methodologies such as zonal attachment [see Box 11].<sup>11</sup> ”

### **Box 12. Zonal Attachment**

Zonal attachment refers to the idea that total allowable catch should be allocated based on the temporal and spatial distribution of stocks, rather than historical catches.

The Scottish Government echoed this sentiment in its [Future Fisheries Management Discussion Paper](#), which set out its objective of “ensuring that any UK allocation of additional fishing opportunities between UK Fisheries Administrations reflects zonal attachment.”<sup>36</sup>

However, the interests involved in any discussion go beyond the UK Government and Scottish Ministers. Broad agreement between all UK fisheries administrations is desirable on how any additional fishing opportunities should be distributed.

### **Outstanding questions**

- What is the Scottish Government's view on whether or not the Secretary of State should seek consent from Scottish Ministers when exercising the power to determining fishing opportunities under clause 23?
- How will any new fishing opportunities be allocated between the UK fisheries administrations as part of future fisheries policy?
- What relevance does the "national benefit objective" have for considering alternative methodology for the distribution and allocation of quota within domestic fleets?

## **7.5 Enforcement**

No fisheries legislation can be effective in achieving its goals unless it is enforced in practice. As noted by the Earl of Devon (CB) in his contribution to the second reading of the Bill;

“ fisheries monitoring and enforcement will still be key to the exercise of our sovereign control and to achieving the bold ambitions set out in this legislation. <sup>8</sup> ”

These sentiments were shared by the Earl of Caithness (Con) and Baroness Young of Old Scone (Lab).

The Bill itself does not alter the existing framework for fisheries enforcement, which sees the Scottish Ministers, through Marine Scotland Compliance, responsible for carrying out inspection and control of fishing activities within the Scottish Zone. Currently, Marine Scotland Compliance has at its disposal three patrol vessels, as well as a number of smaller rigid-inflatable boats used for operations close to the shore. These vessels are also supported by two aircraft.

Whether or not existing capacity is sufficient to ensure adequate policing of the seas is a question that has received a lot of attention during debates over Brexit. A [leaked memo from the Department of the Environment, Food and Rural Affairs in August 2019](#) appeared to suggest that such concerns were shared within government. <sup>37</sup>

There was a discussion concerning enforcement during a [round table on the implications of Brexit for the fisheries sector held by the Rural Affairs and Connectivity Committee in October 2019](#). Furthermore, in its [overview of ‘No Deal’ Brexit Preparations](#), published in October 2019, the Scottish Government acknowledged the challenges of ensuring compliance with fisheries legislation and it noted that:

“ consideration is being given on how to best manage and prevent illegal, unregulated or unreported fishing (and the corresponding risk of clashes at sea between UK and non-UK vessels in the Scottish zone) through increasing Marine Scotland Compliance surveillance and monitoring capabilities. <sup>38</sup> ”

Additional funding was sought by Scottish Ministers to address short-term capacity gaps in the face of a no-deal Brexit and in evidence to the [Environment, Climate Change and Land Reform Committee on 26 November 2019](#), Cabinet Secretary Roseanna Cunningham MSP reiterated that “Marine Scotland’s compliance needs and capabilities are constantly being reviewed.” At the same meeting, Graham Black, the Director of Marine Scotland, confirmed that various options for increasing capacity included “more aircraft hours, along with improved camera capacity”, “increasing the number of rigid inflatable boats” and the “use of drones.” Remote electronic monitoring may also assist in efforts to improve compliance ([see above](#)).

In an evidence session on the 2020/21 budget, Cabinet Secretary [Roseanna Cunningham](#) [said](#) the following to the Environment, Climate Change and Land Reform Committee:

“ Late last year, the UK Government provided money in relation to compliance in the event of a no-deal Brexit, so there is a fluctuating picture in respect of Marine Scotland. We are working through the monitoring and surveillance requirements post-EU exit, and we will be looking to secure funding for the resources that will be required. However, if those requirements are a direct consequence of Brexit, we will be looking to the UK Government to do some of what it has already done for Marine Scotland, so there is a bit of uncertainty. ”

### Outstanding questions

- Are there sufficient financial, technological and human resources available to ensure new compliance requirements under the Fisheries Bill are enforced?

## 7.6 Future relationship negotiations

It is clear that the Fisheries Bill provides no more than a framework for future fisheries management in the United Kingdom and many issues will depend upon arrangements that are struck between the United Kingdom and the European Union, not to mention other neighbouring coastal states. It is unclear how the outcome of future relationship negotiations on fisheries will shape the Bill or whether some parts of the Bill could become redundant. The [Political Declaration](#) sets an objective to ratify a new fisheries agreement by 1 July 2020.

The future relationship negotiations will be covered by a separate SPICe briefing.

### Outstanding questions?

- Could future international agreements which the UK may enter into, such as trade deals, affect the ability of Scottish Ministers to exercise the powers conferred by this legislation?



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