

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Effaith Brexit ar bysgodfeydd yng Nghymru | The impact of Brexit on fisheries in Wales

FW 02

Ymateb gan : ClientEarth

Evidence from : ClientEarth

## Introduction

1. ClientEarth welcomes the opportunity to provide written evidence to the Committee on the impact of the UK's exit from the EU on fisheries in Wales.
2. ClientEarth is a non-profit environmental organisation based in London, Brussels and Warsaw. We work in Europe and beyond, bringing together law, science and policy to create practical solutions to key environmental challenges. ClientEarth's work on Brexit and fisheries aims to ensure that there is a new, robust legal framework for fisheries management in the UK after it exits the EU.
3. ClientEarth is working with several other major UK NGOs on marine and fisheries issues. ClientEarth supports the joint NGO written evidence that has also been submitted to this inquiry by Wales Environment Link with the support of Greener UK. This evidence supplements that joint submission. As ClientEarth does not have specific expertise on Welsh fisheries management, this submission restricts its comment to relevant environmental considerations.

## Summary

4. The key points of ClientEarth's submission are summarised below:
  - The Fisheries Bill should establish key overarching objectives for sustainable fisheries management in UK primary law that are co-owned and co-designed by the devolved administrations to create certainty and guide management decisions from day one;
  - Brexit is an opportunity to build upon the progress made by the EU Common Fisheries Policy and create a more tailored and environmentally ambitious regime for UK fisheries management after Brexit; and
  - A key challenge in fisheries management is to avoid overfishing. Instrumental to this is a multilateral approach, ensuring that the UK, EU and other neighbours continue to work closely together to sustainably manage the substantial number of commercially important fish stocks that are shared.

## **Question 2: What outcomes and policies does Wales want to see from the UK Fisheries Bill? How can policy best reflect the needs of different sectors, including the fishing industry, aquaculture and coastal communities?**

5. The UK Fisheries Bill represents an opportunity to address important aspects of fisheries management now, so that they are in place in primary legislation from the moment that the UK exits the EU. While ClientEarth understands that the UK Government intends the Bill to

be limited in scope,<sup>1</sup> there are nevertheless provisions relevant even to a slim bill that should be put in place in order to govern fisheries in a way that prioritises sustainable management.

6. The Fisheries Bill should contain strong statutory objectives that guide decision-making and underpin the UK's approach to fisheries management. These objectives must:
  - a. prioritise long-term environmental sustainability;
  - b. ensure fisheries management is based on the best available science and that a precautionary approach is applied where information is uncertain;
  - c. ensure the populations of all fish stocks are restored and maintained above levels which can produce the maximum sustainable yield and ensuring fishing mortality does not exceed a level that will deliver maximum sustainable yield for all stocks;
  - d. require decision-makers to take an integrated, ecosystem-based approach to management decisions linked to delivery of the UK Marine Strategy and 'good environmental status'; and
  - e. ensure fisheries management actions accord with other domestic and international environmental laws.
7. The objectives must be accompanied by a strong corresponding statutory duty to ensure that public authorities exercising fisheries management functions do so in accordance with these core objectives.
8. Establishing the objectives from 'day one' will set a clear course for coherent and sustainable fisheries management after Brexit. The objectives should be co-owned by all four governments, setting agreed overarching UK-wide priorities but leaving devolved authorities with discretion as to how to deliver these objectives and comply with their obligations through devolved law and policy.
9. A similar approach has been taken in existing domestic legislation and has also worked in other jurisdictions.<sup>2</sup> Having overarching objectives in place will be particularly important if, as expected, the Bill contains powers to make delegated legislation, as this would allow

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<sup>1</sup> The Queen's Speech stated that the purpose of the Bill will be to "*Enable the UK to control access to its waters and set UK fishing quotas once it has left the EU*": Prime Minister's Office "The Queen's Speech and associated background briefing, on occasion of the opening of Parliament on Wednesday 21 June 2017" 21 June 2017, at p 22.

<sup>2</sup> For example, the Well-being of Future Generations (Wales) Act 2015, s 4; Marine and Coastal Access Act 2009, s 2; Sea Fisheries (Wildlife Conservation) Act 1992, s 1. For other jurisdictions, see for example New Zealand Fisheries Act 1996, ss 8, 9 and 10, those provisions have operated to allow the Minister responsible for fisheries to take long-term and precautionary decisions to protect the environment and have been confirmed by the NZ Supreme Court as underpinning all fisheries management with a requirement for sustainability.

statutory instruments and the actions of public authorities to be guided by and scrutinised against the objectives set out in the Bill.

10. Further to the objectives discussed above, the Bill should contain a requirement that, when setting the total allowable catch (*TAC*) for stocks in UK waters after exit (and when agreeing the UK's 'quota' of shared stocks with other coastal states - that is, stocks that occur in or move between the UK's exclusive economic zone and EU waters), the UK and/or devolved administrations will adhere to the limits recommended in the best available, internationally recognised, scientific advice. Good science underpins good fisheries management because there are biological and ecological limits to the number of fish that can sustainably be taken from the sea. The Bill should also explicitly establish a requirement to set the *TAC* so that stocks are maintained above levels capable of producing the maximum sustainable yield. Where information about particular stocks is uncertain, the Bill should ensure the application of a precautionary approach. These matters are consistent with international legal obligations under the UN Convention on the Law of the Sea (*UNCLOS*) and international best practice.<sup>3</sup>
11. If the Bill contains provisions relating to allocation of quota between the devolved nations or between fishermen in the UK, it should specify that quota allocation be based on transparent and objective criteria that are made available to the public. It should also empower fishing authorities to promote and provide incentives through quota allocation for fishing activities that will have a reduced environmental impact, as well as flexibilities to deal with changes in stock distribution or productivity as a result of environmental changes, such as warming waters caused by climate change.
12. Fishing must be fully accountable and governed in a transparent way. The Bill should establish requirements for fully documented fisheries - requiring vessel monitoring systems and the use of modern technology like CCTV cameras. There is an opportunity to create a more ambitious and rigorous monitoring system than is currently in place under the CFP. This would allow regulators to better enforce fisheries laws as well as improving our understanding of the state of stocks and environmental issues such as bycatch of marine mammals, birds, and non-target fish.<sup>4</sup> The Bill should also ensure that the relevant authorities in England, Wales, Northern Ireland and Scotland have powers and duties to manage fishing activities to protect the marine environment. This should include powers to regulate and restrict fishing both inside and outside of Marine Protected Areas where necessary to protect the marine environment.
13. Provisions of the Bill dealing with access to UK waters should make it clear that foreign vessels given access to the UK's EEZ will be required to comply with all UK laws and standards. This is consistent with international law and would be an example of international best practice. The Bill must ensure a level playing field and should not allow access on terms that would permit foreign vessels to adhere to lower environmental standards than UK fishing vessels. In addition, the Bill must ensure that UK vessels adhere to high

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<sup>3</sup> United Nations Convention on the Law of the Sea 1833 UNTS 3 (signed 10 December 1982, entered into force 16 November 1994) (*UNCLOS*).

<sup>4</sup> G Coase "Remote Electronic Monitoring: Why camera technology is a cost-effective and robust solution to improving UK fisheries management" WWF-UK, September 2017.

environmental standards no matter where they fish and in particular when they are fishing in areas outside of UK jurisdiction.

14. Fish are a common resource and should be managed for the public benefit. The UK and devolved governments will need to agree and establish new and improved mechanisms for inter-governmental working at both ministerial and official levels. A common approach to fisheries management which respects the devolution settlements will be essential to address the transboundary challenges associated with managing a shared, common resource like the marine environment and fish stocks.

#### Future policy and stakeholders

15. Policy formation and implementation should be transparent and consultative, with the information and rationale underpinning management decisions being publically available. This includes scientific advice and information about fisheries monitoring, prosecutions and enforcement action. Transparency is needed for policy to best reflect the needs of all sectors and stakeholders when fisheries governance decisions are made. Having access to this information will allow stakeholders to better understand management decisions and will ensure that, where authorities take actions that may depart from the scientific advice, the public is aware and can seek justification for such action. As fish are a public resource, it is important that fisheries is governed and managed for the public benefit and the public should be kept informed of the actions taken that affect this public resource.
16. In addition, there must be inclusive and meaningful engagement with all stakeholders in order to ensure that fisheries management decisions are properly informed and all needs are considered and reflected. This includes coastal communities, industry, NGOs, and recreational fishermen.

#### Question 3: What are the main challenges and opportunities for fisheries during the transition period and post-Brexit?

17. Recent polling has shown that the British public supports strong fisheries management laws that protect fish stocks and the marine environment after exit.<sup>5</sup> Healthy and thriving fish stocks are the cornerstone of a prosperous and self-sufficient fishing industry and therefore essential for a secure supply of seafood for consumers.<sup>6</sup> Healthy fish stocks will also contribute to the realisation of a healthy marine environment. Post-Brexit, the UK can build on the successes of the Common Fisheries Policy to design and implement a fisheries policy that achieves healthy fish stocks and healthy oceans.
18. Over the past decades, fish stocks have been recovering in the Northeast Atlantic waters around the UK. For example, in 2007 over 70% of assessed stocks were considered

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<sup>5</sup> ClientEarth "British public overwhelmingly support greater fisheries protections after Brexit" 16 April 2018, available at <https://www.clientearth.org/british-public-support-fisheries-protections-brexit/>.

<sup>6</sup> World Bank Group "The Sunken Billions Revisited: Progress and challenges in global marine fisheries" (World Bank, Washington DC, 2017), p3, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/24056/9781464809194.pdf?sequence=8&isAllowed=y>.

overfished whereas now approximately 40% of assessed stocks are overfished.<sup>7</sup> But there is still some way to go. The UK has an opportunity to establish a post-Brexit fisheries management system that is well-tailored and which sets a more ambitious sustainability agenda than the CFP. The UK can take this opportunity to set high environmental standards and explore ways to allocate fishing opportunities that incentivise and reward sustainable practices. The UK should also set up systems for fully documented and accountable fisheries, ensuring all fishing vessels are subject to monitoring systems and high risk vessels are required to install remove electronic monitoring and camera technology.

19. However, a significant challenge will be ensuring that new fishing arrangements with the EU (and neighbouring states such as Iceland and Norway) avoid the risk of overfishing. Overfishing could arise through unilateral action, or by a failure to reach agreement on how to manage stocks that are shared by the UK and the EU or neighbouring states.<sup>8</sup>
20. As a party to UNCLOS,<sup>9</sup> the UK has an obligation to ensure the 'proper conservation and management' of all fisheries resources, including shared stocks, whenever they occur in its EEZ.<sup>10</sup> After exit, the UK will also be required to 'seek to agree' with the EU and other neighbours the measures necessary to coordinate and ensure the conservation and development of shared stocks.<sup>11</sup> This obligation has been interpreted to require meaningful consultation in good faith with a view to adopting effective measures aimed at preventing overfishing of the shared stock and avoid undermining sustainable exploitation.<sup>12</sup>

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<sup>7</sup> Scientific, Technical and Economic Committee for Fisheries (STECF) - Monitoring the performance of the Common Fisheries Policy (STECF-17-04). Publications Office of the European Union, Luxembourg; EUR 28359 EN; doi:10.2760/491411, p 6-7.

<sup>8</sup> Many fish stocks in the North Sea, Northwest Waters and Southwest Waters, including the majority of stocks of commercial importance to the UK, occur both within the UK exclusive economic zone and the exclusive economic zone of other states like Norway, Iceland and/or other EU Member States (i.e. in Union waters). See G Carpenter "Not in the Same Boat" (New Economics Foundation, 2017), p17, available at <http://neweconomics.org/wp-content/uploads/2017/11/Not-in-the-Same-Boat-PDF.pdf>; See also, for example, Aberdeen University and Scottish Fishermen's Federation report "The Spatial Distribution of Commercial Fish Stocks of Interest to Scotland in UK Waters" January 2017, available at [http://www.sff.co.uk/wp-content/uploads/2017/03/SFF\\_Report\\_v8-1.pdf](http://www.sff.co.uk/wp-content/uploads/2017/03/SFF_Report_v8-1.pdf) - this analyses the presence in UK and EU waters of 17 commercially significant stocks.

<sup>9</sup> The UK is a state party to the United Nations Convention on the Law of the Sea in its own right, however it has a declaration in place (mirrored by the European Community's declaration) confirming the EC's competency over matters related to the conservation and management of sea fishing resources. Upon exit, the UK will need to amend its declaration to clarify that competence for these matters will be returned to it. See UNCLOS United Kingdom of Great Britain and Northern Ireland Declaration dated 12 January 1998; European Community Declaration upon signature 7 December 1984.

<sup>10</sup> UNCLOS, Art 61; discussed in *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, International Tribunal for the Law of the Sea Case No 21, at [207]-[209].

<sup>11</sup> UNCLOS, Art 63(1).

<sup>12</sup> *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015, International Tribunal for the Law of the Sea Case No 21, at [207] and [210].

21. There is a biological and ecological imperative for co-operation as well as a legal imperative. Currently, EU ministers meet annually to set TAC for fish stocks in Union waters, which is then allocated between EU member states as quota. After exit, the UK will no longer be a part of this process, however the UK fleet will still be targeting the same fish. The experience managing shared fish stocks between the EU and third countries such as Norway and Iceland has shown that there is a real risk of overfishing in this context.<sup>13</sup> In particular, the 'wars' over herring and mackerel between the EU, Iceland and the Faroe Islands in 2013 demonstrate the issues associated with unilateral action and a failure to cooperate. So there is a need for robust legal safeguards in order to minimise this risk.
22. The loss of this joint process for setting TAC, managing fisheries, and allocating fishing opportunities between states risks overfishing in two ways:
- a. The UK and EU may bilaterally agree a TAC and respective allocations for shared stocks. But if both parties approach negotiations with a short-term view aimed at maximising the allowances of fish for their fleet, and prioritise this short-term economic goal above the need to ensure that the overall volume of shared fish stocks taken by both parties does not exceed scientific advice and limits, the end result may be that more fish are taken out of the sea than scientists advise to be sustainable, resulting in overfishing; or
  - b. If negotiations over the TAC and allocation between states break down and each party determines an allocation of shared stocks unilaterally then the number of fish taken out of these shared fish stocks is also likely to exceed levels that scientists advise as sustainable, resulting in overfishing.
23. Any agreement that the UK makes with the EU or neighbouring states regarding the management of shared stocks must include a requirement that the parties will agree the TAC adhering strictly to recommendations based on best available science. The UK should also quickly establish fixed proportions of TAC for shared stocks that could be renegotiated at intervals (such as every five or ten years) to allow for changes in fish stock distribution and productivity.<sup>14</sup> That will allow for certainty and streamline negotiations because the proportions will not be reopened for discussion every time. The UK must also ensure that any agreement with other states facilitates sharing of scientific advice and data to fully inform the analysis of the state of shared stocks and negotiations for allocations of those stocks.
24. Challenges will also arise in other areas, including in ensuring that the UK and Welsh fisheries management authorities are properly resourced in order to properly carry out their role in monitoring and enforcing fisheries laws both during transition and post-Brexit.

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<sup>13</sup> G Carpenter "Not in the Same Boat" (New Economics Foundation, 2017), p26-29, available at <http://neweconomics.org/wp-content/uploads/2017/11/Not-in-the-Same-Boat-PDF.pdf>.

<sup>14</sup> *ibid*, p72.