

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

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

Memorandwm Cydsyniad Deddfwriaethol ar Fil Pysgodfeydd y DU | Legislative Consent

Memorandum on the UK Fisheries Bill

FB 06

Ymateb gan : Cymdeithas Pysgotwyr Cymru Cyf

Evidence from : Welsh Fisherman's Association Ltd

- The Welsh Fisherman's Association – Cymdeithas Pysgotwyr Cymru Cyf (WFA-CPC) established in June 2011 and are the recognised National representative body for Fishermen's Associations in Wales, governed and directed by a Board made up of elected representatives from the following Welsh Fishermen's Associations:-
 - South Wales & West Fishing Communities
 - Cardigan Bay Fishermen's Association
 - North Wales Fishermen's Co-operative
 - Llyn Fishermen's Association
 - Llyn Pot Fishermen's Association

The WFA-CPC welcomes this opportunity to contribute evidence to the Committee's Inquiry under the Terms of Reference for the Legislative Consent Memorandum on the Passage of the UK Fisheries Bill, accordingly we are pleased to submit our written evidence herewith for your consideration:

What are your views on the Legislative Framework for the UK after Brexit as set out in the UK Fisheries Bill?

After the UK has left the European Union (EU) and the Common Fisheries Policy (CFP) the Government and Devolved Nations of the UK will require additional powers necessary to effectively manage and control fisheries within the UK's Exclusive Economic Zone (EEZ) that enables the UK to operate as an independent party in international fisheries negotiations consistent with the UK's legal status as an Independent Coastal State under the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The Bill proposes common approaches to fisheries management between the UK Government and Devolved Administrations and also makes reforms to fisheries management in England. The primary purpose of the Fisheries Bill is to provide those charged with fisheries management responsibility at a UK level with the powers to deliver those responsibilities:-

- a) Empowering the UK to act as an Independent Coastal State at International fisheries negotiations and
- b) For the UK Parliament, Secretary of State, Devolved Legislature and Ministers (through delegated and devolved powers) to manage domestic fisheries in the UK's EEZ on a sustainable basis.

The Fisheries Bill provides the legislative foundations necessary for a future fisheries policy that respects devolved legislatures, supports coherent/consistent frameworks grounded on the principles of sustainable fisheries management; environmental, economic and social:

KEY BILL PROVISIONS:

- Fisheries objectives and fisheries statements:
- Access to British fisheries:
- Licensing of fishing boats:
- Access and licencing ; offences and consequential amendments:

- Fishing opportunities:
- Discard prevention scheme:
- Grants and charges:
- Powers to make further provision:
- Miscellaneous:
- Final Provisions:

WFA-CPC Key Considerations:-

The WFA-CPC broadly welcomes the Fisheries Bill (as amended in Public Bill Committee) 17th December 2018; In our view the Bill provides the powers for the UK to act as an Independent Coastal State when the UK departs from the EU and by extension the CFP (following an implementation period which may apply) in particular powers for the UK to set quotas and control the access over who can fish in UK waters and under what conditions.

Revoking the automatic right of non UK vessels to fish in UK waters would be entirely consistent with any Coastal States' authority to sustainably manage the exploitation of naturally renewing resources.

Under the key provision of the UK Fisheries Bill non UK fishing vessels would require a licence to fish in UK and Welsh waters, these together with associated licence conditions, would create the mechanism necessary to control and enforce foreign fishing effort and activity in UK waters. Domestic and foreign fishing boat licences in the Welsh Zone would be granted, or otherwise, by Welsh Ministers as such non UK vessels would be expected to adhere to the same rules as apply to UK vessels when fishing in UK/Welsh waters.

The WFA-CPC welcomes the recent amendment and introduction of Clause 39 which rightly confers the legislative competence of the National Assembly for Wales in relation to fishing, fisheries or fish health in the area of the Welsh Zone beyond the seaward limit of Welsh territorial seas.

As international fisheries are a reserved matter we understand it is the Secretary of State who would hold the authority to set quotas, any powers historically resting with the EU in respect of quota setting would be revoked therefore the authority to negotiate with the EU, Norway and other coastal states would rest with Secretary of State in consultation with Welsh Ministers.

Does the Committee consider consultation sufficiently robust to uphold Welsh fishing interests/resources at annual international fisheries negotiations?

Fisheries Objectives:-

Sustainable Fishing:

The WFA-CPC fully support the sustainability objective on the face of the Bill, however, Maximum Sustainable Yield (MSY) as introduced within the reform of the CFP basic regulation in 2013 whilst a convenient expression of that aspiration in practice has proved challenging particularly in respect of achieving MSY for all TAC species by 2020 particularly within mixed fisheries. We support the Bill and whilst retaining the MSY objective, has removed the arbitrary MSY timetable together with the unscientific and unachievable language with which the concept of MSY was expressed within the CFP. In our view we absolutely need flexible responsive and adaptive management that works within the context of dynamic marine resources subject to wide ranges of natural variability and a dynamic and multifaceted fishing sector supported by a statutory monitoring programme providing the necessary evidence to inform sustainable fisheries management which, we believe, the Bill, as currently drafted, will provide the necessary powers which will complement and contribute to the Sustainability Principles of the Environment Act (Wales) 2016 and the Goals of the Wellbeing & Future Generations Act (Wales) 2015.

Precautionary Objective

We support the Precautionary Principle, understood to mean that the absence of definitive data or information should not obstruct proportionate risk based timely intervention to prevent harm. There are however instances whereby the Precautionary approach has been applied under the CFP resulting in successive annual automatic 20% reductions in TAC for skates and Rays which have proved harmful and counterproductive undermining effective management and leading to widespread discarding, we fully support the objective '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' as this is consistent with the provision within the Environment Act (Wales) 2016 and the goals of the Wellbeing & Future Generations Act (Wales) 2015.

Ecosystem Objectives

The ecosystem based approach to fisheries management is generally interpreted as minimising any harmful effects of fishing activities on the marine environment. We support this objective within the more inclusive concept of a 'social-ecological system of ecosystem-based management' which considers; the ecosystem, conservation, socio-economics, tourism/recreation and fisheries management; recognising that humans with their cultural diversity are an integral component of many ecosystems and captures the three pillars of sustainability environmental, economic and social integral to sustaining the life and lives of coastal communities.

Scientific Evidence Objective:

The WFA-CPC strongly advocates and supports a science based fisheries policy which builds a robust evidence information base from which to inform management decisions. In our opinion there is no substitute for evidence led decision making that positively engages rather than negatively alienates stakeholders.

Discards Objectives:

In our view it is important and sensible to maintain the commitment to gradually eliminate discarding on a case-by-case basis incentivising the avoidance and reduction, as far as possible, of unwanted catches gradually ensuring that all catches are landed, however, fisheries management is inherently complex and blunt legislation (e.g. the current EU Landing Obligation) which has generated profound difficulties for the fishing industry and fisheries managers alike. The language in the Bill is both aspirational and realistic about practical realities that exist within mixed fisheries that we believe strikes the right balance between policy and practice:

Equal Access Objective:

We are supportive of the equal access objective which ensures that the access of UK fishing boats to any area within British fishery limits is not affected by the location of the fishing vessels home port, however, consistent with the principles of Sustainable Management of Natural Resources (SMNR) as established within the Environment Act (Wales) 2016 together with the goals and principles of the Wellbeing & Future Generations Act (Wales) 2015. We would seek provision, possibly within the Joint Fisheries Statement (JFS) for Welsh Ministers, to determine effort limits for fishing vessels active within the Welsh Zone, subject to and supported by, annual science-based evidence and monitoring programmes that determine non-TAC stock levels consistent with the principles of MSY and the duty placed on Welsh Ministers for the SMNR under the Environment Act (Wales) 2016.

Clause 2 – Fisheries Statements:

The Fisheries Bill/Act defines the rules of Welsh Ministers as Fisheries Policy Authorities (FPA's) and places a requirement on FPA's to act jointly in the production of a Joint Fisheries Statement (JFS) stating their policies for achieving the fisheries objectives and formally consulting with stakeholders. The FPA's must prepare and publish a JFS before the 1st January 2021 and every 6 years thereafter. 'Schedule One' defines the roles of the Welsh Legislature and Welsh Ministers for the preparation of a JFS including provisions to adapt or amend periodically. The policies within the Statements will be legally binding unless an FPA can provide a valid reason for departing from the agreed policy. We welcome the introduction of Fisheries Statements as they present a flexible and adaptive vehicle for fisheries policy, however, in our considered opinion we believe that the JFS would be strengthened with the inclusion of a dispute resolution mechanism where agreement cannot be reached between FPA's and the creation/inclusion of a formal advisory council comprised of appropriately qualified authoritative fisheries experts to inform policy decision during development and prior to their publication:

Clause 7: Revocation of Requirement for Equal Access for EU Fishing Vessels:

The revocation of the Principle of Equal Access in so far as it applies to non UK fishing vessels which is derived from the CFP is an essential precondition to deliver the UK's stated intention to act as an Independent Coastal State in accordance with international law (UNCLOS)

Clause 8 mandates that 'a foreign fishing boat must not enter British fishery limits unless in possession of a valid UK fishing licence or for a purpose recognised in international law or treaty'.

Clause 9: Licencing of British Fishing Vessels:

This Clause provides that fishing can only be undertaken by licenced British fishing boats subject to a number of exceptions under sub-section 2(A) inclusive and authorised by Welsh Ministers:

Clause 9 (3) gives the Secretary of State power to amend this section by regulations with the consent of Welsh Ministers.

Does the National Assembly for Wales consider the SoS powers under Clause 9 (3) are consistent with the sustainability principles of the Environment Act (Wales) 2016?

Clause 12: Power to Grant Licences in respect of Foreign Fishing Boats:

Confers powers to each Devolved Administration of the UK to grant a licence to administrative sea areas as described in sub section 2(B) 'Wales and the Welsh Zone' - given that Welsh/UK territorial waters, 0 – 12nm from base lines, are expected to be exclusively for UK licenced fishing boats and the protection of vulnerable inshore fisheries, we would suggest amending 2(B) to reflect the Welsh offshore area seaward of 12nm to the extent of Welsh fishing limits (Median Line). 2(B) could be a temporary description relating to the potential for continued access of non UK vessels (subject to licencing) until the notice period in respect of the 1964 London Fisheries Convention expires in July of 2019.

Clause 18: Fishing Opportunities:

Provides that the Secretary of State will set the total UK fishing opportunities expressed in quota or effort days only for the purposes of complying with the International obligation to determine the fishing opportunities of the UK. This Clause provides broad powers to the SoS to set UK quotas which could be interpreted as applicable to stocks wholly within the waters of a Devolved Administration

We fully support the representation of the Minister for Environment, Energy and Rural Affairs Lesley Griffiths AM in respect of the Legislative Consent Memorandum (LCM) regarding Clause 18. We note that the SoS must consult the UK Fisheries Administrations regarding any proposed changes by regulation.

Clause 21: Duties to Ensure Fishing opportunities are not exceeded:

Places a duty on Welsh Ministers to exercise their functions relating to fisheries to ensure that no seafish are caught by British fishing boats in excess of the catch quota in any calendar year as quota is managed at a UK level. It is important that all Fisheries Administrations avoid exceeding quota allocations that would disadvantage vessels within another administration. By placing an obligation on each administration to only fish within their respective allocations would offer an effective safeguard:

Clause 27: Discard Prevention Charging Schemes:

The Bill presents a partial solution to the problem of choke species associated with the full implementation of the Landings Obligation (Discard Ban) in 2019 by way of a 'Discard Prevention Charge Scheme'.

The Scheme allows vessels to land unavoidable catches of over-quota bycatch species which are sold for human consumption but a charge is then levied. This charge is intended to remove the incentive for any vessel to target valuable bycatch species for which they have no quota but avoid choking the main target species. Whilst we appreciate that the provisions under Clause 27 relate to England and the MMO we would respectfully suggest that Welsh Ministers seek such provision as an option to mitigate future risks of Choke that could develop as quota adjustments post Brexit are realised increasing Wales' quota holding and potential for risk of choke.

Clause 28: Financial Assistance, Powers of the Welsh Ministers:

Introduces Schedule 4 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes relating to Wales, the Welsh Zone or Welsh fishing boats

Clause 31: Powers to make further provisions about fisheries aquaculture etc.:

We understand that Clause 31 & 33 relate to the delegated powers sought by the Secretary of State to make certain provisions in regulation regarding fisheries and aquaculture as currently regulated by the EU under the CFP. The purpose of these powers is to enable the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation including the regulations of the CFP incorporated into UK law by the EU (Withdrawal) Act 2018.

We fully appreciate and understand the need for delegated powers, however, we also understand the concerns expressed in relation to giving such extensive powers to Ministers of the UK Government without scrutiny of the UK Legislatures, in our opinion such powers are necessary given the time available to ensure the 'Act' functions at the time the UK leaves the EU.

We are reassured that Clauses 31 to 36 inclusive provide a level of safeguarding that requires the Secretary of State to either, consult with, or seek the consent of, Welsh Ministers before making provisions in so far as they would apply to Wales or the Welsh Zone.

Clause 39: Legislative competence of the National Assembly for Wales:

The WFA-CPC warmly welcomes the amended Bill Clause 39 which makes provision about the legislative competence of the National Assembly for Wales in relation to fishing, fisheries or fish health in the area of the Welsh Zone beyond the seaward limit of the territorial sea:

What are your views on the provisions in the UK Fisheries Bill that will enable the Welsh Ministers to bring forward policy in relation to Welsh Fisheries after Brexit?

There is consensus that the UK needs a dynamic system of fisheries management that has the capability to respond quickly to changes in the marine environment, changes in scientific advice and to international

commitments, there is also support to move away from the CFP and provide for effective and dynamic fisheries management.

In July 2018 the Cabinet Secretary for EP & RA, Lesley Griffiths AM, held a debate in the Senedd regarding 'Brexit & the Fishing Industry' the Welsh Government motion with Plaid Cymru amendments was passed, the debate began by recognising the significant and distinct challenges Brexit poses to the Welsh fishing industry and marine environment and highlighted the following key themes:-

- Plan to make best use of our seas:
- Provide effective stewardship for the marine environment and our natural resources:
- Continue to be responsible partners in UK marine and fisheries management:
- Secure a fairer deal for the Welsh fishing industry:
- Stand on our own two feet:
- Finally re-iterating the Governments support for full an unfettered access to EU markets:

Further to the debate on the 3rd July 2018 the Climate Change, Environment & Rural Affairs Committee published its report and recommendations on 'The Impact of Brexit on Fisheries in Wales' in October 2018.

In Wales we also have unique legislation under the:-

- Environment Act (Wales) 2016:
- Well-Being & future Generations Act (Wales) 2015:

These Acts provide the foundation for Welsh Policy relating to the environment, natural resources and sustainability. We understand that the Welsh Government will be consulting in early 2019 on 'Brexit & Our Seas' which we anticipate will build on the key themes of the Senedd debate 'Brexit & the Fishing Industry' together with the CCERA Committee recommendations 'The Impact of Brexit on Fisheries in Wales'. We anticipate that the impending consultation on 'Brexit & Our Seas' will draw together and build on the reports and recommendations to date that will create a future Welsh Fisheries Policy.

In our view the Fisheries Bill (as amended in Public Bill Committee) 18th December 2018 and significantly the provision within Clause 39 which addresses the Legislative Competence of the National Assembly for Wales will provide the powers necessary for Welsh Ministers to bring forward a policy programme that delivers Sustainable Fisheries for Future Generations. Once we have defined our policy we will have a clearer understanding of what may need to be provisioned through a Welsh Fisheries Bill.

Do you wish to raise any other matters in relation to the provisions in the UK Fisheries Bill as they relate to Wales?

- In our opinion it would be a missed opportunity if the Bill did not include a provision to add flexible management powers to s156 & s189 of the Marine & Coastal Access Act 2009 that would provide Welsh Ministers with the necessary powers to vary or amend regulation that would deliver adaptive fisheries management in Wales consistent with a future fisheries policy:
- The Fisheries Bill will provide an enhanced and clear legislative framework, it is imperative that we create a transparent and coherent Welsh Fisheries Policy, but, as yet, we do not have the ability to manage adaptively once Welsh Ministers are in receipt of such powers:

WFA-CPC

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