



BRIEFING PAPER

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The Fisheries Bill 2017-19

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2. Future UK policy - towards an independent coastal state
3. The Bill in detail
4. Second Reading debate
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Summary

Fisheries management in the UK (including quota allocation) is devolved, with different approaches taken by the four administrations. A [Concordat](#) in 2012 established common practice for vessel licensing, effort management and quota distribution.

Following Brexit, the UK will no longer be part of the [EU Common Fisheries Policy \(CFP\)](#). It will become an [independent coastal state](#) and be fully responsible for managing fisheries in the UK's Exclusive Economic Zone (EEZ) of 200 miles. This will include setting total allowable catches (TACs) and determining who has access to fisheries.

The [25 Year Environment Plan](#), published in January 2018, set out details of the Government's aims for a sustainable fisheries policy after Brexit, based on a natural capital approach, which would allow for sustainable fisheries, whilst protecting and enhancing the marine environment. This was followed by the publication of a [Fisheries White Paper](#), in July 2018, which recognised that "healthy fish stocks are the first step to vibrant commercial and recreational fishing industries, and prioritises a healthy marine environment" and committed to work under the principle of maximum sustainable yield. The White Paper included details of the proposed Fisheries Bill, which would create powers for "retained EU fisheries law to be amended expeditiously by secondary legislation"; and include proposals for powers to deliver agreements reached with the EU and other coastal states on access to waters and fishing opportunities.

The [Fisheries Bill](#), published on 25 October 2018, is a framework bill that will provide the UK Government with powers to set annual total allowable catches for UK waters, and provide the UK Government and devolved administrations with powers to amend the fisheries regulations that will be transposed into UK law from EU legislation. In addition to this, a number of Articles in the [EU CFP Regulations](#) are revoked or amended. The Bill includes a number of Henry VIII powers. The devolved administrations have taken different positions on a number of issues, including to what extent the Bill requires legislative consent.

The Bill reflects the objectives set out Article 2 of the EU Regulations and provides for the how these will be reflected in policy across the UK, although it does not include a duty to meet these objectives. It also includes powers for the UK Government to set fishing opportunities, and for England only, powers to create a scheme for sale of quota and charging for discards. The Bill also extends the powers of national authorities with regard to marine conservation to the whole of the UK EEZ.

[Second Reading](#) of the Bill took place in the House of Commons on 21 November 2018. The [Committee stage](#) of the Fisheries Bill took place between 4 and 17 of December 2018. The Bill now includes eight Government amendments, some of them included at the request of the Devolved Administrations. One Conservative amendment was successful. No Opposition amendment was successful. Both Government and Opposition committed to return to several areas during Report stage. There were also several amendments proposed by Conservative Members that were negated on division. All clauses of the Bill except one, which deals with devolved powers, will apply to all parts of the UK. Should clause 18 of the Bill not be in force on exit day the Government has set out that it has [prerogative powers](#) to set fishing opportunities until the Fisheries Bill becomes law.

1. The fisheries sector in the UK

1.1 Summary of economic contribution

The following table summarises the economic contribution of the fishing sector, which includes fishing, aquaculture and fish processing.¹

Economic contribution of the UK fishing sector				
	Fishing	Aquaculture	Processing	Total fishing sector
Employment (2017)	5,650	3,350	16,200	25,200
Businesses (2018)	3,650	435	305	4,390
Economic output (2017)	£556m	£432m	£580m	£1,568m

Sources: Employment: ONS, Business register and employment survey, 2018, via NOMIS database

Businesses: ONS, Business activity, size and location, 2018, via NOMIS database

Economic output: ONS, Annual Business Survey, Provisional 2017 results, Nov 2018

Employment data are for Great Britain; economic output is Gross Value Added (GVA)

In 2017, employment in the fishing sector in the UK was 25,200, the majority of which (64%) worked in fish processing.

There were 4,390 businesses in the fishing sector in the UK in 2018, the vast majority (87%) of which were very small with fewer than 5 employees.

The economic contribution of the fishing sector was £1.6 billion, 37% of which came from fish processing. The economic output of the fishing sector was 0.1% of total UK output (in terms of Gross Value Added, GVA, which is similar to GDP).

1.2 Description of the UK fishing sector

Industrial classification divides the UK fishing sector into three sectors: the fish processing industry, which is the largest employer of the three as set out above; the fishing industry, which encompasses the collection for human consumption of all wild aquatic life, including fish, crustaceans and molluscs; and the aquaculture industry which is the cultivation of aquatic life for collection and human consumption.

Fish processing industry

The fish processing industry is a manufacturing industry involved with the preparation and preservation of aquatic life for human consumption. It is defined as [SIC code 10.2](#).

Typically, fish processing plants are located near major fish ports, which means that fish can be prepared before transportation to consumers.

¹ Unless otherwise stated the following sources have been used to estimate the economic contribution: Economic contribution (Gross Value Added, GVA): ONS, [Annual Business Survey, Revised 2016 results](#), May 2018; Employees: ONS, [Business register and employment survey](#), 2018, via [NOMIS database](#); Businesses: ONS, [UK business counts](#), 2018, via [NOMIS database](#)

Fish processing plants can be divided into three categories: primary processors (dealing with cutting, peeling, gutting and washing fish and shellfish), secondary processors (dealing with brining, smoking, freezing and canning) and mixed processors that do a mixture of these activities.²

There were around 370 fish processing plants in the UK in 2016, employing an average of 48 people per plant. Since 2008 there has been a considerable consolidation in the industry: the number of plants has fallen from 560 and the average number of people employed in each plant in average has risen from 36.³

Fish processing is focused in Humberside, the East of Scotland and the Highlands of Scotland. The fish processing industry in the Highlands is almost entirely focused on salmon processing. The East of Scotland and Humberside industries work mainly with sea caught fish and shellfish.⁴

The UK fish processing industry is the largest in the EU by turnover, according to the European Commission, with turnover of €5.0 billion in 2012. The second largest fish processing industry was in France, with turnover of €4.9 billion.⁵

Fishing industry

The fishing industry involves the collection of wild aquatic life for human consumption, including fish, crustaceans and molluscs from the sea and freshwater sources. It is defined as Standard Industrial Classification (SIC) code [SIC code: 03.1](#).⁶

Detailed statistics related to this industry can be found in the House of Common Library briefing paper, [UK sea fisheries statistics](#).

In 2017, the UK fishing fleet was made up of 6,148 registered vessels, the seventh highest number in the EU (Greece had the highest – 14,977). In terms of capacity, the UK fleet had a gross tonnage of 187,000 gross tonnes, the second largest capacity in the EU (Spain had by far the largest in the EU: 338,000 gross tonnes).⁷

Just under 80% of the UK fleet are 10m and under vessels (u-10m). However, both the number of vessels and the size varies significantly across the UK, with England having the largest number of u-10m fleet, 2,512, and Scotland the largest number over 10m vessels, 576. The size of the vessels is reflected in the gross tonnage of each fleet in 2017: it was 58,611 gross tonnes in England; 5,124 in Wales; 102,933 in Scotland and 18,333 in Northern Ireland.⁸

² Seafish, [Seafood processing industry report](#), 2016, p12

³ *Ibid*, p10

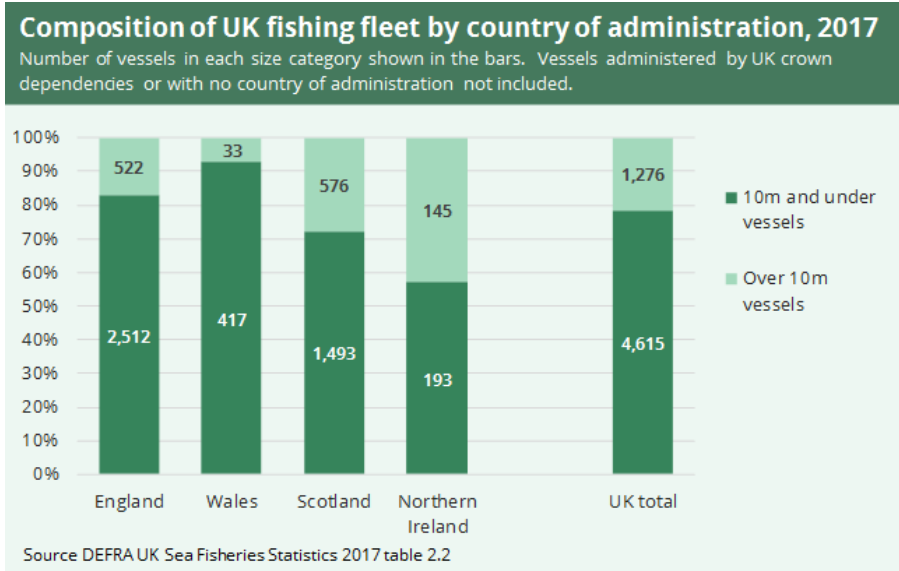
⁴ *Ibid*, p18

⁵ European Commission, [Facts and figures on the common fisheries policy](#), 2016, p 32

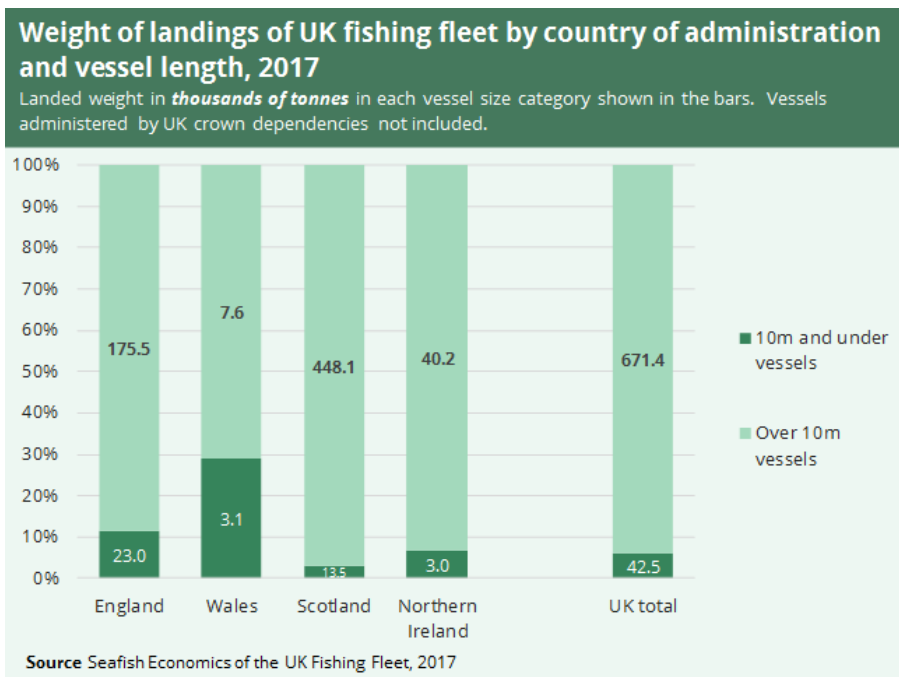
⁶ The [Standard Industrial Classification](#) (SIC) system is used to define all economic activity into a hierarchy of sectors and industries.

⁷ DEFRA, [UK sea fisheries annual statistics report 2017](#), September 2018, p9

⁸ *Ibid*, p15



Despite the UK fleet being composed mainly of u-10m vessels, (in 2017 under-10m vessels accounted for 78% of the UK fleet) they only landed 6% of catch by weight.⁹ For example in England the 2,512 u-10m vessels, just over 80% of the fleet, landed just over 10% of the total catch by weight or 23,000 tonnes. In Scotland the landings were overwhelmingly from larger vessels.



Aquaculture industry

The fish farming or ‘aquaculture’ industry is defined as the process of cultivating in captive conditions and then collecting aquatic life for human consumption. It is defined as [SIC code 03.2](#).

The aquaculture industry in the UK produced 194 million tonnes of fish and shellfish in 2016, compared to 498 million tonnes of fish landed in

⁹ [Seafish Economics of the UK Fishing Fleet 2017](#) page 14

UK ports, so 28% of all fish produced in the UK was from aquaculture.¹⁰

The UK's aquaculture industry was the second largest in the EU in 2015 by tonnage – behind Spain which produced 294 million tonnes.

By value, the UK's aquaculture industry was the largest in the EU, producing fish worth €995 million, compared to €620 million in France, the second most valuable aquaculture industry in the EU in 2015.

In the UK, 90% of all aquaculture produced fish was diadromous fish (mainly salmon). Molluscs accounted for a further 9% of all aquaculture produced fish.

For context, in 2015, Norway produced 1.4 billion tonnes of fish from aquaculture valued at €5.2 billion. The EU 28 produced 1.3 billion tonnes of fish by aquaculture, worth €4.1 billion.¹¹

1.3 Businesses

In 2018, there were 3,650 fishing businesses, 435 aquaculture businesses and 305 fish processing businesses in the UK, meaning that there were 4,390 businesses in the fishing sector overall.¹²

Businesses in the UK fishing sector, 2018		
	Number	% with <5 employees
Fishing	3,650	93%
Aquaculture	435	74%
Fish Processing	305	39%
<i>Total fishing sector</i>	<i>4,390</i>	<i>87%</i>
All UK businesses	2.7 million	78%

Source: ONS, Business activity, size and location, 2018, via NOMIS database

Excludes very small businesses with no employees and turnover below £85,000 a year

The fishing sector is characterised by a higher than average proportion of businesses with under 5 employees. In the whole fishing sector 87% of businesses have 0-4 employees, compared to 78% in the UK economy as a whole.

In the fishing industry specifically, this proportion is even higher: 93% of businesses have fewer than 5 employees. This is explained by the large number of vessels that are registered as businesses with their crew as the only employees.

Research conducted by Greenpeace into fishing businesses in England and Wales found that although there are a large number of small

¹⁰ Eurostat, [Aquaculture statistics](#), 2017 and DEFRA, [UK sea fisheries annual statistics report 2017](#), September 2018, Table 3.4

¹¹ Eurostat, [Aquaculture statistics](#), 2017

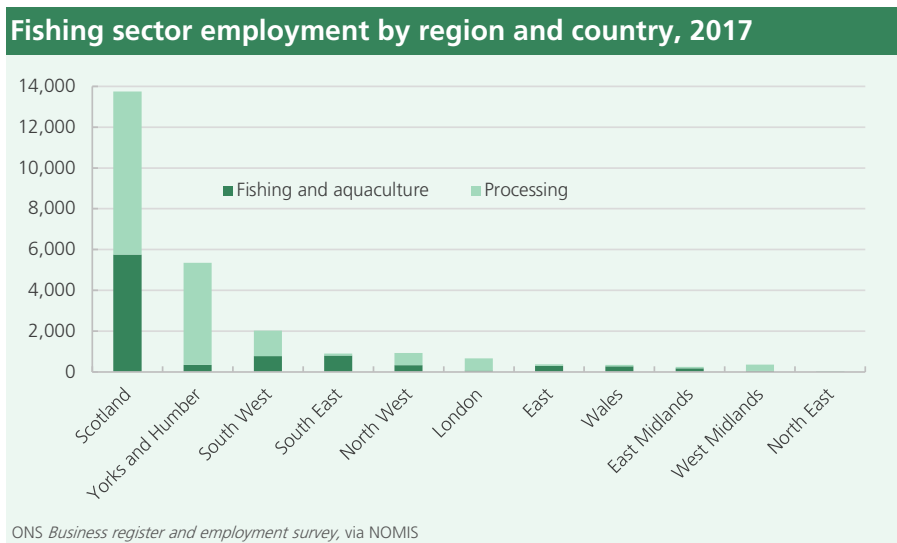
¹² ONS, [Business activity, size and location](#), 2017, via NOMIS database. Data excludes very small businesses with no employees and turnover below the VAT threshold of £85,000 a year.

businesses involved in the fishing industry, 61% of fishing quotas for England and Wales are owned by only three companies.¹³

The fish processing industry has a much smaller than average proportion of businesses with less than five employees: 39%. The processing industry is labour intensive and typically involves businesses with lots of employees.

1.4 Employees in the fishing sector

The following chart shows employment in the fishing sector in the regions and countries of Great Britain.



Scotland dominates the fishing sector in Great Britain, with 55% of the sector's employment (13,750 people) working in Scotland in 2017:

- 58% of fishing industry employment was in Scotland (3,500 people)
- 75% of aquaculture industry employment was in Scotland (2,250 people)
- 50% of fish processing employment was in Scotland (8,000 people).

Yorkshire and Humberside is the next largest region or country in Great Britain in terms of employees in the fishing sector: 5,350 or 21% of all fishing sector employment. 93% of fishing sector employment in Yorkshire and Humberside was in the fish processing industry (5,000 people).

¹³ Greenpeace, [Big Fish quota barons squeeze out small scale fishermen](#), 14 April 2016

Fishing sector employment by region and country of Great Britain, 2017					
	Fishing	Aquaculture	Processing	Total fishing sector	% of total fishing sector
Scotland	3,500	2,250	8,000	13,750	55%
Yorks and Humber	300	50	5,000	5,350	21%
South West	600	200	1,250	2,050	8%
South East	450	350	100	900	4%
North West	250	100	600	950	4%
London	50	0	600	650	3%
East	200	150	100	450	2%
Wales	200	100	100	400	2%
East Midlands	100	100	100	300	1%
West Midlands	0	50	300	350	1%
North East	0	0	50	50	0%
<i>Great Britain</i>	<i>5,650</i>	<i>3,350</i>	<i>16,200</i>	<i>25,200</i>	<i>100%</i>

Source: ONS, *Business register and employment survey*, 2018

1.5 Employment by constituency

The following table shows the top 15 constituencies in terms of employment in the fishing sector.¹⁴

Fishing sector employees in top 15 parliamentary constituencies, 2017					
	Fishing	Aquaculture	Processing	Total fishing sector	% of all employees
Banff and Buchan	1,750	-	2,500	3,750	12%
Great Grimsby	-	-	3,500	3,630	8%
Orkney and Shetland	450	700	300	1,300	6%
Ross, Skye and Lochaber	350	350	450	1,050	4%
Argyll and Bute	250	400	350	1,050	3%
Berwickshire, Roxburgh and Selkirk	50	-	800	880	2%
Dumfriesshire, Clydesdale and Tweeddale	50	-	800	830	3%
Kingston upon Hull West and Hessle	100	-	600	730	1%
Cleethorpes	-	-	600	620	2%
Na h-Eileanan An Iar	150	250	250	480	5%
Caitness, Sutherland and Easter Ross	250	150	200	430	2%
Kingston and Surbiton	-	-	400	400	1%
Moray	200	-	200	390	1%
Lancaster and Fleetwood	50	-	300	380	1%
Edinburgh North and Leith	-	50	300	350	0.3%
<i>Great Britain</i>	<i>6,000</i>	<i>3,000</i>	<i>16,000</i>	<i>25,000</i>	<i>0.1%</i>

Source: ONS, *Business register and employment survey*, 2018

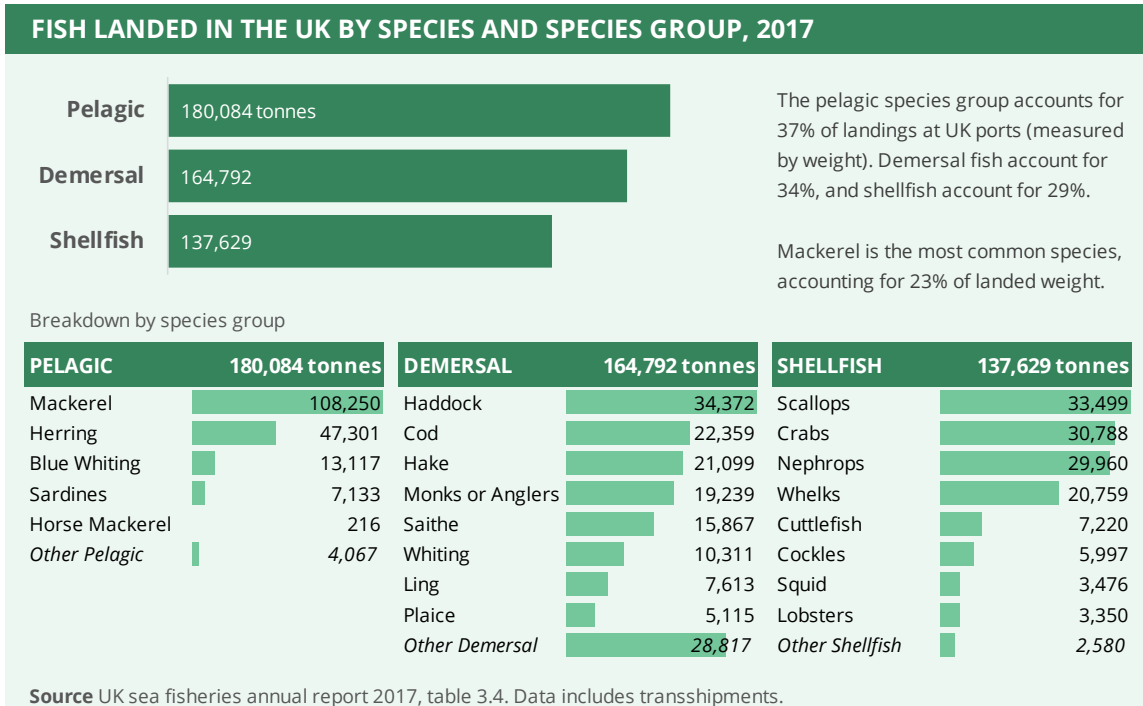
The major fishing ports of Fraserburgh and Peterhead (two of the top three ports in the UK by tonnes of fish landed), are both in the constituency of Banff and Buchan. The fishing sector in this constituency accounts for 12% of employment.

The constituency of Great Grimsby includes the largest fish processing industry in the country, employing 3,500 people, almost a quarter of all fish processing employees in Britain.

1.6 UK fish landings

In 2017, 482,500 tonnes of fish and shellfish were landed in UK ports, by both UK and foreign registered vessels. The following graphic shows landings in UK ports by vessel in 2017.

¹⁴ These data are estimates based on the ONS, *Business register and employment survey*. They are subject to some sampling error and have been rounded.



This included 180,100 tonnes of pelagic fish (that live in coastal or open waters, such as herring and mackerel), 164,800 tonnes of demersal fish (that live near the sea bed, such as cod and haddock), and 137,600 tonnes of shellfish.¹⁵

Since 2000, the quantity of fish landed in UK ports has declined by 8%, due to the falling quantity of demersal fish landed (down 33% from 2000 to 2017). The quantity of pelagic fish landed has risen by 18% over this period, and the quantity of shellfish landed has risen by 8%.¹⁶

All the fish and shellfish landed in UK ports was worth £789 million in 2017. Between 2000 and 2017, the value of all fish and shellfish landed in the UK has increased by 17% in real terms. The value of demersal landings was £320 million in 2017, the value of pelagic landings was £123 million, and the value of shellfish was £346 million.¹⁷

The UK fishing fleet landed the third largest tonnage of fish and shellfish in the EU in 2017, 723,000 tonnes (including fish landed by UK vessels in foreign ports). The top two EU fleets by tonnage landed were Denmark (904,000 tonnes) and Spain (902,000 tonnes). For context, Norwegian vessels caught 2.2 million tonnes of fish and shellfish in 2017.¹⁸

¹⁵ DEFRA, [UK sea fisheries annual statistics report 2017](#), September 2018, table 3.4

¹⁶ DEFRA, [UK sea fisheries annual statistics report 2017](#), September 2018, table 3.7

¹⁷ *Ibid* and HM Treasury, [UK GDP Deflator](#), October 2018

¹⁸ Eurostat, [Catches in all fishing regions](#), Database accessed November 2018

Fisheries flows

The fishing industry flows are complex, with vessels registered in one country often landing their catches at the closest ports in a different country. For example, the value of landings into Wales is almost evenly split between EU vessels, other UK vessels, and Welsh vessels.¹⁹ The following graphic illustrates 'fisheries flows' involving the UK in 2017.²⁰

INTERNATIONAL FISHERIES FLOWS INVOLVING THE UK, 2017					
FOREIGN VESSEL LANDINGS INTO UK PORTS, 2017			UK VESSEL LANDINGS INTO FOREIGN PORTS, 2017		
Vessel Nationality	Tonnes	Per cent of total	Port Nationality	Tonnes	Per cent of total
Total	48,448	100%	Total	290,276	100%
France	15,144	31%	Norway	125,909	43%
Norway	8,945	18%	Netherlands	63,333	22%
Ireland	6,731	14%	Ireland	52,173	18%
Denmark	5,890	12%	Denmark	36,859	13%
Spain	4,888	10%	France	3,447	1%
Belgium	3,821	8%	Spain	3,221	1%
Sweden	1,650	3%	Falkland Islands	3,007	1%
Germany	836	2%	Iceland	1,796	1%
Faroes	499	1%	Mauritius	318	0%
Netherlands	45	0%	South Africa	175	0%

Source UK sea fisheries statistics annual report 2017 tables 3.15 and 3.16

In 2017, foreign-registered vessels landed 48,400 tonnes of fish in UK ports, 10% of all of the fish landed in the UK. The largest proportion of this fish (31%) was landed by vessels registered in France.

UK registered vessels landed 290,300 tonnes of fish into non-UK ports. The largest share of this fish (43%) was landed in Norway.

1.7 Trade in fish and related products

The following table summarises trade in fish and related products from the UK in 2017.

UK trade in fish, 2017 (£ millions)			
	Exports	Imports	Balance
EU	1,338	1,091	247
Non-EU	570	2,110	-1,540
World	1,908	3,202	-1,293

Includes fish, crustaceans, molluscs & aq. inverts & preps thereof
Source: HMRC, UK Trade Info

In 2017, the UK exported fish and similar products worth £1.9 billion and imported £3.2 billion worth;

¹⁹ Public Policy Institute for Wales, [Implications of Brexit for Fishing Opportunities in Wales](#), 13 February 2018

²⁰ DEFRA, [UK sea fisheries annual statistics report 2017](#), September 2017, Table 3.15 and 3.16

- There was a trade deficit in fish of £1.3 billion
- Fish exports to the EU were worth £1.3 billion (70% of all UK fish exports from the UK by value)
- Fish imports from the EU were worth £1.1 billion (34% of all fish imports to the UK by value)

The following table shows the UK's largest trading partners for fish and related products.

UK largest trading partners in fish, 2017					
	Exports			Imports	
	£ millions	% of total		£ millions	% of total
France	516	27%	Iceland	275	9%
United States	254	13%	China	216	7%
Spain	212	11%	Faroe Islands	202	6%
Irish Republic	163	9%	Denmark	200	6%
Italy	120	6%	Germany	197	6%
China	119	6%	Vietnam	186	6%
Netherlands	85	4%	Sweden	177	6%
Germany	66	3%	India	133	4%
Denmark	43	2%	Norway	126	4%
South Korea	38	2%	Netherlands	119	4%
EU	1,338	70%	EU	1,091	34%
Non-EU	570	30%	Non-EU	2,110	66%
World	1,908	100%	World	3,202	100%

Source: HMRC, UK Trade Info

The UK's biggest export destination for fish and fish products is France. Exports to France were worth £516 million in 2017, 27% of all exports.

The UK's biggest import partner was Iceland, with £275 million worth of fish imports in 2017. The UK imported £216 million worth of fish products from China in 2017, 71% of which was frozen fish fillets.²¹

²¹ All trade data is from the [UK Trade Info database](#), downloaded in October 2018, using product code SITC 03 – 'Fish, crustaceans, molluscs & aq. inverts & preps thereof'

2. Future UK policy - towards an independent coastal state

Following Brexit, the UK will no longer be part of the [EU Common Fisheries Policy \(CFP\)](#). It will become an [independent coastal state](#) and be fully responsible for managing fisheries in the UK's Exclusive Economic Zone (EEZ) of 200 miles. This will include setting total allowable catches (TACs) and determining who has access to fisheries.²²

Box 1: UK Fisheries Management

Total Allowable Catches (TACs) for each stock in each marine area for each year are set at EU level, for commercial fisheries that fall within the [Commons Fisheries Policy](#). Each TAC is divided between Member States on the relative stability principle, which is based on their historical fishing activity in that area.

As fisheries management is devolved each devolved administration is responsible for setting fishing quotas within its waters, using the UK fisheries [Concordat](#) as a basis. Their role is to allocate their share of each TAC to individual vessels, which each Member State is allowed to do as they see fit as long as equitable and transparent criteria is used.

TACs are divided between vessels with licences that entitle them to a share of fishing quota allocations (FQAs), based on historical fishing effort, both for over 10m vessels and 10m and under vessels (u10m).

The u10m fleet has consistently expressed its dissatisfaction with the quota allocations, arguing that its share of quota is based on inaccurate information on historical fishing effort. In 2017 under-10m vessels accounted for 78% of the UK fleet but only landed 6% of the UK catch by weight.²³

The majority of over 10m vessels are part of a [Producer Organisation](#) that manages the fishing quotas for their whole pool (there are multiple Producer Organisations). For u10m vessels the fisheries authorities manage the overall annual quota and then allocate a monthly fishing allowance per licence, which takes into account the amount of fish taken in previous months. Fishing quota can be bought, leased or borrowed.

Non-quota species, which are outside of the CFP, and include the majority of shellfish, are managed at UK level, through a licencing scheme and the use of byelaws to manage individual fisheries and fishing gear use.

A more detailed overview can be found in the [Commons Briefing Paper on Fisheries Management in the UK](#).

Some level of mutual access to EU and UK waters is likely to be part of any agreement reached with the EU, as part of a future relationship. The UK will continue to be bound by the requirements of the UN Convention on the Law of the Sea ([UNCLOS](#)) and how they relate to the management of fisheries in any Brexit outcome. UNCLOS requires coastal States to give other States access to the surplus of the allowable catch in its EEZ and emphasises the need to minimise economic dislocation in States whose nationals have habitually fished in the zone. It also provides an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated species.²⁴

²² Article 61(1) of the [UN Convention on the Law of the Sea \(UNCLOS\)](#) states that: "The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone."

²³ [Seafish Economics of the UK Fishing Fleet 2017](#) page 14

²⁴ [UN Convention on the Law of the Sea \(UNCLOS\)](#)

The [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published in July 2018, set out the Government's intention to continue to co-operate closely with the EU and other coastal states on the sustainable management of fish stocks that cross borders, and states that "any decisions about giving access to our waters for vessels from the EU, or any other coastal states including Norway, will then be a matter for negotiation".²⁵

2.1 Devolution

Fisheries management in the UK is devolved, with different approaches taken by the four administrations. In Northern Ireland some level of devolution has existed since the 1920's, however in other devolved administrations this did not occur until the 1960's.²⁶ Each fisheries administration manages non-quota fisheries (which do not fall under the CFP) differently. In England, they are managed at local level, while in Scotland, Wales and Northern Ireland they are managed centrally.

In addition, since 2012 the allocation of CFP fishing quotas has also been a devolved matter. The UK Government [announced](#) in May 2012 that instead of setting individual quotas for fishing vessels that held a fishing licence at UK level, devolved administrations would take over distributing quota:

Under the agreement, the UK, Scottish and Welsh Government, and the Northern Ireland Executive will each be allocated shares, agreed annually, of UK fish quotas for distribution to their fleets. These will be based on the number of boats in each area and the quota they already receive. However, there will be no permanent split of UK quota; fishing vessels will be free to move their operations to other parts of the UK.²⁷

The Government's aim was to "allow each country to adapt quota allocations to best suit fleets in different parts of the UK". The differences between the UK fleets was summarised by NEF as follows in its report [Who gets to fish?](#) based on 2016 MMO data:

Fishing activity is unevenly distributed across the UK, with the Scottish industry accounting for the largest share (71%). This imbalance reflects the location of fish stocks, with Scotland having greater access to large shoals of pelagic species. Consistent with this, Scotland is home to a large over 10 metre fleet, whilst England has a much larger under 10 metre 'inshore' fleet (+1000 vessels). Scottish vessels landed 167,000 tonnes of pelagic species (75% mackerel) in 2014 in comparison to England's 14,000 tonnes. English vessels landed 63,000 tonnes of shellfish versus Scotland's 53,000 tonnes. Wales and Northern Ireland have significant inshore, shellfish-oriented fishing, with an additional twin-rig Nephrops fleet in Northern Ireland.²⁸

The agreement, or [Concordat](#), established common practice for vessel licensing, effort management and quota distribution. Under the

²⁵ Defra, [Fisheries White Paper](#) *Sustainable fisheries for future generations*, published July 2018

²⁶ Defra, Fisheries: [Explanatory Notes](#), 25 October 2018

²⁷ Defra, [Management of fishing quotas to be devolved](#), 18 May 2012

²⁸ NEF, [Who gets to fish?](#) 15 March 2017

Concordat, the devolved administrations have authority to make changes to how fishing opportunities can be allocated within their area²⁹. In addition, a [Fixed Quota Allocation \(FOA\) Register](#), aimed at increasing transparency, has been developed as part of the Concordat through collaboration between all the UK fisheries administrations, the [Marine Management Organisation \(MMO\)](#) and [Centre for Environment, Fisheries and Aquaculture Science \(CEFAS\)](#). The aim is to increase transparency around who has access to fishing quotas across the UK.

The UK Government consulted on a further review of the Concordat in December 2016, but the proposals put forward have not yet been implemented.³⁰

2.2 The Brexit negotiations to date

We do not yet know the nature of the relationship the UK will have with the EU after Brexit as discussions are ongoing. The latest draft of a transition agreement, during which the UK and EU have agreed that the UK will continue to be bound by EU law as if it were still a member state, was published on 14 November 2018.³¹ This transition period is dependent on the Withdrawal Agreement being implemented in March 2019.

The House of Lords Committee on the European Union 2016 report, [Brexit: Fisheries](#), set out some of the potential concerns and priorities for fisheries going into the Brexit negotiation. The report recognised that whilst the fishing industry represents “a very small part of the UK’s GDP” it is of great importance to many coastal communities and that opportunities exist for the UK in leaving the CFP. It also noted that the majority of fish caught in the UK are exported to the EU and that the UK currently imports most of the fish it consumes.

During withdrawal negotiations the EU position has been that fisheries should form part of any transition agreement, with the UK complying fully with the CFP until any transition period ends.³² Under the CFP the TACs are set on a calendar year basis. The proposed 21-month transition period coincides with the 2020 quota year end and would remove the need for reaching agreement on how to set TACs for the first three months of 2021. This has been reflected in the [final version](#) agreed with the EU on 25 November 2018.

The backstop and the future relationship

During the ongoing discussions for what will happen beyond the transition period in a future relationship, the maintenance of current arrangements for sharing fisheries resources after Brexit was referred to

²⁹ Defra, [A subject specific concordat between the administrations on management arrangements for fishing opportunities and fishing vessel licensing in the United Kingdom](#). Defra. 2012

³⁰ Defra, [Changing the Fisheries Concordat 2016](#), 7 December 2016

³¹ European Commission, [Draft Withdrawal Agreement](#), 14 November 2018, Part 4, Articles 121 and 122

³² The Guardian, [EU to hold Britain to fishing quotas during Brexit transition](#), 11 January 2018

in the European Council's [draft negotiating guidelines for a future trade deal](#). This linked continued existing reciprocal access to fisheries to the proposal for a zero-tariff trade agreement:

Trade in goods, with the aim of covering all sectors, which should be subject to zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin. In this context, existing reciprocal access to fishing waters and resources should be maintained.³³

The UK Government's [Fisheries White Paper](#) rejected the EU's position that access to fisheries should be linked to any trade agreement, referring to the latter as "a separate question":

Access to markets for fisheries products will be agreed as part of our future economic partnership, just as with other goods and food products. This is separate to the question of fishing opportunities and access to waters, which consequently will be addressed separately, founded on the UK's legal status as an independent coastal state. This is consistent with fisheries agreements internationally, and with EU-third country precedents. Both the EU and UK have an interest in continued trade for the fisheries and wider seafood sector.³⁴

The details of the proposed backstop do include a reference to fisheries and trade. This makes clear that the free movement of fishery and aquaculture products would not be included in the customs arrangements "unless an agreement on access to waters and fishing opportunities is applicable between the Union and the United Kingdom".

The [Political Declaration on the Future Relationship](#), published at the same time, sets out that any fisheries agreement should be in place for the first year after the transition period and included target date for ratifying any fisheries agreement of 1 July 2020. The [Declaration](#) calls for "cooperation bilaterally and internationally to ensure fishing at sustainable levels" and also makes reference to a future agreement on access and quotas, but just links any agreement to the overall economic partnership:

Within the context of the overall economic partnership, establishment of a new fisheries agreement on, inter alia, access to waters and quota share, to be in place in time to be used for determining fishing opportunities for the first year after the transition period.³⁵

No deal Brexit and the Bill

A no deal Brexit, in which there was no transition agreement on fisheries until the end of 2020, would mean that the UK would become an independent coastal state from March 2019 taking over responsibility for its Exclusive Economic Zone. The UK would no longer be bound by the Common Fisheries Policy and could deny access to EU Member States' fishing vessels. No deal would also impact the fisheries

³³ European Council, [European Council \(Art.50\) \(23 March 2018\) Draft guidelines](#), XT 21022/18, 7 March 2017

³⁴ Defra, [Fisheries White Paper](#), 4 July 2018

³⁵ UK Government, [Outline Political Declaration on the Future Relationship](#), 14 November 2018

industry indirectly, through any impacts on the UK's borders and the ability to export and import fisheries products. Imports and exports could be subject to tariffs.

Box 2: Do we need the Fisheries Bill if there is no deal?

The Fisheries Bill would provide powers the Secretary of State to set and distribute fishing opportunities in UK waters by revoking and replacing *Article 16* and amending *Article 17* of [EU Regulation 1380/2013 on the Common Fisheries Policy](#). The Fisheries Bill would also revoke and replace *Article 2* which sets fisheries objective; and *Article 5* which provides EU vessel access to UK waters. In addition, the Bill provides power to exclude foreign fishing vessels, if unlicensed by the Government, from UK waters.

The [Common Fisheries Policy \(Amendment etc.\) \(EU Exit\) Regulations](#) explicitly omit a number of Articles in [Regulation 1380/2013](#) covering conservation measures and objectives (Articles 6,7,8, 11,12,13) which are due to be replaced by provisions in the Fisheries Bill.

However, Annex B of the [Explanatory Memorandum for the Common Fisheries Policy \(Amendment etc.\) \(EU Exit\) \(No. 2\) Regulations 2019](#), published 28 February 2019, referred to existing common law powers:

The UK has domestic powers to set its own fishing opportunities: common law powers, an express power which is currently contained in clause 18 of the draft Fisheries Bill, and powers to specify fishing opportunities through licence conditions.

This was an issue raised with Defra by the [Secondary Legislation Scrutiny Committee](#). In its response Defra made a reference to existing prerogative powers to set fishing opportunities which could be used if the Fisheries Bill is not be in force on exit day:

The Department explains that the instrument revokes provisions which put into law the EU's current fishing opportunities, as it will no longer be appropriate for these to apply to the UK after exit. Defra says that the Secretary of State will instead set fishing opportunities for the UK, under clause 18 of the Fisheries Bill. Defra told us that after exit the "Secretary of State will immediately replace the current EU figures with UK fishing opportunities" and that "in the event that the [Fisheries] Bill is not in force for Exit day, the Secretary of State will set UK total fishing opportunities for the UK for 2019 using prerogative powers".³⁶

The EU Commission published a [preparedness notice to stakeholders on Fisheries and Aquaculture](#) in April 2018, setting out how UK withdrawal would impact both the UK and EU sectors in the absence of any kind of withdrawal agreement.

The Government published a [technical note on commercial fisheries](#) on 15 October 2018. The note covered access to UK and EU waters, access to UK and EU ports, import and export of fisheries products, labelling and funding. It has also published a note on [Exporting and importing fish if there's no Brexit deal](#), last update 5 March 2018.

The EU commission also [published](#) its proposed contingency plan for a no-deal and fisheries on 23 January 2018. It plans to regulate for extra funding through the EMFF to compensate EU vessels for the cessation

³⁶ House of Lords Secondary Legislation Scrutiny Committee (Sub-Committee A), [21st Report of Session 2017–19, Proposed Negative Statutory Instruments under the European Union \(Withdrawal\) Act 2018](#), 20 March 2019

of fishing activities. It also proposes to regulate for continued access for UK vessels in EU waters based on 2019 quota allocations as long as the UK allows EU vessels into UK waters on similar terms

For further details see the Library Briefing Paper on [Brexit: Fisheries Negotiations](#).

2.3 The 25 Year Environment Plan

The 25 Year Environment Plan, [A Green Future: Our 25 Year Plan to Improve the Environment](#) was published on 11 January 2018. Launching the Plan, the [Prime Minister identified](#) the protection and enhancement of the natural environment as a "central priority" for the Government as part of delivering its [manifesto pledge](#) to "be the first generation to leave the environment in a better state than we inherited it".

The Plan sets out details of the Government's aims for a sustainable fisheries policy after Brexit, based on a natural capital approach, which would allow for sustainable fisheries, whilst protecting and enhancing the marine environment. The Government approach would use [maximum sustainable yields](#) (MSY) for fish stocks, set based on the scientific assessment of stock levels, as already exists within the EU [Commons Fisheries Policy](#). This will be part of broader ecosystem based approach that protects the wider marine environment.³⁷ In the Plan the Government also made a commitment to publish an annual statement on the state of fish stocks of interest to the UK, once it leaves the EU.

More generally the Government committed to complete an assessment of the marine environment in 2018, which will inform an updated UK Marine Strategy. The [existing UK Marine Strategy](#) was published in three parts between 2012 and 2015, under the [Marine Strategy Framework Directive](#) (2008/56/EC), which requires Member States to set out measures to achieve Good Environmental Status (GES) in EU marine waters by 2020. The Directive also requires each stage of the strategy to be reviewed every 6 years and updated as necessary, starting in 2018. The requirements of the Directive were transposed into UK legislation using a number of measures, as [set out](#) by the Joint Nature Conservation Committee (JNCC).³⁸

2.4 Fisheries White paper

The Fisheries White Paper, [Sustainable Fisheries for a Future Generation](#), was published for consultation in July 2018. The Secretary of State for the Environment, Food and Rural affairs, Michael Gove, set out the focus of the White Paper as follows:

Foremost, this White Paper recognises that healthy fish stocks are the first step to vibrant commercial and recreational fishing industries, and prioritises a healthy marine environment. We will

³⁷ The JNCC [describes](#) an ecosystem-based approach for fisheries as one that takes account of all the interactions the target fish stock has with predators, competitors and prey species; the effects of weather and climate; the interactions between fish and habitat; the effects of fishing on species and habitat.

³⁸ JNCC, [EU Marine Strategy Framework Directive](#) [website as of 5 March 2019]

continue to work under the principle of maximum sustainable yield, which has done so much to restore stocks, as well as to help to protect our valuable marine ecosystems, and we will continue to prevent wasteful discards. In all this, scientific evidence will guide decisions, making sure that we pass a healthy marine environment and profitable fishing industry on to the next generation.³⁹

And

As a dynamic industry, fisheries require rapid and responsive regulation. Bringing control back to the UK will enable greater scrutiny of fisheries policies, and swifter responses to changing scientific advice or circumstances and meeting our international obligations.

This White Paper reflects continuing discussions with the Devolved Administrations, who are responsible for domestic fisheries management in their areas, and stakeholders.⁴⁰

The detail of the White Paper included the following commitments and proposals:⁴¹

- A move away from using historical fishing effort (relative stability) as the basis on agreeing access to shared fishery stocks with other countries, and instead use zonal attachment (based on where fish stocks spend time during their lifecycle). This would be done on an annual basis, with the option of multiannual agreement for some stocks.
- Maximum Sustainable Yields principles would continue to be applied when setting or agreeing Total Allowable Catches (TACs) and work will continue to end discards. Catch rates will be agreed that are based on the best available science. The Government will also “pursue an ecosystem approach to fisheries management” seeking to minimise impacts on the marine environment, as set out in the 25 Year Environment Plan.
- The use of Remote Electronic Monitoring (REM) to ensure compliance with fisheries regulations. A consultation on introduction of [Inshore Vessel Monitoring Systems for all licensed British fishing boats under 12 metres](#) in length operating in English waters, was published by Defra on 4 October 2018. The objective is to gain better information on where vessels are fishing in English waters by extending vessel monitoring to all inshore vessels.
- New UK frameworks will be developed that will respect the devolution settlement. These “will not normally be adjusted” without Devolved Administration consent. Frameworks will maintain the existing flexibility for the administrations and “lead to a significant increase in decision-making powers for the Devolved Administrations”.
- The White Paper makes clear that that powers concerning international relations, access to UK waters and quota setting will be reserved and will be exercised at UK level. UK delegations to

³⁹ Defra, [Sustainable fisheries for future generations](#), July 2018

⁴⁰ Defra, [Sustainable fisheries for future generations](#), July 2018

⁴¹ Defra, [Sustainable fisheries for future generations](#), July 2018

fisheries negotiations will include representatives from each administration, but if there are any disagreements the Secretary of State will have powers to make a final decision.

- The Government does “not intend to change the method for allocating existing quota”. However, Government proposed exploring allocating any additional fishing opportunities that arise as a result of Brexit using a different methodology, to be agreed with the Devolved Administrations and Crown Dependencies, from December 2020 onwards.
- A number of suggestions on changes to use of quota include creation of some reserve quota, allocation of quota for recreational angling, tendering or auctioning additional quota, and using quota to deal with discards. This includes scientific trials in England of effort-based fishing (a days-at-sea approach).
- Consideration of new criteria to define low impact inshore fisheries to replace the current under 10 m category. The proposals are for references to engine power and lighter regulation for low impact fishing activities; and monitoring of the cumulative impact of “medium impact vessels”.
- A review of the economic link conditions that are applied to UK registered vessels to increase the benefit of UK communities from UK fishing quota.
- The Joint Maritime Operations Co-ordination Centre (JOMCC) established in 2017 to support fisheries enforcement in the UK’s EEZ. Proposals also include whole fleet monitoring of all vessels in UK waters and monitoring of fish catches.
- The White Paper refers to the new environment body that will hold Government to account as aimed at filling a potential governance gap that may arise, including for the marine environment, after we leave the EU.

2.5 Legislative proposals

The [Fisheries White Paper](#) set out some details of what the Bill would cover, including the following:

- The Fisheries Bill proposes taking powers that will enable this retained EU law to be amended expeditiously by secondary legislation. The marine environment is dynamic and timely decisions are required. (p11)
- Our Fisheries Bill includes proposals for powers to deliver what we negotiate with the EU and other coastal states on access to waters and fishing opportunities. This includes powers for the UK Government and Devolved Administrations to implement international agreements reached on access to UK waters, and to set fishing opportunities (principally quota). The principle of universal access to UK waters will continue to apply to all UK vessels. (p11)
- To give us the tools to enable changes, the Fisheries Bill proposes powers that will enable Defra to explore and pilot alternative approaches to the future allocation of fishing

opportunities and models to fund future fisheries science in England. (p12)⁴²

2.6 Fisheries regulations

The [EU Withdrawal Act 2018](#) includes provision for transposing existing EU fisheries regulations into UK legislation. The regulations introduced under the EU Withdrawal Act are intended to be in force before March 2019. According to the Fisheries White paper there are about 100 legislative instruments covering technical measures such as gear type or minimum landing sizes that will need to be transposed. In response to a [petition](#) against this approach the Government explained the position as follows:

The Government has always been clear that the European Union (Withdrawal) Bill ensures that, so far as possible, the same rules and laws will apply on the day after exit as on the day before. This will provide the maximum possible certainty and continuity to businesses, workers and consumers across the UK – so that they can have confidence that they will not be subject to unexpected changes on the day we leave the EU.

The Bill delivers on our promise to end the supremacy of EU law in the UK. It is the mechanism by which the UK will leave the EU while taking back control.

The Fisheries Bill announced in the Queen's Speech in June will demonstrate how we are taking back control of access to our waters and the allocation of fishing opportunities.

The remaining technical elements of current EU fisheries law will be incorporated in to UK law under the European Union (Withdrawal) Bill, ensuring both certainty and that our fisheries are managed sustainably.⁴³

The regulations which had been published by the Government as of 6 March 2019 are set out below. The links to the Statutory Instrument landing pages provide access to the draft instrument and draft explanatory memorandum, details of progress through Parliament together with the reports of the Secondary Legislation Scrutiny Committee and Joint Committee on Statutory Instruments:

- [Fisheries \(Amendment\) \(EU Exit\) Regulations 2019](#), laid 4 December 2018
- [Common Fisheries Policy \(Amendment etc\) \(EU Exit\) Regulations 2019](#), laid 17 January 2019
- [Fisheries \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019](#), laid 11 February 2019
- [State Aid \(Agriculture and Fisheries\) \(Amendment\) \(EU Exit\) Regulations 2019](#), laid 12 February 2019
- [Common Fisheries Policy and Aquaculture \(Amendment etc\) \(EU Exit\) Regulations 2019](#), laid 13 February 2019

⁴² Defra, [Sustainable fisheries for future generations](#), July 2018

⁴³ UK Parliamentary Petition, [Stop the Common Fisheries Policy being adopted into UK law post-Brexit](#), closed 3 May 2018 with 67,960 signatures.

- [Common Fisheries Policy \(Amendment etc\) \(EU Exit\) \(No. 2\) Regulations 2019](#), laid 28 February 2019

2.7 Fisheries Bill published

The Government published the [Fisheries Bill](#), together with [Explanatory Notes](#) and a [delegated powers memorandum](#) on 25 October 2018. It also published a [summary of response to the White paper](#) at the same time, which includes some commentary on the Bill in the context of responses.

On publishing the Bill, the Secretary of State set out the changes that would be introduced through the Bill and stated:

“This new Fisheries Bill will allow us to create a sustainable, profitable fishing industry for all of the UK. It will regenerate coastal communities, take back control of our waters and, through better conservation measures, allow our precious marine environment to thrive.”

“The Common Fisheries Policy has damaged the UK’s fishing industry and our precious fish stocks. The Bill will deliver a sustainable fishing industry, with healthy seas and a fair deal for UK fishermen.”⁴⁴

The Commons Fisheries Policy is set out in [Regulation \(EU\) No 1380/2013](#). This, as set out in the Explanatory Notes for the Bill, will be retained and corrected under *the [European Union \(Withdrawal\) Act 2018](#)*, together with around 100 technical regulations.

The [Fisheries Bill](#), published on 25 October 2018, is a framework bill that will provide the UK Government with powers to set and distribute annual total allowable catches for UK waters, and provide the UK Government and devolved administrations with powers to amend the fisheries regulations that will be transposed into UK law from EU legislation. In addition to this, a number of Articles in the EU CFP Regulations are revoked or amended.

The Bill reflects the objectives set out Article 2 of the EU Regulations and provides for the how these will be reflected in policy across the UK, although it does not include a duty to meet these objectives. It also, and for England only, powers to create a scheme for sale of quota and charging for discards. The Bill also extends the powers of national authorities with regard to marine conservation to the whole of the UK EEZ.

2.8 Reactions to the Bill

The National Federation of Fishermen’s Organisations and the Scottish Fishermen’s Federation (SFF) both welcomed the Bill.

The [SFF stated](#) on publication of the Bill that “this is a necessary piece of legislation that sets a completely new framework for fisheries management outside the universally detested Common Fisheries Policy”

⁴⁴ Defra, [Gove launches Fisheries Bill to take back control of UK waters](#), 25 October 2015

[The NFFO](#) highlighted the importance of getting balance of powers right in the Bill:

The Bill will provide the basis for an adaptive and responsive fisheries policy, capable of dealing with a dynamic industry and resource and evolving scientific advice. This contrasts starkly with the cumbersome CFP decision-making process which has proved so difficult to work with.

Parts of the Bill introduce new measures and will require scrutiny and discussion. Getting the balance right between an overall UK framework for fisheries and the authority delegated to the devolved administrations will be important and there is much still to be discussed in this area.

Likewise, the Bill's provisions for charging fishermen require further explanation.⁴⁵

The New Economics Foundation's response to the Bill publication, [A fair and sustainable Fisheries Bill and post-brexit legislation](#), highlighted four priorities:

- It is laudable that the Fisheries Bill includes an ecosystem-based approach to fisheries management as a top-level objective, but this should be amended to include a clear legal duty on all authorities to exercise their functions in accordance with these objectives.
- The Fisheries Bill does not detail how quota will be allocated. Future fisheries legislation should create a new 'quota reserve' system that sets aside a percentage of quota and allocates it as an incentive to deliver on public goods – environmental and social goals – and to help new, low-impact fishers establish themselves in the industry. While the White Paper mentions the creation of a quota reserve for any new quota gained, this should also include existing quota.
- Future legislation should initiate a process of 'quota reallocation', ensuring that those fishers currently left out of the system receive a quota share that is fair and viable. In addition, the UK fisheries administrations should give greater decision-making powers to local and regional management. In England, this means extending the geographical remit of Inshore Fisheries and Conservation Authorities (IFCAs) from the current 6 miles to 12, to allow for local solutions to unique environmental challenges along our coastline.
- The fisheries administrations should review the support available for the industry and institute a 'resource levy', differentiated to incentivise boats to land in UK ports, to recover costs.⁴⁶

The [Marine Stewardship Council](#) welcomed the Bill and said that "initial signs are that DEFRA and the Secretary of State have listened to the public and made sustainability central to their plans" but warned:

⁴⁵ NFFO, [Publication of the Fisheries Bill](#), 25 October 2018

⁴⁶ New Economics Foundation, [A fair and sustainable Fisheries Bill and post-brexit legislation](#), 1 November 2018

We hope that the good intentions of the Bill will be backed up by substance. Effective monitoring of fisheries and the marine environment will be needed, as will resources to implement and enforce this legislation. We hope this Bill will pave the way for the UK to become a world leader in fisheries management, synonymous with sustainable 'green rated' seafood.⁴⁷

[Sustain](#), the alliance for food and farming, expressed disappointment in the Bill:

The Bill is incredibly disappointing. Michael Gove has ducked away from the difficult questions, and put off long-overdue debates about a fairer and more sustainable allocation of quota and setting targets to make all UK fisheries verifiable sustainable so they can achieve the best markets for their products.

On discards, the Bill states an objective to 'Gradually eliminate discards' - which is far weaker and slower than the EU commitment to end discarding completely, which has a clear and unambiguous deadline. This is a backward step, despite us all having been promised no weakening of British environmental standards after Brexit.

Through the UK's membership of the European Union, we are also signed up to a commitment to fish all stocks to a level that will lead to maximum productivity (Maximum Sustainable Yield - MSY) by 2020. This is missing from the Fisheries Bill, which contains only a vague reference to MSY.

Sustain is concerned that we are putting the reputation of UK fish products at risk. The market for sustainable seafood is growing 10 times faster than the market for conventional seafood. Securing the best markets within and outside the EU requires fish products to be able to demonstrate that they are sustainably produced, including robust conservation measures for the marine environment that the fish come from.⁴⁸

While welcoming the Bill, stating " it rightly recognises that our fisheries are a public good, to be managed in the public interest", [Greenpeace](#) was critical of some of the detail:

However, too often we've seen the Government fail to remedy the historic inequality in the industry. With over a quarter of the UK's current fishing quota owned or controlled by just five Rich List families, it's clear a new approach is urgently required. While the Bill could open up opportunities to fish in more areas around our shores, the Government has still failed to confirm that fishing opportunities will be shared fairly on transparent environmental, social and economic criteria. Until this guarantee is made for both current and future quota, the promise of "taking back control" which has been repeatedly made to coastal communities and local, low-impact, fishers, will remain a vanishing dream.⁴⁹

The [British Ports Authority](#) called for the Bill to strengthen economic links between fish landings and ports:

This Bill should be strengthening the economic link between our fisheries and our ports and coastal communities; there is currently no requirement for boats registered in the UK to land any fish caught in our waters in the UK. As a result, 40% of UK quota is

⁴⁷ MSC, [Government Post Brexit Fisheries Plans Published](#), 25 October 2018

⁴⁸ Sustain, [Sustain responds to disappointing UK Fisheries Bill](#), 25 October 2018

⁴⁹ Greenpeace, [Government Fisheries Bill – Greenpeace response](#), 25 October 2018

landed in abroad in Europe, where much of the economic value is realised.”

“Landings are the best way to ensure UK communities benefit from UK quota. We believe that either all, or the vast majority of, catch from UK fisheries should be landed into UK ports. Ports are hubs of local and regional economies and the foundation of the fisheries and wider marine industry, yet our own research has found that many fishing ports struggle to operate commercially on income from fishing alone [...].”

On infrastructure

“The European Maritime and Fisheries Fund (EMFF) and its precursors have been critical to supporting the maintenance and modernisation of infrastructure and we are pleased that the Bill contains clauses that will enable the Government to replicate this , scheme, and hopefully improve it and support UK fishing ports’ transition to long-term sustainability.”⁵⁰

Devolved Administrations

Fisheries is one of the devolved areas that has been [listed by Defra](#) as requiring a [common framework](#) approach to ensure policy consistency and coordination after Brexit. As in other policy areas, the extent to which this is the case has been a source of disagreement between the Government and the devolved administrations.⁵¹ For further information see Library Briefing Papers [Brexit: Devolution and legislative consent](#).

Scotland

The Scottish Government Minister Mike Russell said in June 2018, that he “couldn’t conceive of circumstances” in which the Scottish Parliament would grant consent for further UK legislation related to Brexit, such as trade, agriculture and fisheries.⁵² The Scottish Government has published [research](#) of the impact of Brexit on fisheries, which focused on the impact of any future trade arrangements:

The Scottish Government is currently considering how best to take forward the future management of Scotland’s fisheries and seafood industries, if the UK leaves the EU.

The findings from this scenario modelling suggest that the future prosperity of Scotland’s seafood industries depends largely on the right exit scenario being negotiated by the UK Government.⁵³

Details of the Scottish Government position on the Bill and other developments can be found in the Scottish Parliament Information Service [briefing on the Fisheries Bill](#) published 17 December 2018. This summarised the Scottish Government’s position as follows:

The Scottish Government agrees that legislative consent is required for the Bill. However, they argue that legislative consent is needed in relation to clauses 18-20, where the UK Government

⁵⁰ British Ports Authority, [Land all UK fish in the UK, post-Brexit, says BPA](#), 25 October 2018

⁵¹ Commons Library Briefings, [Brexit: Devolution and legislative consent](#).

⁵² BBC News online, [“Holyrood ‘won’t approve any Brexit bills’”](#), 22 June 2018.

⁵³ Scottish Government, [Economic Impacts of Scenarios for Scottish and UK Seafood Industries Post EU Exit](#), June 2018

does not. In addition, the LCM suggests that Scottish Government also

consider consent is required for clauses 29 and 30, stating “Defra’s reasoning as to why they do not believe consent is required for clauses 20, 29 [on power of Marine management to impose charges] and 30 [fees for services provided for the industry] is also awaited.”⁵⁴

Clause 18-20 cover the setting and distribution of fishing opportunities.

Wales

The Welsh Government has not made any detailed statement on its position on fisheries after Brexit. However the Welsh Assembly's Climate Change, Environment and Rural Affairs Committee published a report, [The Impact of Brexit on fisheries in Wales](#), on 16 October 2018 and made a number of recommendations, including the following:

- The Welsh Government should publish a focused and ambitious strategy to grow Welsh fisheries and it should ensure that the highest environmental standards are maintained;
- The allocation of quota to Wales under the 2012 UK Fisheries Concordat is not a fair one and constrains the development of Welsh fisheries. The Welsh Government should seek to renegotiate the UK Fisheries Concordat, with the aim of ensuring an increase in quota allocation;
- The Welsh Government should report back to the Committee within the next 12 weeks on discussions with the UK Government about future fisheries policy. A proposed common framework for fisheries management and any proposals for an inter-governmental mechanism to facilitate agreement between the UK Administrations on common frameworks, including fisheries policy, should be addressed.⁵⁵

Since then the National Assembly for Wales Climate Change, Environment and Rural Affairs Committee has published its [Report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill](#), on 12 February 2019. The Committee’s overall conclusion was that the Bill needed to be strengthened:

The key provisions in the UK Fisheries Bill, for example, the fisheries objectives and the Joint Fisheries Statement, are designed to ensure a common approach to fisheries across the UK post-Brexit. These provisions will apply equally to the UK administrations. It is therefore neither appropriate nor desirable to seek to amend these provisions only in relation to Wales. Notwithstanding this, we heard compelling evidence that, unless these provisions are strengthened, the UK Bill will struggle to deliver its intentions. Given the above, where our recommendations for amendments would apply other than in relation to Wales, we expect the Welsh Government to engage

⁵⁴ SPIce, [Fisheries Bill](#) 17 December 2018

⁵⁵ Welsh Assembly's Climate Change, Environment and Rural Affairs Committee, [The Impact of Brexit on fisheries in Wales](#), 16 October 2018

with the other UK administrations with the aim of securing those amendments.⁵⁶

Constitutional and Legislative Affairs Committee also [published a Report on the Bill](#) in February 2019, highlighting a number of issues including the extent of regulatory powers it includes:

We [...] remain unclear about the extent to which the Bill goes beyond what is necessary to achieve a common legislative framework.

Whilst the Bill creates a common framework, the extensive regulation-making and executive powers it provides to the Welsh Ministers should not be overlooked.⁵⁷

Northern Ireland

There is currently no Northern Ireland Executive. In response to this the Northern Ireland Affairs Select Committee called, in its report on [Brexit and Northern Ireland: Fisheries](#), for the UK Government to make decisions on behalf of Northern Ireland, to avoid it being disadvantaged:

The Government's White Paper contains a number of proposals, such as changes to how fishing opportunity is shared between the UK fleet, which refer only to England. Fisheries is a devolved matter in the UK. However, in the absence of a Northern Ireland Executive and Assembly, there is no capacity for Northern Ireland to take decisions on its future fisheries policy. If the Executive is not restored by the end of the year, the UK Government must be prepared to take such decisions and prevent Northern Ireland from falling behind the other devolved administrations in preparing their fishing fleets for Brexit.⁵⁸

⁵⁶ National Assembly for Wales Climate Change, Environment and Rural Affairs Committee [Report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill](#), on 12 February 2019.

⁵⁷ Constitutional and Legislative Affairs Committee, [The Welsh Government's Legislative Consent Memorandum on the Fisheries Bill](#), February 2019

⁵⁸ Northern Ireland Affairs Select Committee, [Brexit and Northern Ireland: Fisheries](#), 11 September 2018

3. The Bill in detail

3.1 Commencement, territorial extent and delegated powers.

There is no date for commencement set out in for the majority of the clauses in the Bill. Instead they will be brought into force through regulations by the Secretary of State. Different dates can be applied to different parts of the Bill.

The following are exceptions. Clause 29, allowing the MMO to extend charges for such things as issuing catch certificates, which would be necessary in the event of a no deal scenario; and Clause 38 and Schedule 7, extending the byelaw making powers for conservation purposes of the MMO and equivalent national authorities the whole the UK's EEZ, will come into force two months after Royal Assent.

Provisions in Clause 39 to 43 covering issues such consequential amendments, interpretation, extent and commencement, will come into force on the day the Bill receives Royal Assent.

All clauses except 37 apply to all parts of the UK and many will require Legislative Consent Motions. Clause 37 deals with the powers of devolved Ministers, while a number of the schedules also deal with devolved matters. Full details of the territorial extent of each clause of the Bill can be found in a table Annex A of the [Explanatory Notes](#). A table summarising the delegated powers contained in the Bill can be found in Section C of the [delegated powers memorandum](#).

Box 3: Henry VIII powers

The Bill includes a number of so-called Henry VIII powers. These are clauses in a bill that enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation.⁵⁹The following are the Henry VIII powers included in the Fisheries Bill.

- Clause 9 (3) allows the Secretary of State to add or remove, through regulations, exceptions to the types of British fishing vessels that do not need a licence, using the affirmative procedure.
- Clause 11(1) prohibits foreign vessels fishing in UK waters without a licence. However, Clause 11(2) allows the Secretary to amend the prohibition through regulations, using the affirmative procedure.
- Clauses 31 (powers to make provisions about fisheries, aquaculture, etc) and Clause 33 (powers to make provisions about aquatic animal diseases) and Schedule 6 (which provides powers for devolved administrations) are not amendable. However, Clause 34 (7) and (8) provides that powers under Clauses 31, 33 and Schedule 6 to make regulations extend to amending, repealing or revoking "[any enactment](#)" as it relates to these clauses. They state:
 - (7) A power to make regulations under section 31 or 33 is capable of being exercised so as to amend, repeal or revoke any enactment (apart from sections 31 to 37, Schedule 6, and section 40 so far as it applies for the purposes of those enactments).
 - (8) In subsection (7) "enactment" has the same meaning as in the European Union (Withdrawal) Act 2018.

This will be done using the affirmative procedure in the appropriate cases.

⁵⁹ Parliament Glossary, [Henry VIII clauses](#), [website visited 28 November 2018]

3.2 Fisheries policy objectives and statements

Clauses 1 to 6 of the bill set out fisheries objectives that the UK Government and Devolved Administrations must aim to achieve when setting out their policies in a two new policy documents: a Joint Fisheries Statement (JFS) and the Secretary of State's Fisheries Statement (SSFS). They are:

- a. The sustainability objective
- b. The precautionary objective
- c. The ecosystem objective
- d. The scientific evidence objective
- e. The discards objective
- f. The equal access objective

Clause 1 provides more detail of what each objective means. The Bill does not include a duty to meet the objectives does impose a duty to produce the first JFS and SSFS by January 2021 (the end of the intended implementation period) and that they be reviewed every 6 years at least.

The objectives set out in Clause 1 are a reflection of some of the Commons Fisheries Policy objectives set out in Article 2 of the CFP regulations ([Regulation \(EU\) No 1380/2013](#)), which include ensuring that fishing and aquaculture are environmentally sustainable, are managed in a way to that is consistent with achieving economic, social and employment benefits, and applying a precautionary principle approach to fisheries management.

Clause 2 includes a list of areas which reflect the more detailed objectives set out in Article 2 (5) and which apply only to the Secretary of State when preparing the SSFS, which would only be applicable to reserved powers and those that apply to England only. **Clause 6** sets out what effect the Statements will have. In the case of the JFS they will set out the policies the fisheries authorities will apply "unless relevant considerations indicated otherwise". The Explanatory Memorandum sets out that this condition is required to enable divergence from policies, for example in response to changes to scientific advice. The reasons for any divergence must be stated. In the case of the SSFS, any difference in policies set by the national fisheries authorities, must be justified by setting out their reasons for doing so.

Clause 1 also includes two additional objectives to those in CFP:

- The scientific evidence objective includes an additional requirement to "base fisheries management policy on the best available scientific advice". This replicates the commitment made in 25 Year environment Plan to base fisheries policy on scientific evidence and was supported by the majority of respondents to the White Paper consultation.
- The equal access objective, guaranteeing equal access to UK boats to all UK waters is an addition and reflects the commitment by the Government in the White Paper to preserve this principle after

Brexit and the White Paper responses summary states it received strong support.⁶⁰

Schedule 1 sets out the process for consulting on draft JFS and SSFS. In the case of the JFS, following consultation a draft must be laid before the appropriate legislature by each fisheries policy authority, and respond to any resolutions or recommendations from legislative committees. In the case of SSFS the same process applies but the draft is laid before the Houses of Parliament only. Both documents come into effect when published.

Clauses 3-5 set out the process for producing and amending the statements.

Maximum Sustainable Yield and the 2020 target

Although the majority of Article 2 wording has been replicated in Clause 1 and 2, the CFPs commitment to achieve a [maximum sustainable yield](#) exploitation of fish stocks by 2020 is not included. A number of organisations had called for the Bill to include a duty to achieve MSY for all stocks by 2020, reflecting the CFP. This was acknowledged by the Government in the summary of responses which stated that many NGOs wanted sustainability principles to be binding on the face of the Bill.⁶¹ However, the response also referenced some comments from the fishing industry which did not agree:

Some respondents from the fisheries industry expressed concern that the CFP target to achieve MSY for all stocks by 2020 was unachievable. Industry responses in particular suggested that a more general commitment to work towards achieving MSY in line with the United Nations Convention on the Law of the Sea (UNCLOS) would be preferable.⁶²

Box 4: Maximum Sustainable Yield

The CFP regulations define maximum sustainable yield as follows:

Maximum sustainable yield means the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without significantly affecting the reproduction process.

Article 2 also sets out that “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”.

There have been ongoing questions regarding efforts within the CFP to meet the 2020 target. The Pew Trust concluded in November 2017 “that ministers continue to set limits above scientific advice, at current rates as many as half of stocks could still be overfished in 2020, contravening EU law”.⁶³ According to the Pew Trust, in 2018, the

⁶⁰ Defra, [Sustainable fisheries for future generations](#), July 2018, p7

⁶¹ Defra, [Sustainable fisheries for future generations](#), July 2018 p4

⁶² Defra, [Sustainable fisheries for future generations](#), July 2018 p8

⁶³ Pew Trust, [EU Needs Swift Progress to End Overfishing by 2020 Deadline](#), November 2017

Fisheries Council of Ministers set 44 percent of limits for 2018 higher than the published scientific advice.⁶⁴

3.3 Access to UK waters for foreign vessels

Clause 7 revokes Article 5 of the CFP Regulation which allows equal access to EU vessels to EU waters. **Clause 8** sets out that foreign fishing vessels will only be able to enter UK waters to fish if they hold a sea fishing licence. **Schedule 3** (Part 1) sets out consequential amendments to existing legislation regarding foreign vessel licensing.

Clause 11 provides for the creation of a licensing scheme for foreign vessels to fish in UK waters, through regulations and with the consent of the Devolved administrations.

The clause includes Henry VIII powers. Clause 11(1) prohibits foreign vessels fishing in UK waters without a licence. However, Clause 11(2) allows the Secretary to amend the prohibition through regulations, using the affirmative procedure. The delegated powers memorandum provides the following explanation for their inclusion:

The Fisheries Administrations may need to introduce exceptions to the prohibition on unlicensed fishing by foreign vessels. This could be necessary to implement any agreement with the EU or other countries on the conditions for access to UK waters.⁶⁵

It also makes clear “it is not the government’s intention to use this exception-making power to remove the general requirement that foreign fishing vessels are licensed”.⁶⁶

Clause 12 would allow each fishing authority to licence foreign fishing boats setting out similar requirements as currently exist for British vessels. Licences will be for a named fishing boat, setting out what it is allowed to fish, where, for how long and using what type of gear. Unlike for British vessels the licence would only be valid for that devolved administration’s zone.

This is different to the how access for EU boats is implemented now. Currently a proportion of the TAC that is allocated to a Member State for each fishing area within EU waters is then distributed by that Member State as it sees fit to its flagged vessels, with no authorisation for individual vessels by the UK or any control exercised by UK fisheries authorities.

3.4 Licencing for British fishing vessels

The Government intention is that there is no change to how licences are managed in the for British Vessels as a result of the UK leaving the EU. **Clauses 9, 10 and 13-17** together with **Schedule 2 and 3**, as set out in the [explanatory notes](#), consolidate and clarify existing law. They do this by revoking and replacing section 4 of the [Sea Fish](#)

⁶⁴ Pew Trust, [Progress and Delays Mark EU’s Efforts to End Overfishing](#), 3 May 2018

⁶⁵ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

⁶⁶ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

[\(Conservation\) Act 1967](#) covering licencing of fishing boats, and consolidating various other pieces of legislation.

There will be no change to the current situation where a licence issued by a UK Fisheries Administration continues to be valid for the whole of UK waters. Current exceptions for the need for a licence are maintained and set out in Clause 9(2). Each fisheries administration will continue to issue licences for its own vessels to fish in UK waters.

Clause 9 (3) includes a Henry VIII power which allows the Secretary of State to add or remove, through regulations, exceptions to the type of British fishing vessels that do not need a licence, using the affirmative procedure

Schedule 2 includes further provisions on licencing, including setting out UK Fisheries Administrations powers to attach conditions to sea fishing licences; powers to amend revoke or suspend licences; limit fishing activity; and regulatory powers regarding charges.

The Schedule also includes a new duty in Paragraph 4 to require a fishing authority to requiring fishing vessels licenced by them to abide by fishing restrictions placed by other authorities in their own areas, unless it considers it unreasonable to do so. This would allow any restriction or closure to apply to all British fishing vessels rather than just those from the fishing authority in question, as is currently the case.

3.5 Secretary of State powers to set UK fishing opportunities: total quota and days at sea

The process for setting quotas as part of the CFP involves a mid-year [consultation](#) on proposed TACs for the following year, based on [ICES scientific advice](#). This follows an announcement in the Autumn of the planned allocations. The final decision is made by representatives of Member States at a meeting of the [Agriculture and Fisheries Council](#) (AGRIFISH) each December. This sets the TACs to be allocated for each fishing area in EU waters for the following year. There is also some limited use within the CFP of days-at-sea for [controlling fishing effort](#).

This process has been criticised for being an overly centralised, top-down approach for managing fisheries and not responsive to local stock levels. Local experience may not reflect the recommended limits on fishing quotas.⁶⁷ The view amongst the fishing communities is that the CFP is slow to respond to changes in populations and local variations in stock abundance, often to their disadvantage, with reference to high fish catches of stocks whose catches are being increasingly restricted. The EU's response to these concerns has been to move towards increased cooperation and implementation of measures by Member States at a [regional level](#).

Once outside the CFP it will be the responsibility of the UK to set total allowable catches for UK waters.

⁶⁷ IFG, [Commons Fisheries Policy](#), [website on 19 March 2018]

Clause 18 of the Bill provides powers for the Secretary of State to set, for each calendar year, the total amount of sea fish that may be caught by fishing vessels or “catch quota” and the maximum number of days that fishing boats may spend at sea or “effort quota”. The Secretary of State would also have the power to amend any determination or to set catch or effort as zero. The Secretary of State will be able to, through regulations, set out what is meant by days-at-sea.

The Clause also sets out that these powers may only be used for the purpose of complying with international regulations. It is under this power that the UK Government would set the Total Allowable Catches for each stock in each area to ensure the UK complies with what has been agreed with other independent coastal states and the EU during yearly fisheries negotiations.

Regulations introduced under this clause would be subject to the [negative resolution procedure](#) in Parliament.

Clause 19 sets out that the Secretary of State must consult the devolved administrations and the MMO when setting total allowable catches and days at sea. The clause does not set out how they should be consulted and does not include any reference to any other form of consultation with stakeholders or other interested parties. The 25 Year Environment Plan and the Fisheries White Paper refer to using the best available scientific advice and an ecosystem approach when setting fishing effort. However, there is no reference to this in either clauses.

There is ongoing debate amongst those with an interest in the fisheries industry whether days at sea is an approach that should be considered. The New Economics Foundation report, [Who gets to Fish?](#) provides a good summary of the arguments:

Some want days-at-sea management, but the track record is poor. The Fishing for Leave lobby group has made one of their key Brexit demands a shift in management from quota (limits on the quantity of fish that can be caught) to days-at-sea (limits on the amount of fishing time that is permitted). Some fishers are interested in this proposal (technically hours-at-sea) as it may grant them more fishing opportunities if they can continue to fish despite reaching their quantity threshold for any one species (the ‘choke’) in a mixed fishery. Under this proposal, there are no catch limits, just limits on the amount of time at sea.

A fundamental objection to days-at-sea management is the pressure it places on the sustainability of fish stocks, and days-at-sea limits are often set much higher than scientific advice. Following sound science is the very foundation of responsible fisheries management; it is notable that proponents of days-at-sea, predominately Fishing for Leave, see a more limited role for fisheries science in management, while groups that are opposed to days-at-sea, like The Angling Trust, would like a greater role for science in management.

Others point to the practical difficulties of effort-based management and the poor track record of these systems. The National Federation of Fishermen’s Organisations has commented that while appealing on the surface, ‘a leap into an unworkable system of effort control could be a lot worse’. This has certainly been the case historically as most fisheries systems worldwide

have abandoned days-at-sea in favour of quota management. The few remaining management systems using days-at-sea (e.g. Faroe Islands, the Mediterranean basin) are not performing well environmentally or economically.⁶⁸

Both [Fishing for Leave](#) and the [National Federation of Fishermen's Organisations](#) have set out their position in further detail on their websites. The NFFO concludes:

It is good for existing arrangements to be challenged and the potential for alternatives to be thoroughly examined. But it is important to go into the future with our eyes wide open. Our conclusion is that the system of TACs and quotas comes with many challenges, especially within the context of the landings obligation.⁶⁹

Clause 20 would revoke Article 16 of the CFP regulations which set out how fishing opportunities are distributed to Member States. The Article includes setting out the principle of relative stability as a principle for allocating quota; allowing for “a reasoned request” to be submitted by Member States where there is a disparity between fishing opportunities for a stock and the actual state of that stock, for the disparity to be addressed; and allows each Member State to decide how it allocates quota to its own flagged vessels.

Article 16 also includes the requirement that “fishing opportunities shall be fixed in accordance with the objectives set out in Article 2(2)”. This refers to MSY and states:

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.

Clause 20 also amends Article 17 to preserve the existing CFP requirement on Member States to use of transparent and objective criteria when allocation fishing opportunities, and transfers this to national authorities, which in this clause are defined as the Secretary of State and the Marine Management Organisation. The term “allocation” used in the EU Regulation is replaced by “distribution”. The new text would read as follows (italics denote how the text would be amended):

Criteria for the *distribution* of fishing opportunities for use by fishing boats

When distributing the fishing opportunities for use by fishing boats, the national relevant 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

⁶⁸ NEF, [Who gets to Fish?](#) 15 March 2017

⁶⁹ NFFO, [Are Days the Answer?](#) 3 April 2017

environmental impact, such as reduced energy consumption or habitat damage.

Despite the requirements of Article 17 the UK has been criticised in the past for a lack of transparency in the approach to the distribution of quota and for not assessing sufficiently environmental and social aspects. A 2017 report by the European Court of Auditors, [EU fisheries controls: more efforts needed](#), looked at Scotland in particular although the approach is similar across all administrations, and concluded:

Member State did not always know which criteria had been used to distribute the quotas or the amounts allocated to each of the beneficiaries. This was the case in Scotland and France for most of the species. This lack of transparency makes it difficult for Member States to know the actual beneficiaries of fishing opportunities, their fishing gears and characteristics and therefore to assess any potential adverse impact on the environment and local economies, for example, and take the necessary corrective measures where appropriate. Lack of transparent distribution of quotas increases the risk that specific interests of certain economic operators are favoured at the expense of others.⁷⁰

Clause 21 sets out a duty for the relevant national authorities to ensure that there is no fishing in excess of quota and no excess of days at sea. In this clause the authorities are the SoS, the MMO and the three devolved administrations.

3.6 Sale of fishing opportunities: England only

The Fisheries White Paper included a commitment to explore new options for allocating any new quota that arises as a result of the UK leaving the EU, including tendering or auctioning additional quota.

Their low share of quota allocation has been a significant concern to the u-10m fishers, who have called for increased quota to be allocated to them, even before Brexit comes into effect:

Jerry Percy, chairman of the Coastal Producer Organisation, which was created to acquire more quota for local fishermen in the UK, says the time has come to put aside the [Brexit rhetoric](#). If [Michael Gove](#) and others are really concerned about the survival of “iconic” coastal communities, they need to act now and within existing rules, he says.

“Unless something concrete and dramatic is done to help in the immediate future then the ever-more seemingly ephemeral promises of a post-Brexit windfall of quota and access will be meaningless to those small-scale coastal fishermen who have gone out of business,” he said.

What can be done? The government has transferred small amounts of “unused” quota from big interests to small in the past. In 2013, one of the big fisheries producer organisations challenged these transfers [in the British courts and lost](#). The final judgment reluctantly accepted that fish quotas were private

⁷⁰ European Court of Auditors, [EU fisheries controls: more efforts needed](#), 2017

property but suggested that the legality of this ownership was “built on sand”.⁷¹

The [New Economics Foundation](#) has also raised concerns that there may be limited benefit of Brexit if the current quota allocation system is maintained:

The key promise of more quota for small boats was always within the power of the UK government, not Brussels. It still is, and yet this White Paper specifically states that the existing quota ownership will not be challenged: “We do not intend to change the method for allocating existing quota”. It says, “we recognise that fishermen have invested in FQAs. We will continue to use this methodology for the apportionment of existing quota”. This adherence to the status quo shows that there never really was a ‘Brexit dividend’ on offer for our fishing communities, and that despite the rhetoric of fisheries being a ‘public resource’, the privatised approach to UK fishing quota will be upheld.

[...]

We have been around the coast listening to fishermen in Orkney, Skye, Poole and Eastbourne who do not feel represented by either the Scottish Fishing Federation or the National Federation of Fishermen’s Organisations. We know from talking to fishermen around the country that the key thing they want is a fairer quota system, and a balanced management regime which means inshore areas are off limits to larger mobile gear operators to give smaller boats a chance and put low impact gears first. We need a fair and sustainable future for coastal communities, and we will only get that if we listen to them.⁷²

Clause 22 of the Bill does provide powers to introduce a different approach to quota allocation for England only. The clause would allow the Secretary of State to put in place regulations setting out a process for selling fishing opportunities, either as catch quota or effort quota, for a calendar year at a time, in England. However, it includes no mention of the sale of quota being targeted to a particular sector, for example the u10m. The proposals differ from the existing system in that the quota rights would be allocated for a year only, rather than permanently. The [Explanatory Notes](#) state that:

The intention is that the scheme should be used to tender a proportion of the additional fishing opportunities that are gained following the UK’s withdrawal of the EU.⁷³

The Clause also sets out a list of provisions that may be included in the regulations, including for the allocation to be through a competitive tender or auction. The regulations may specify those who are eligible or ineligible to buy rights, and limit those rights, but does not provide any detail of what the basis those exclusions would be made.

However, [the delegated powers memorandum](#) does provide some further detail, stating that:

⁷¹ The Guardian, [Brexit is a red herring when it comes to the plight of UK fishermen](#), 11 June 2018

⁷² NEF, [Fisheries White Paper: who is this for?](#) 4 July 2018

⁷³ Defra, Fisheries: [Explanatory Notes](#), 25 October 2018

The purpose of any such scheme would not be cost recovery or revenue raising: eligibility rules could, for example, require those bidding for the quota to demonstrate they are engaged in sustainable fishing.⁷⁴

Regulations could also set minimum prices, and either allow or prohibit rights being transferred to (or being exercised by) another person. Concentration of quota ownership is something that is of concern in some sectors of the industry and was the focus of a Greenpeace investigation in October 2018:

A new Unearthed investigation [...] traced the owners of more than 95% of UK quota holdings – including, for the first time, those of Scotland, the UK’s biggest fishing nation.

It reveals that more than two-thirds of the UK’s fishing quota is controlled by just 25 businesses [...]

Meanwhile, in England nearly 80% of fishing quota is held by foreign owners or domestic Rich List families, and more than half of Northern Ireland’s quota is hoarded onto a single trawler.⁷⁵

A press article set out a response from the Scottish Fishermen’s Federation chief executive Bertie Armstrong, in which he highlighted some benefits of larger fishing vessels:

SFF chief executive Bertie Armstrong said: “Once again, Greenpeace is guilty of painting a completely false picture of the UK fishing industry to match its particular prejudices.

Sustainability has for many years been the number one priority for the industry, and many sacrifices have been made to reach the present position where for key stocks catches are at record or near record high levels while pressure on those stocks from fishing vessels is at a record low, as testified by recent academic study.

Studies also show that for pelagic species large vessels which require massive capital investment are significantly more environmentally-friendly than a fleet of smaller vessels, not to mention safer in wild offshore winter seas where and when much of the catching of this type takes place.

The only thing that has eroded our coastal communities is a blatantly inequitable EU Common Fisheries Policy which awards other fishing nations 60% of our fish stocks.⁷⁶

3.7 A new discard preventions scheme: England only

One of the approaches taken to ensure fish are taken within TACs has been the introduction, as part of the CFP, of a discard ban in the form of a landing obligation for all fish caught. This is set out in Article 15 of the CFP regulations which are unamended in the Bill.

⁷⁴ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

⁷⁵ Unearthed, [Revealed: the millionaires hoarding UK fishing rights](#), 10 October 2018

⁷⁶ Daily Mail, [Greenpeace criticise ‘mismanaged’ fishing quotas](#), 11 October 2018

Box 5: The landing obligation

One of the approaches taken to ensure fish are taken within the TAC has been the introduction as part of the CFP landing obligation (or discard ban).

The landing obligation aims to encourage fishing vessels to improve gear selectivity and fishing strategies to minimise unwanted catch. The obligation was introduced in 2015, with support of the UK Government, and comes into full force on 1 January 2019. It requires all commercial species that are caught to be landed, whether they are target species or not, even if undersized. TACs have been given a one-off uplift to take account of the extra landings resulting from the discard ban. The distribution of this extra quota is determined by each Member State and can be conditional on the use of approaches that minimise by-catch. In addition, the CFP continues to allow quota swaps between years, and between licences, to manage surplus catch.

Reaching quota limits for species as a result of the landing obligation is likely to be a particular problem for mixed fisheries in the UK. This is because reaching the limit for one of a range of quota species targeted – often called a choke species - could mean fishing vessels would have to tie up with unused quota for the rest of the year, unless they are able to source further quota allocation.

To address the concerns on the impact of the landing obligation **Clauses 23 to 27** provide the Secretary of State with powers to establish a charging scheme allowing for payment to be made for an “unauthorised catch of sea fish”. The rationale for the powers is set out in the delegated powers memorandum:

39. Without a more flexible approach for mixed fisheries, there could be early closure of fisheries or problems with compliance measures and large-scale illegal discarding. Early closures would result in UK fishers not using all their quota, reducing revenues as well as the quantity of fish available for both consumption and export.

40. The Bill provides for a discard prevention charging scheme to be introduced by regulations. Instead of being prosecuted for landing fish over quota, English licence holders registering under the scheme would pay a charge for sea fish caught and landed in excess of their authorised quota, thereby providing flexibility as the landing obligation comes into full force. This proposed charge would be priced in such a way that it was financially beneficial to adopt more sustainable fishing practices that would reduce bycatch, thereby reducing reliance on the charge over time.⁷⁷

The Bill sets out that registration with the scheme is voluntary and can only apply to holders of English sea fishing licences, or the [Producer Organisations](#) that hold licences for them. If the conditions set out in the charging scheme are met, then catches will be ignored when considering whether a fishing quota has been exceeded. The clause does not specify the basis of how charges could be calculated but does provide some examples for the basis on which charges will be made.

There is also provision for the Secretary of State to nominate a charge collector, and make payments to cover any expenditure, although it does not provide detail of who might be nominated. There are various

⁷⁷ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

options set out for the use of any receipts in the Bill, including repayment to Secretary of State, to cover expenses, or to be used for charitable or conservation purposes.

3.8 Grants and charges

The CFP 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.⁷⁸ A [2016 NAO report showed](#) that the largest share of this funding had been allocated to Scotland (€108 million), followed by England (€97 million), Northern Ireland (€24 million) and Wales (€15 million). Under the EMFF the UK's Fisheries Operational Programme priorities have been set out as follows:

- Promoting environmentally sustainable, resource efficient, innovative, competitive and knowledge based fisheries - €67,487,315;
- Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge based aquaculture - €19,327,305;
- Implementation of the Common Fisheries Policy (CFP) - €97,633,875;
- Increasing employment and territorial cohesion - €13,583,840;
- Fostering marketing and processing - €27,243,978;
- Implementation of the Integrated Maritime Policy (IMP) - €5,334,672;
- Technical assistance - €12,528,452.⁷⁹

Clause 28 of the Bill would allow the Secretary of State to setup a support scheme, through regulations, to provide financial assistance, in the form of grants or loans, in England, covering three areas: conservation, enhancement or restoration of marine and aquatic environment; support of the aquaculture industry; and support for recreational fisheries. The explanatory notes are more general stating that the clause will provide powers to “make grants to the fishing industry and for connected purposes”. **Schedule 4** provides the same powers for Welsh Ministers and on the Northern Ireland department, although there is no similar provision for Scotland. The delegated powers memorandum describes the powers as broader than those set out in the Fisheries Act 1981, which are repealed and replaced.⁸⁰

Clause 29 provides powers for the Secretary of State to put in place regulations to allow the Marine Management Organisations to charge for several functions relating fisheries. **Schedule 5** confers equivalent

⁷⁸ EU Commission, [EU adopts €310m investment package for the UK fisheries and aquaculture sectors](#), 3 December 2015

⁷⁹ EU Commission, [EU adopts €310m investment package for the UK fisheries and aquaculture sectors](#), 3 December 2015

⁸⁰ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

powers for Northern Ireland. **Clause 30** will allow the UK Sea Fish Authority, [Seafish](#), to charge EU Members States for services provided, which is not currently the case.

3.9 Powers to amend fisheries regulations

The Commons Fisheries Policy is set out in [Regulation \(EU\) No 1380/2013](#). This sits alongside around 100 technical regulations, setting out details of rules fishing restrictions in specific areas, which are amended and superseded on a regular basis, in response to new developments such as changes in scientific advice.

The Government's view is that after the UK leaves the CFP "in order to manage fisheries effectively, we need delegated powers to be able to respond to scientific advice quickly" To achieve this **Clauses 31 to 36** confer powers on the SoS to update regulations through an [affirmative procedure](#). **Clause 37 and Schedule 6** confers the same powers on Welsh Ministers and the Northern Ireland Department.

The powers in clause 31 will only be exercisable to implement international obligations, for a conservation purpose (relating to sea fish, protecting the marine environment from fisheries activities or improving the health of any aquatic animal) or for a fish industry purpose (relating to commercial fishing or aquaculture, improving traceability of or disseminating information on fish products.)The clause also lists 17 subjects, many of a technical nature, that could be regulated using the powers. The clause includes powers to allow the Secretary of State to implement measures proposed by [Regional Fisheries Management Organisations](#). These are international organisations formed by countries with fishing interests in an area.

Henry VIII powers are included as follows. Clauses 31 (powers to make provisions about fisheries, aquaculture, etc) and Clause 33 (powers to make provisions about aquatic animal diseases) and Schedule 6 (which provides similar powers for devolved administrations) are not amendable. However, Clause 34 (7) and (8) provides that powers under Clauses 31, 33 and Schedule 6 to make regulations extend to amending, repealing or revoking "[any enactment](#)" as it relates to these clauses:

(7) A power to make regulations under section 31 or 33 is capable of being exercised so as to amend, repeal or revoke any enactment (apart from sections 31 to 37, Schedule 6, and section 40 so far as it applies for the purposes of those enactments).

(8) In subsection (7) "enactment" has the same meaning as in the European Union (Withdrawal) Act 2018.⁸¹

⁸¹ Under the European Union (Withdrawal) Act 2018 ([section 20](#)): "enactment" means an enactment whenever passed or made

- (a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act,
- (b) an enactment contained in any Order in Council made in exercise of Her Majesty's Prerogative,
- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

The delegated powers memorandum provides the following explanation of the provisions:

They supplement the power in clause 8 of the EU (Withdrawal) Act 2018, which only allows amendments to be made for operability purposes, but set out in a detailed and finite list the matters for which provision might be made. The power to amend retained EU law is in clause 34(7) and (8).⁸²

It also acknowledges that is a broad regulating making power, but that “on balance, the Department’s view is that it is clearer for the subject matter to be dealt with together” rather than in separate narrow delegated powers; that the matters listed are “mostly technical in nature” and that the powers “will be subject to affirmative resolution in the appropriate cases”. These are listed as follows:

- a) amending primary legislation;
- b) amending Article 17 of the CFP Regulation (criteria for the allocation of fishing opportunities);
- c) imposing fees;
- d) creating a criminal offence or increasing the penalty for or widening the scope of a criminal offence;
- e) conferring functions on, modifying functions of or relating to the management of producer organisations or inter-branch organisations.⁸³

Annex B of the memorandum provides details for each subject matter listed in Clause 31(4) it covers, and examples of what provision might be made.

In Annex A the Government points to the examples of the bylaw making powers granted to the MMO and IFCAs under the *Marina and Coastal Management Act 2009* as covering similar areas as those covered in Clause 31. That Act provides power for national fisheries authorities to put in place bylaws which do not require any parliamentary procedure but must be approved by the Secretary of State.

Clause 33 confers powers, similar to those set out in Clause 31 on the Secretary of State to make regulations relating to aquatic animal

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- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
 - (e) an enactment contained in, or in an instrument made under, Northern Ireland legislation,
 - (f) an enactment contained in any instrument made by a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government, a Northern Ireland Minister, the First Minister in Northern Ireland, the deputy First Minister in Northern Ireland or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty,
 - (g) an enactment contained in, or in an instrument made under, a Measure of the Church Assembly or of the General Synod of the Church of England, and
 - (h) except in sections 2 and 7 or where there is otherwise a contrary intention, any retained direct EU legislation;

⁸² Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

⁸³ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

diseases. **Schedule 6** confers similar powers to the Welsh Government, Northern Ireland Department and Scottish Government.

Clause 34 sets out the limits on the powers conferred in the clauses 31 and 33.

Devolved administration consent

The aim of the Government is to ensure a consistent approach to fisheries management across the UK. With this aim, **Clause 35** allows the Secretary of State to make regulations as set out in clauses 31 and 33 on devolved matters, with the consent of the devolved administrations. The [delegated powers memorandum](#) provides examples of how these powers may be used, including introducing days-at-sea measures:

- implement its international law obligations (including those stemming from any fisheries agreements with the EU, other coastal states such as Norway and from international law generally (including under UNCLOS);
- move away from the CFP (for example to introduce new days at sea measures to replace outdated CFP measures, to change technical requirements relating to gear size and use or to introduce restrictions on types of fishing);
- keep pace with changes to EU law where this is necessary or appropriate.⁸⁴

3.10 Extending marine conservation powers

Clause 38 and **Schedule 7** extends the powers of the MMO and Scottish and Welsh Ministers (under the [Marine and Coastal Access Act 2009](#)) to make bylaws relating to marine conservation, to cover the whole of the UK EEZ, which extends up to 200nm from the UK coast. Similar powers already apply in Northern Ireland, but elsewhere in the UK these powers only apply under the Act within [Marine Protected Areas](#) that are within 12 nautical miles of the UK coast

There are no Parliamentary procedures required in England and Wales to put bylaws under the Act in place, but they do need approval by the Secretary of State. In Scotland there is precedent for Orders to be laid before Parliament, and discussions on the correct procedure are ongoing.⁸⁵

The powers will be exercisable for the purpose of marine conservation in connection with “fishing activities, selling, buying or introducing into the sea or cultivating sea fisheries resources”.⁸⁶

⁸⁴ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

⁸⁵ Defra, [Fisheries Bill Memorandum to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018

⁸⁶ Defra, Fisheries: [Explanatory Notes](#), 25 October 2018

4. Second Reading debate

The [Second Reading debate](#) for the Fisheries Bill was held on 21 November 2018. On introducing the Bill, the Secretary of State Michael Gove, set out that:

Taking back control of our waters, leaving the common fisheries policy and once again becoming an independent coastal state will give us an opportunity to lead environmentally, to revive the fishing industry economically and to ensure that our coastal communities once more have the opportunity for a renaissance.⁸⁷

The Minister went on to set out how, once outside the CFP, the UK would be governed by UNCLOS:

Of course, as an independent coastal state, we will be governed by the United Nations convention on the law of the sea. That landmark piece of international law makes it clear that all independent coastal states will negotiate with their neighbours to ensure that the environmental health of fish stocks are preserved and that an equitable share of each nation's bounty can be agreed, because we as a nation depend for the fish we eat not just on the fish in our waters—of course, we have the healthiest stocks of any country in the existing European Union—but on negotiating with other independent coastal states, including Norway, the Faroes, Iceland and others, to ensure that we get the mix of fish that consumers demand and that society has a right to expect.⁸⁸

In response to a question on maintain the sustainability of fish stocks, the Minister stated the Government's aim:

The Bill makes it clear that there are principles, to which the Government will be held, that ensure that fishing will be sustainable and that our marine environment will be restored to full health. The Bill also gives the Government powers to ensure that no vessel can fish in our waters unless it adheres to those high environmental standards.⁸⁹

Speaking for the Opposition, Sue Hayman Shadow Secretary of State for Environment, Food and Rural Affairs, supported the Bill but raised some concerns:

We do not oppose the Bill at this stage, as it has turned out to be a mostly enabling Bill for making future decisions. It is clear that the Government have some way to go before we can all be satisfied with what is before us today. I hope that Ministers will reconsider parts of this legislation so that we can reach a consensus on the direction of travel. We intend to bring forward a number of key amendments in Committee to make those improvements.⁹⁰

⁸⁷ HC Deb 21 November 2018 [c897](#)

⁸⁸ *ibid* [c898](#)

⁸⁹ *ibid* [c899](#)

⁹⁰ *ibid* [c910](#)

Sue Hayman also referred on several occasions to coastal communities, stating that:

Labour believes that well-managed fisheries and sustainable fishing practices can help reinvigorate many of these communities. This is a unique opportunity, as we have heard from the Secretary of State, to transform the way that we manage our fisheries to improve lives by driving economic prosperity, tourism and environmental benefits to our beautiful and unique British coastal areas.⁹¹

Sue Hayman referred to measures relating to quota in the Bill stating that “the clear lack of proposals to redistribute existing and future quota can be seen only as an endorsement of the current unfair system. Labour will bring in amendments to improve that situation”.⁹² She also referred to the limited reference to Maximum Sustainable Yield in the Bill, and the intention to bring forwards amendments to incorporate a target date in the Bill:

There is only a vague reference to MSY in the Bill, and no clear roadmap as to when and how this can be achieved. We would like to know whether Ministers are still committed to it as we leave the EU. We believe that stocks should at least meet this standard by 2020 and will seek to bring that into the Bill if the Government do not.⁹³

In addition, the Bill did not set out “the full details as to how we will manage our seas more responsibly”.⁹⁴

Deidre Brock, speaking for the SNP, referred to the desirability of a common framework stating that “where such frameworks are sought and agreed by both sides they will be mutually beneficial, but they cannot be imposed. They must recognise the devolution settlement and respect it”.⁹⁵ However, with regards to quota setting she was less supportive, setting out the view that “Quotas for Scotland’s waters should be set in Scotland, just as quotas for English waters should be set in England and Welsh waters in Wales. That is devolution”.⁹⁶

During the debate Members raised a number of issues such as the need for reform of the existing quota system. Increasing quota allocations for u-10m vessel referred to several times. In response to this the Minister referred to “a 13% uplift for the under-10 metre fleet under this Government”⁹⁷ and stated that “the Bill explicitly allows us to ensure that new quota can be allocated to the under-10 metre fleet”.⁹⁸

Neil Parish, Chair of the Environment Food and Rural Affairs Select Committee, stated that “we need to make sure the Bill works” and that “it can be improved”, welcoming the Labour party’s positive view on the Bill. He also referred to the need for clarity on enforcement and the

⁹¹ Ibid [c910](#)

⁹² Ibid [c910](#)

⁹³ Ibid [c913](#)

⁹⁴ Ibid [c913](#)

⁹⁵ Ibid [c921](#)

⁹⁶ Ibid [c922](#)

⁹⁷ Ibid [c905](#)

⁹⁸ Ibid [c905](#)

need to ensure effective on-board monitoring of vessels.⁹⁹ With regards to the proposed discard payment scheme he said:

We do not want the fishermen to target particular species, but we want them to be able to catch fish and land it all. The challenge is going to be making sure that we recompense fishermen for delivering fish that they did not have the quota to catch, but do not stimulate them into catching fish that they perhaps should not be catching.¹⁰⁰

He also called for clarity in the Bill on practical arrangements, raising concerns that:

Fisheries might get bogged down in unnecessary bureaucracy. Many of these companies are made up of five employees or fewer, so we must ensure that the burden of bureaucracy is as small as possible.¹⁰¹

Several members referred to a lack of detail in the Bill,¹⁰² and also raised concerns about the proposed use of the negative resolution procedure set out in the Bill.¹⁰³ Angela Smith was concerned that with regards to the fisheries objectives set out in Clause 1 the “light touch duties placed on the authorities potentially undermine the delivery of those aspirations”¹⁰⁴; and about the lack of detail in the Bill on role of the proposed environmental regulator.¹⁰⁵

Members raised the issue of grant funding, and whether the funding from the European Maritime and Fisheries Fund will be replaced.¹⁰⁶ Members also referred to the importance of the fish processing sector, and the importance to fisheries generally of tariff free access to the EU.¹⁰⁷ Reference was also made on a number of occasions to the NFFO’s calls for a formal advisory council to guide policy.¹⁰⁸ Peter Aldous, called for the Bill to ensure that leaving the CFP benefited coastal communities, referring to the economic link requirement for vessels, stating that it “must have teeth and must actually achieve its objective, rather than remaining a high-minded statement”.¹⁰⁹

George Eustice, the then Minister for Agriculture, Fisheries and Food, closed the debate by making a number of points. He stated that UNCLOS will be the new legal baseline for the UK for fisheries one we leave the EU. With regards the current quota allocations system he referred to proposals in the White Paper on new quota allocations, and to longer term options for changing existing quota allocations:

In the longer term, we could obviously change the allocation keys on the existing FQAs, but the legal advice based on case law is

⁹⁹ Ibid [c914](#)

¹⁰⁰ Ibid [c915](#)

¹⁰¹ Ibid [c917](#)

¹⁰² Ibid [c942](#), [c952](#)

¹⁰³ Ibid [c936](#), [c941](#)

¹⁰⁴ Ibid [c925](#)

¹⁰⁵ Ibid [c926](#)

¹⁰⁶ Ibid [c937](#)

¹⁰⁷ Ibid [c927](#), [c933](#), [c952](#)

¹⁰⁸ Ibid [c928](#)

¹⁰⁹ Ibid [c953](#)

that that would have to be done gradually over a period of time.¹¹⁰

With regards to enforcement of the EEZ, he referred to addition Royal Navy vessels being tested, and ongoing discussions about aerial surveillance.¹¹¹

5. Committee stage

The Committee stage of the Fisheries Bill took place between 4 and 17 December 2018. The Public Bill Committee received both written and oral evidence, and carried out a line by line examination of the Bill over 10 sittings. Further details of the sittings, written evidence and the Committee Membership are available on [the Public Bill Committee page](#).

The Bill now includes eight Government amendments, some of them included at the request of the Devolved Administrations. One Conservative amendment was successful. No Opposition amendment were successful. Both Government and Opposition committed to return to several areas during Report stage. There were also several amendments proposed by Conservative Members that were negated on division.

5.1 Government Amendments to the Bill

A number of unopposed amendments made by the Government to the Bill as follows:

- An amendment to **Clause 17**, which brings Schedule 3 into force, ensuring it accurately describes Schedule 3 (as amended).¹¹² Agreed to without debate.
- Three amendments to **Schedule 3**, which sets out consequential amendments on **access and licensing**. The first is aimed at ensuring clarity and consistency regarding British fishing boats and foreign fishing boats in the Sea Fish (Conservation) Act 1967 and in subordinate legislation. The remaining two include minor and consequential amendments to a number of regulations, including some of the regulations amendable by the devolved administrations (made at the request by the devolved administrations).¹¹³ Agreed without debate.
- Amendments to **Clause 22** on sale of English fishing opportunities, allowing conditions for the sales of opportunities to be set other than just by price, and including a requirement for the Secretary of State to consult when introducing regulations on the sales. When introducing the amendments, the Minister explained their purpose as follows:

We are amending the Bill to make it clear that quota will not necessarily be put up for sale to the highest bidder. We may allocate it on a range of other

¹¹⁰ Ibid [c971](#)

¹¹¹ Ibid [c971](#)

¹¹² PB Deb [c244 13 December 2018](#)

¹¹³ PB Deb [c249 13 December 2018](#)

criteria, such as sustainability, the needs of coastal communities and the reliance of certain sectors on specific stocks.

Amendment 6 simply includes a duty to consult stakeholders prior to making any regulations governing the distribution of additional quota. That demonstrates transparency and supports our commitment to work with stakeholders to shape a new future for the UK industry.¹¹⁴

The Minister also set out, later in the proceedings, the Government's intention to use monies from the discard prevention levy and tenders for fishing opportunities "to support the scientific objective".¹¹⁵

- And amendment to **Clause 42 (now Clause 45)** on commencement, to ensure two Government amendments, new Clause 4 and new clause 22, will commence on the date the Bill receives Royal Assent.¹¹⁶ Agreed without debate.
- **New Clause 4 (now Clause 41)** was agreed without debate and "would ensure that the amendments to the statutory instruments made by the Bill do not limit what can be done under the powers which the instruments were made".¹¹⁷ Agreed without debate
- **New Clause 5 (now Clause 39)** would extend the powers of the legislative competence of the Welsh Assembly to the whole of the Welsh Zone, which it does not currently have (unlike is the case in Scotland and Northern Ireland). As a result, the Assembly will be able to make primary legislation on fisheries for the whole Welsh Zone.¹¹⁸ During the short debate the Minister confirmed that the new Clause had been developed in conversation with the Welsh Government.¹¹⁹
- **New Clause 22 (now clause 40)** sets out objectives for the Secretary of State aimed at ensuring any fisheries agreement with the EU results in an increase in the share of fishing opportunities compared to what exists under the CFP. Further details set out below.¹²⁰

¹¹⁴ PB Deb [c289 13 December 2018](#)

¹¹⁵ PB Deb [c305 17 December 2018](#)

¹¹⁶ PB Deb [c327 17 December 2018](#)

¹¹⁷ PB Deb [c349 17 December 2018](#)

¹¹⁸ PB Deb [c350 17 December 2018](#)

¹¹⁹ PB Deb [c351 17 December 2018](#)

¹²⁰ PB Deb [c328 17 December 2018](#)

Box 6: Issues to be returned to by Minister

During the Committee discussions the Minister made several commitments on amending the Bill or providing further information to Members:

- The Minister made a commitment to discuss with other Departments the possibility of **committing to an annual debate on fisheries in Government time** and consider options ahead of Report.¹²¹
- Amending the language in Clause 2 to take further account and planning for **coastal communities** in fisheries statements.¹²²
- Consider whether the Secretary of State Fisheries Statement could more directly address concerns about how **fishing opportunities** will be set.¹²³
- In response to a proposed amendment on **annual publication of number of fishing licences** allocated by country of origin, the Minister committed to exploring with officials whether a section could be added to the Marine Maritime Organisation annual report to that effect.¹²⁴
- The Minister referred to sharing the Government's thinking on how to **improve or refine the economic link** before Report stage.¹²⁵
- Laying a Statutory Instrument before Report, which would **remove existing derogations for foreign vessels** in existing EU legislation, including pulse electric fishing.^{126, 127}
- Provide information on how monies from the discard prevention levy and tender of fishing opportunities will be focused on **support for the scientific objective**.¹²⁸
- The Minister agreed to provide on Report details of the progress on moving some **fish stocks with more limited data** (categories 3 and 4) to full stock assessments.¹²⁹

New clause 22 on fisheries agreements between EU and UK

The Government announced on 10 December 2018 its intention to bolster the Fisheries Bill by introducing an amendment requiring Ministers to ensure fishing opportunities are improved as the result of any agreement with the EU:

The Government will table an amendment to [the Fisheries Bill](#) which will enshrine its commitment to secure a fairer share of fishing opportunities for UK fishermen.

The amendment would place a legal obligation on the Secretary of State, when negotiating a fisheries agreement with the EU, to pursue a fairer share of fishing opportunities than the UK currently receives under [the Common Fisheries Policy \(CFP\)](#).¹³⁰

New Clause 22 would apply when negotiating fisheries agreement with the EU on share stocks, but only if the Withdrawal Agreement has come

¹²¹ PB Deb [c171 11 December 2018](#)

¹²² PB Deb [c270 13 December 2018](#)

¹²³ PB Deb [c270 13 December 2018](#)

¹²⁴ PB Deb [c205 11 December 2018](#)

¹²⁵ PB Deb [c255 13 December 2018](#)

¹²⁶ PB Deb [c232 13 December 2018](#)

¹²⁷ Defra, [EU vessels prevented from electric shock fishing post Brexit](#), 13 February 2018

¹²⁸ PB Deb [c305 17 December 2018](#)

¹²⁹ PB Deb [c261 13 December 2018](#)

¹³⁰ Defra, [Bolstered Fisheries Bill and £37m boost for UK fishing industry](#), 10 December 2018

into force. It sets out two objectives that the Secretary of State must pursue:

(3) The first objective is that the agreement should provide for annual negotiations to determine fishing opportunities.

(4) The second objective is that the agreement should have the effect that Union fishing boats are not granted access to UK waters in any year unless the fishing opportunities for that year that are available for distribution by the United Kingdom are (looked at in the round) greater than those that would have been so available under relative stability.¹³¹

When introducing the new clause, the then Minister, George Eustice, explained the provisions as placing a statutory obligation on Ministers not to allow access to the EU fleet unless the British fleet receives greater catch allocations than it currently does under the relative stability principle:

The effect of new clause 22 is to place a statutory obligation on the Government not to agree continued access at the current level for the European Union unless we receive an increase in fishing opportunities and secure that all-important departure from relative stability. That means that, in the event of our putting together a new partnership with the European Union, it will not be possible for the Government to conclude the partnership unless our fishing industry sees an increased share of the total allowable catch in return for that continued access.

The approach that we seek to take is similar to what already happens with the EU-Norway agreement, where a framework agreement runs for a number of years but certain presumptions underlie it. The presumption that will underlie our future economic partnership with the European Union, in so far as it relates to fisheries, is that, in return for granting continued access to the European Union, the quid pro quo for the British fleet will be a fairer share of the total allowable catch, which goes above and beyond that which is set out in the current relative stability shares.¹³²

Speaking for the Labour Party, Luke Pollard, welcomed the principle of the clause.¹³³ Alistair Carmichael, speaking for the Liberal Democrats, was of the view that the Minister was overselling the importance of the new clause stating that “largely it is yet another statement of good intent”.¹³⁴ Alan Brown, speaking for the SNP, was of the view that “being asked to pursue something and being duty bound to deliver it are vastly different propositions” and was critical of the inclusion of subsection (5) which would allow the Secretary of State to determine what fishing opportunities would have been available under relative stability, and therefore what is required to meet the fishing opportunities objective.¹³⁵

¹³¹ Fisheries Bill, [Bill 305 2017-19 \(as amended in Committee\)](#), 18 December 2018

¹³² PB Deb [c328 17 December 2018](#)

¹³³ PB Deb [c328 17 December 2018](#)

¹³⁴ PB Deb [c329 17 December 2018](#)

¹³⁵ PB Deb [c329 17 December 2018](#)

5.2 Non-Government amendment made on division

An amendment was proposed to **Clause 20**, on allocation of fishing opportunities, by Peter Aldous, Conservative MP for Waveney. This would require the MMO and the Secretary of State to publish documents and **evidence for the basis of fishing opportunities allocation** to be made available to the public within 20 days of their allocation.¹³⁶ This was agreed on division.

5.3 Unsuccessful non-Government amendments

There were a number of non-Government amendments that were pushed to a vote although none were successful.

Luke Pollard, for the Labour Party, proposed a **duty be placed on public authorities** to have regard for the fisheries objectives set out in Clause 1 of the Bill. He expressed concern that there “is no clear obligation on authorities other than the Secretary of State to deliver them”.¹³⁷ The Minister in response referred to the fisheries administrations being covered by the Bill and that “the requirement to follow the joint fisheries statement applies equally to all fisheries Administrations in the UK and is legally binding”,¹³⁸ as set out in Clause 6 of the Bill.

Labour also proposed the addition of a **public asset objective** to Clause 1 which would require fisheries to be managed as “a shared resource and public asset held in stewardship for the public good”.¹³⁹ In response the Minister this was not necessary because “it is a statement of fact that they are a public asset, and our common law tradition enshrines that”.¹⁴⁰

An amendment was proposed that would have required the Secretary of State to lay an **annual statement before Parliament** on progress towards achieving the fisheries objectives.¹⁴¹ The Minister referred to a number of reasons why there was no need to place a statement on a statutory footing. He set out that the White Paper includes a commitment to an annual statement on the Government’s assessment of fisheries stocks; that the Government would publish any data used to inform international negotiations; and that the right place for a more formal oversight requirement would be the forthcoming Environment Bill.¹⁴² However the Minister did commit to discuss the options before returning at Report.¹⁴³ A further amendment was proposed requiring a

¹³⁶ PB Deb [c281 17 December 2018](#)

¹³⁷ PB Deb [c135 11 December 2018](#)

¹³⁸ PB Deb [c137 11 December 2018](#)

¹³⁹ PB Deb [c139 11 December 2018](#)

¹⁴⁰ PB Deb [c141 11 December 2018](#)

¹⁴¹ PB Deb [c169 11 December 2018](#)

¹⁴² PC Deb [c170 11 December 2018](#)

¹⁴³ PB Deb [c171 11 December 2018](#)

UK fisheries statement be published within 12 months of the legislation coming into force.¹⁴⁴

A Labour amendment would have required the Government to put in place a **dispute resolution system for Fisheries Authorities** if there is a failure to agree a Joint Fisheries Statement.¹⁴⁵ In response the Minister explained that the Government was in the process of developing a fisheries memorandum of understanding with the devolved administrations that was likely to include a chapter on dispute resolution.¹⁴⁶

A further Labour amendment would have required **foreign fishing boats** to comply with the **same environmental protection and marine safety standards** as British fishing boats. In response the Minister said that it was the intention that any vessel seeking access to UK waters would have to abide by UK environmental standards; and that any fishing vessel requires a Maritime and Coastguard Agency licence.¹⁴⁷ Luke Pollard raised concerns that a lack of “clear wording that says that EU fishers must obey the same rules as UK fishers will worry a lot of fishing communities up and down the country”.¹⁴⁸

A proposed New Clause 13 which would have created **a national landing requirement**. When proposing the amendment, Luke Pollard called on the Government to make it a requirement that anyone fishing under UK quota land at least 50% of the catch in British waters.¹⁴⁹ The aim of the amendment would be to support the UK processing industry, which employs more people than the fisheries industry, and coastal communities:

Five of the top 10 local authorities in Britain with the highest unemployment rates are coastal communities. Among the 25 local authorities with the highest rates of insolvency, 16 are coastal—indeed, Plymouth is ranked second and first for coastal communities. We also know that 10 of the 20 local authorities in England and Wales with the highest proportion of people in poor health are coastal communities. Fishing will not in itself reverse all that decline, but it could make a big difference.¹⁵⁰

Alan Brown, speaking for the SNP expressed concern about how the provision would affect devolved administrations. Alan Carmichael was of the view that “fishing boats should be able to land wherever they get the best price for their fish”. Owen Smith, referred to Welsh Government who he said were “very supportive of the idea”. In response Minister referred to the existing requirements of the [economic link](#), and that “we should review and strengthen the economic link as we leave the European Union” and do that “in collaboration with other

¹⁴⁴ PB Deb [c178 11 December 2018](#)

¹⁴⁵ PB Deb [c183 11 December 2018](#)

¹⁴⁶ PB Deb [c187 11 December 2018](#)

¹⁴⁷ PB Deb [c208 11 December 2018](#)

¹⁴⁸ PB Deb [c209 11 December 2018](#)

¹⁴⁹ PB Dec [c218 13 December 2018](#)

¹⁵⁰ PB Deb [c219 13 December 2018](#)

parts of the UK. The Minister also offered to share the thinking about how to improve or **refine the economic link** before Report.¹⁵¹

There was a number of references to the use of **negative and affirmative procedures** in the Bill and attempts to change the former to the later. Luke Pollard raised the issue as follows:

I acknowledge that the Delegated Powers and Regulatory Reform Committee report on the Bill was very kind to Ministers. It stated that of the 15 delegated powers in the Bill, "only four" were governed by the negative procedure and, according to the Committee, "justifiably so". We seem to have identified two more instances than that Committee did, and we do not necessarily agree that all six are justifiable—hence our six amendments for a move to the affirmative procedure instead.

We believe that enhanced scrutiny is an important part of the process, so it should not simply go through on the nod.¹⁵²

Further amendments proposed included one by Peter Aldous to change the negative procedure set out in Clause 18, which provides powers for the Secretary of State to set fishing opportunities, to an affirmative procedure.¹⁵³

There were a number of amendments requiring quotas to be set within **Maximum Sustainable Yields** (MSY). Proposing his amendment Alan Carmichael referred to the lack of proper reference to the MSY as "one of the most worrying aspects of the Bill".¹⁵⁴ Luke Pollard stated that MSY should be a guiding principle for fisheries and that the view that MSY "is not firmed up enough in the Bill is shared by key environmental stakeholders and across industry."¹⁵⁵ Owen Smith was of the view that the Bill takes a retrograde step by not including MSY and that it would give "this and any other Government the wriggle room not to pursue sustainable fishing policies and to set catch levels above MSY"¹⁵⁶

Brendan O'Hara speaking for the SNP proposed an amendment supported by the Scottish Government. to ensure any decision taken on **setting national quota**, that relate to Scotland under Clause 18 could only be taken with the consent of Scottish Ministers.¹⁵⁷ In response the Minister said that the Clause 18 "compliance with or implementation of international obligations is devolved, but that determining UK fishing opportunities is not a function that is exercisable separately".¹⁵⁸

Peter Aldous, MP for Waveney, proposed an amendment to Clause 20 that would "**legally enshrine fish as a public resource**" aimed at addressing the present situation which of "inequitable and unsustainable distribution" of quota.¹⁵⁹ Labour supported the

¹⁵¹ PB Deb [c224 13 December 2018](#)

¹⁵² PB Deb [c235 13 December 2018](#)

¹⁵³ PB Deb [c262 13 December 2018](#)

¹⁵⁴ PB Deb [c253 13 December 2018](#)

¹⁵⁵ PB Deb [c254 13 December 2018](#)

¹⁵⁶ PB Deb [c255 13 December 2018](#)

¹⁵⁷ PB Deb [c264 13 December 2018](#)

¹⁵⁸ PB Deb [c267 13 December 2018](#)

¹⁵⁹ PB Deb [c269 13 December 2018](#)

amendment. The Minister stated that it was beyond question that fish was a public asset. However, he did commit to:

- Tweaking some of the language in Clause 2 regarding taking account and having a plan for coastal communities.
- Considering the Secretary of State's Fisheries Statement to see whether it could more specifically address the concerns about how fishing opportunities are set.¹⁶⁰

A Labour amendment would have allowed for the **redistribution of existing quota**, set criteria for this and the allocation of new quota on the basis of social, environmental and local economic criteria following wide ranging consultation.¹⁶¹

Peter Aldous proposed an amendment to create a role for a **Minister for English Fisheries**;¹⁶² the issue was also picked up by Brendan O'Hara who was concerned that Secretary of State is also in effect the English Fisheries Minister.¹⁶³

When discussing the proposals for the **Discard Prevention Landing Scheme**, the Minister committed to "consult thoroughly with the industry to ensure that we get the scheme design right" and to carry out a pilot of the scheme before rolling it out.¹⁶⁴

A new clause proposed by Labour for an **expert advisory council on fisheries**, which is supported by fishing industry representatives, was unsuccessful. The Minister did not support this citing existing "extensive involvement with stakeholders, including environmental NGO's and fishing industry". He also expressed the view that the problem with putting a statutory body in the Bill in the way proposed is that it might become too rigid".¹⁶⁵

In response to an amendment to **ban pulse fishing** the Minister announced that the Government anticipated laying a Statutory instrument before Report, which would remove existing derogations for foreign vessels in EU legislation.¹⁶⁶ This has now been published.¹⁶⁷

In response to amendments proposing ways of addressing the **lack of data on some fish stocks** and how to ensure their sustainable fished, the Minister committed to providing on Report on the progress on moving some of the data limited category 3 and 4 stocks to full stock assessment.¹⁶⁸

In response to an amendment proposed by Peter Aldous to add the Devolved administrations to the **list of relevant administrations** in Clause 20, reference was made during the debate to the Scottish

¹⁶⁰ PB Deb [c270 13 December 2018](#)

¹⁶¹ PB Deb [c271 13 December 2018](#)

¹⁶² PB Deb [c179 11 December 2018](#)

¹⁶³ PB Deb [c184 11 December 2018](#)

¹⁶⁴ PB Deb [c298 17 December 2018](#)

¹⁶⁵ PB Deb [c374 17 December 2018](#)

¹⁶⁶ PB Deb [c232 13 December 2018](#)

¹⁶⁷ Defra, [EU vessels prevented from electric shock fishing post Brexit](#), 13 February 2018

¹⁶⁸ PB Deb [c261 13 December 2018](#)

Government and the Welsh Assembly being happy not to be included. However, the Minister committed to discussing the issue further with the devolved administrations before Report.¹⁶⁹

Brendan O'Hara speaking for the Scottish National Party proposed a number of failed amendments including proposals to devolve the Role of Seafish and the control of the fishing levy¹⁷⁰; and funding for Scottish fisheries.¹⁷¹ Scottish MPs also proposed clauses addressing the management of UK shared fish stocks¹⁷²; and proposals for ensuring the same level of monitoring and enforcement on all vessels fishing in British waters.¹⁷³ In response to the later the Minister made clear that this will be the case as the result of EU Regulations which will become retained EU law.¹⁷⁴

Further amendments that were not successful covered issues such as financial assistance for scientific data gathering,¹⁷⁵ a fishing industry skills strategy¹⁷⁶ and plastic waste from the fishing industry.¹⁷⁷

¹⁶⁹ PB Deb [c279 13 December 2018](#)

¹⁷⁰ PB Deb [c353 17 December 2018](#)

¹⁷¹ PB Deb [c356 17 December 2018](#)

¹⁷² PB Deb [c365 17 December 2018](#)

¹⁷³ PB Deb [c367 17 December 2018](#)

¹⁷⁴ PB Deb [c369 17 December 2018](#)

¹⁷⁵ [PB Deb c302 13 December 2018](#)

¹⁷⁶ [PB Deb c332 17 December 2018](#)

¹⁷⁷ PB Deb [c368 17 December 2018](#)

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