



Fisheries Bill [HL] HL Bill 71 of 2019–21

On 11 February 2020, the second reading of the Fisheries Bill [HL] is scheduled to take place in the House of Lords.

Summary

The UK will no longer be part of the EU's Common Fisheries Policy (CFP) at the end of the withdrawal agreement transition (or implementation) period, set to finish on 31 December 2020. From then on, the UK will control access to its own fishing waters. The bill would set a framework for managing fisheries in the UK once the CFP no longer applies. It would:

- Require the national fisheries authorities for England, Wales, Scotland and Northern Ireland to produce a joint fisheries statement setting out how they intend to achieve the fisheries objectives defined in the bill. The statement would be underpinned by fisheries management plans that would have to comply with requirements relating to sustainable levels of fishing.
- End automatic rights for EU vessels to access British fishing waters and introduce a license requirement for foreign fishing vessels.
- Replace existing powers for UK licensing authorities to license fishing vessels in UK waters.
- Allow the secretary of state to determine catch and effort quotas for British fishing boats, in line with the UK's international obligations to determine its fishing opportunities—for example, under a future fisheries agreement with the EU.
- Allow the sale of rights to English and Welsh “catch quotas” or “effort quotas” for a year.
- Enable a discard prevention charging scheme to be introduced in England.
- Enable financial assistance schemes to be established in England, Wales, Scotland and Northern Ireland to replace the European Maritime and Fisheries Fund.

The bill is similar to the Fisheries Bill introduced in the 2017–19 session, although some clauses have been redrafted. It also includes new fisheries objectives, the requirement for fisheries management plans and additional powers for the devolved authorities.

The UK and the EU are expected to start negotiating a new fisheries agreement, which they aim to conclude by 1 July 2020. The EU is seeking continued reciprocal access to fishing waters and stable quota shares for the amount of fish that can be caught. The UK argues British fishing waters should primarily be for British fishing vessels, and opportunities for EU vessels should be negotiated annually on the basis of scientific data about sustainable catch levels, not based on historic quotas.

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I. Overview

I.1 Main Elements of the Bill

The Fisheries Bill [HL] was introduced in the House of Lords on 29 January 2020 and is due to have its second reading on 11 February 2020. The Cabinet Office briefing accompanying the December 2019 Queen's Speech included this bill among those that would “make the most of all the opportunities that [Brexit] brings for the people of the United Kingdom”.¹

The briefing summarised the main elements of the bill as follows:

- Delivering on the manifesto commitment to establish legal commitments to fishing sustainably and the legal requirement for the plan to achieve maximum sustainable yield for each stock.
- Ensuring equal and fair access for English, Welsh, Scottish, and Northern Irish boats across UK waters.
- Providing powers to licence foreign vessels in UK waters, although they will have no automatic right to access.
- Creating powers to determine fishing opportunities (quota or days at sea) for the UK, so that we can move away from the unfair Common Fisheries Policy. These powers will enable us to preserve and seek to increase fish stocks.
- Powers to provide grants to fishermen to conserve, enhance and restore the marine and aquatic environment, and to regulate fishing in order to protect the marine environment.
- Powers to amend primary legislation (including retained EU law) to allow the UK to respond to scientific advice (for example, on fish stock levels); to maintain high standards of fish health, protecting our aquaculture industry and export markets; and to meet our international commitments relating to fisheries.²

I.2 Previous Bill in the 2017–19 Session

The current bill is starting in the House of Lords and has therefore not yet been considered by the House of Commons. However, Theresa May's Government introduced a [Fisheries Bill](#) in the House of Commons in the 2017–19 parliamentary session. It had its second reading in the Commons in November 2018 and ten sittings in a public bill committee in December 2018 but did not progress any further. The House of Commons Library briefing for that bill described the background to it, its provisions and the amendments made to it in committee.³

¹ Cabinet Office, [The Queen's Speech 2019](#), December 2019, p 19.

² *ibid*, pp 19–20.

³ House of Commons Library, [The Fisheries Bill 2017–19](#), 11 April 2019.

The bill followed a fisheries white paper published by Theresa May's Government in July 2018.⁴

The present bill is similar to the previous one, although the drafting has been changed in places (for example, moving some provisions amending existing legislation into schedules). There are also some changes to the substance of the bill. These are described later in this briefing where the bill is covered clause-by-clause, but some of the key changes are:

- Addition of a “national benefit objective” and a “climate change” objective to the list of “fisheries objectives”, and the replacement of the “discards objective” with a “bycatch objective”.
- Addition of fisheries management plans to be produced by the fisheries authorities under the joint fisheries statement.
- Addition of powers for the Welsh ministers to make regulations enabling the sale of rights to Welsh “catch quotas” or “effort quotas” for a calendar year.
- Expansion of the list of purposes for which the secretary of state could grant financial assistance in England.
- Addition of powers for the Scottish ministers to establish a financial assistance scheme.
- Addition of powers for the Scottish and Welsh ministers to impose charges for carrying out functions relating to the regulation of marine activities.
- Addition of powers for the Scottish ministers to make regulations for the purpose of implementing the UK's international obligations relating to fisheries, for a conservation purpose or for a fish industry purpose.
- Omission of a new clause added to the previous bill by a government amendment at committee stage that set negotiating objectives for the secretary of state when negotiating a post-Brexit fisheries agreement with the EU.

2. Leaving the Common Fisheries Policy

2.1 What Does the Common Fisheries Policy Cover?

While it was a member of the EU, the UK was covered by the EU's Common Fisheries Policy (CFP). The CFP covers:

- shared access for EU fishing vessels to EU member states' waters;

⁴ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), July 2018, Cm 9660.

- total allowable catch (TAC) and fishing opportunities for key fish stocks for each member state are agreed annually in December between EU member states;
- the representation of EU member states by the European Commission in negotiations with third countries and in international fisheries agreements; and
- directly applicable fisheries management legislation, including on detailed technical measures and control and enforcement.⁵

The UK fishing industry has criticised the CFP because of the combined effect of shared access to EU waters and restrictions on the amount of fish that can be caught from stocks subject to a quota. The result has been that EU fishing vessels land more fish from UK waters than UK vessels do from EU waters. On average, between 2012 and 2016, other EU member states' vessels annually landed in the region of 749,000 tonnes of fish (£575 million revenue) caught in UK waters.⁶ UK vessels landed approximately 96,000 tonnes (£96 million revenue) caught in other member states' waters per year in the same period.

The Government has repeatedly stated that Brexit will allow the UK to control access to its fishing waters. The 2019 Conservative Party general election manifesto stated that the UK's future relationship with the EU would "ensure we are in full control of our fishing waters".⁷ In January 2020, Steve Barclay, then Secretary of State for Exiting the European Union, said that:

For the first time in more than 40 years, we will have access to UK waters on our own terms, under our own control, and we will be responsible for setting fishing opportunities in our own waters.⁸

2.2 Transition Period

On 31 January 2020, the UK ceased to be a member of the European Union, but that does not mean it left the CFP immediately. Under the terms of the UK-EU withdrawal agreement, the UK entered a transition period, also referred to as the implementation period, which is due to run until 31 December 2020. While the withdrawal agreement itself allows for the transition period to be extended for one or two years, it is the Government's policy not to have an extension. Section 33 of the European Union (Withdrawal Agreement) Act 2020 prohibits ministers from agreeing to an extension.

⁵ [Explanatory Notes](#), p 6.

⁶ Cabinet Office, [The Queen's Speech 2019](#), December 2019, p 20.

⁷ Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 5.

⁸ [HC Hansard, 9 January 2020, col 600](#).

Most EU law will continue to be applied in the UK during the transition period. This includes the CFP.⁹ As it is no longer a member of the EU, the UK is no longer represented in the EU's decision-making bodies. However, article 130 of the withdrawal agreement specifies that the EU will continue to consult the UK on fisheries during the transition period.

Much of the bill deals with measures that would apply once the UK has left the CFP at the end of the transition period.

The European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) will ensure that the directly applicable EU regulations that underpin the CFP will remain part of UK domestic law after the end of the transition period, as part of the body of retained EU law. Some 'corrections' have been made to retained EU fisheries law through secondary legislation to make it "operable" in UK law after the end of the transition period.¹⁰ The bill would make further amendments, including to the basic Common Fisheries Policy regulation, to enact policy changes, including ending EU fishing vessels' shared rights to access UK waters.

2.3 Future UK-EU Fisheries Agreement

After the end of the transition period, EU vessels will no longer have automatic shared access to UK waters and the UK will no longer be subject to the EU's mechanisms for setting total allowable catch for different fish stocks for the year. However, the UK and the EU are expected to commence negotiations on a post-Brexit fisheries agreement.

Such an agreement could intersect with the bill, as it contains provisions that would:

- Allow foreign vessels to enter British fishery limits for the purpose of fishing in accordance with a sea fishing licence or for a purpose recognised by international law or by any international agreement to which the UK was party (clause 12).
- Allow the secretary of state to determine annual quotas for the amount of fish that may be caught and the number of days that may be spent at sea by British fishing boats, for the purpose of complying with the UK's international obligations to determine its own fishing opportunities (clause 23). The Government has stated that such international obligations might arise under an agreement with the EU.¹¹

⁹ European Commission, '[Questions and Answers on the United Kingdom's Withdrawal from the European Union on 31 January 2020](#)', 24 January 2020.

¹⁰ [Explanatory Notes](#), p 14.

¹¹ *ibid*, p 23.

- Allow the secretary of state to make provision for the sale of rights to English “catch quotas” and “effort quotas” for a year (clause 27). The Government intends that this would apply only to a proportion of the additional fishing opportunities that are gained following Brexit.¹² The amount of additional fishing opportunities could be dependent on the outcome of negotiations with the EU over a new UK-EU fisheries agreement.

The revised political declaration, agreed between Boris Johnson and the EU in October 2019, states that “within the context of the overall economic partnership” the UK and the EU should establish a new fisheries agreement covering access to waters and quota shares.¹³ The political declaration commits both parties to “use their best endeavours” to conclude and ratify a new fisheries agreement by 1 July 2020. The political declaration explains that this timescale is so the fisheries agreement could be in place in time for determining fishing opportunities for the first year after the transition period.

The political declaration also sets out commitments for the UK and EU to cooperate in future on managing fishing sustainably. Within this context, it notes that the UK will be an independent coastal state, and both parties will cooperate “while preserving regulatory autonomy”.¹⁴

The EU has consistently emphasised its intention to maintain as far as possible the existing reciprocal access to fishing waters and to negotiate fishing rights as part of negotiations on the wider future relationship, not as a standalone issue. In the draft negotiating mandate for the future relationship negotiations published by the European Commission in early February, it said an agreement on fisheries should “aim to avoid economic dislocation for [European] Union fisherman that have traditionally fished in United Kingdom waters”.¹⁵ The European Commission therefore proposes that provisions on fisheries should “build on existing reciprocal access conditions, quota shares and the traditional activity of the [European] Union fleet”. It is seeking an agreement that would:

- provide for continued reciprocal access, for all relevant species, by EU and UK vessels to the waters of the EU and the UK;
- define stable quota shares, which can only be adjusted with the

¹² [Explanatory Notes](#), p 25.

¹³ HM Government, [Political Declaration Setting out the Framework for the Future Relationship Between the European Union and the United Kingdom](#), 19 October 2019, p 14. The wording in the political declaration on fishing opportunities was unchanged compared to the earlier version of the declaration agreed between Theresa May and the EU in November 2018.

¹⁴ *ibid.*

¹⁵ European Commission, [Recommendation for a Council Decision Authorising the Opening of Negotiations for a New Partnership with the United Kingdom of Great Britain and Northern Ireland](#), 3 February 2020. This is a draft mandate that has not yet been formally agreed.

- consent of both parties;
- include modalities for transfers and exchanges of quotas and for the setting of annual or multi-annual total allowable catches (or effort limitations) on the basis of long-term management strategies;
- organise the modalities for obtaining fishing authorisations and the provisions that ensure equality of treatment and compliance, including joint control and inspection activities.¹⁶

It has been reported that some EU member states intend the reference to “stable quota shares” to mean they would maintain a quota share similar to what they currently benefit from under the CFP.¹⁷

The draft mandate ties agreement on fisheries explicitly to the wider negotiations on the future relationship, stating that:

The terms on access to waters and quota shares shall guide the conditions set out in regard of other aspects of the economic part of the envisaged partnership, in particular of access conditions under the free trade area [...]

EU figures have recently suggested that they foresee possible trade-offs between EU access to UK fishing waters and other aspects of the future economic relationship that are negotiating priorities for the UK. Phil Hogan, the EU’s Trade Commissioner, said: “The EU will be seeking concessions on fishery access and the UK will very probably be seeking concessions on financial services”.¹⁸ Leo Varadkar, the Irish Taoiseach, recently made a similar point.¹⁹ Michel Barnier, the EU’s chief negotiator, has said that there would be “no agreement” on the economy and trade “without global agreement on trade for goods, the level playing field and fisheries”.²⁰

Setting out his vision for the future relationship, Prime Minister Boris Johnson emphasised that after the end of the transition period, the UK would control its own fishing waters, and access for British fishing vessels would be prioritised:

We are ready to consider an agreement on fisheries, but it must

¹⁶ European Commission, [Recommendation for a Council Decision Authorising the Opening of Negotiations for a New Partnership with the United Kingdom of Great Britain and Northern Ireland](#), 3 February 2020.

¹⁷ Tony Connelly, [‘Brexit is Done: Now for the Hard Part’](#), RTE, 1 February 2020.

¹⁸ Jon Stone, [‘UK Could Trade its Fishing Rights for Financial Services Access after Brexit, EU Trade Chief Suggests’](#), *Independent*, 14 January 2020.

¹⁹ BBC News, [‘Varadkar: EU Will Have Stronger Team in Trade Talks with UK’](#), 27 January 2020.

²⁰ *Guardian*, [‘EU Will Continue to Plan for Possible No-Deal Brexit at End of 2020, Says Barnier’](#), 9 January 2020.

reflect the fact that the UK will be an independent coastal state at the end of 2020, controlling our own waters.

And under such an agreement, there would be annual negotiations with the EU, using the latest scientific data, ensuring that British fishing grounds are first and foremost for British boats.²¹

The fisheries white paper published in 2018 under Theresa May's Government suggested the UK would seek to "move away from relative stability towards a fairer and more scientific method for future TAC [total allowable catch] as a condition of future access".²² Under the CFP's principle of 'relative stability', the UK receives a fixed share of fishing opportunities based on historical fishing patterns during the period 1973–78.²³ It is argued that this is unrepresentative of the fish now in UK waters.

The fisheries white paper also rejected the EU's position that access to fishing opportunities should be linked to a wider trade agreement:

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.

When the previous Fisheries Bill was before Parliament in the 2017–19 session, Theresa May's Government announced its intention to "bolster" the bill by amending it to "enshrine [a] commitment to secure a fairer share of fishing opportunities for UK fishermen".²⁴ The bill was amended at committee stage to include a requirement for the secretary of state to pursue two negotiating objectives when negotiating a future fisheries agreement with the EU. These specified the agreement should:

- Provide for annual negotiations to determine fishing opportunities.
- Have the effect that EU 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 UK are (looked at

²¹ Prime Minister's Office, '[PM Speech in Greenwich](#)', 3 February 2020.

²² Department for Environment, Food and Rural Affairs, '[Sustainable Fishing for Future Generations](#)', July 2018, Cm 9660, p 9.

²³ *ibid.*

²⁴ Department for Environment, Food and Rural Affairs, '[Bolstered Fisheries Bill and £37m Boost for UK Fishing Industry](#)', 10 December 2018.

in the round) greater than those that would have been so under relative stability.

This clause is not included in the new version of the bill. Boris Johnson's Government has taken the line on Brexit-related legislation that "a statutory negotiating objective in primary legislation is not necessary nor the constitutional norm".²⁵

2.4 Other International Agreements

As part of the process of leaving the CFP, the UK has also given notice of its intent to withdraw from the London Fisheries Convention.²⁶ This convention was concluded in 1964. It allows the Netherlands, Germany, Belgium, France and Ireland to fish for certain species in specified areas of UK and crown dependency territorial waters, within the band 6 to 12 nautical miles from the shore.²⁷ Likewise, it allows UK vessels some access to the zones of those countries.

The UK's participation in the London Fisheries Convention formally ended on 31 January 2020.²⁸ However, rights of access under the convention, except those relating to crown dependency waters, are included in annex I to the EU's CFP regulation. The UK will continue to comply with these until the end of the transition period.

The UK is also a party to the UN Convention on the Law of the Sea (UNCLOS). Among other things, UNCLOS sets limits for:²⁹

- Territorial sea—up to 12 nautical miles from the baseline. Coastal states have sovereignty over their territorial sea.
- Exclusive economic zone—12 to 200 nautical miles from the baseline, or to the median line where coastal states' exclusive economic zones overlap.

Coastal states have exclusive rights to the natural resources, including fish, in their exclusive economic zone. Under the CFP, EU member states share access to each other's exclusive economic zones. This will end at the end of the transition period (depending on what may be agreed in a future UK-EU fisheries agreement) and the UK will regain control of its own exclusive economic zone. It will remain bound by the rights and obligations of the UNCLOS.

²⁵ [HL Hansard, 21 January 2020, col 1050.](#)

²⁶ [Explanatory Notes](#), p 11.

²⁷ *ibid*, p 6.

²⁸ *ibid*, p 11.

²⁹ *ibid*, p 6. The baseline is usually the low-water line along the coast.

3. Devolution and a Common Framework

Within the UK, fisheries management is devolved. The UK's share of the total allowable catch under the CFP is distributed between England, Scotland, Wales and Northern Ireland on the basis of a fixed quota allocation established in 1999, based on amounts landed during a fixed reference period.³⁰ All four nations manage their own fishing quotas and licensing of fishing boats in line with a concordat agreed in 2012.³¹

The UK's membership of the EU and the CFP meant there was a consistent approach across the UK, despite fisheries being a devolved matter. As part of the Brexit process, there has been discussion about how to handle powers returning from Brussels in policy areas that are within devolved competence. The Government has explained that in some areas, common frameworks will be developed:

[...] powers previously exercised at EU level that intersect with devolved competence will flow directly back to Edinburgh, Cardiff and Belfast. In some areas, the UK Government and the Scottish and Welsh Governments agree it will be necessary to maintain UK-wide approaches, or common frameworks, after we leave the EU.³²

On fisheries management and support, the UK Government proposed that:

[...] where necessary, parts of the existing EU framework could be replaced by a UK framework. This would comprise a limited set of legislative provisions, partially established in the Fisheries Bill, supplemented by a concordat that includes ways of working, dispute resolution and enforcement processes. This will ensure common control and compliance standards, preserve equal access for UK vessels throughout UK waters and require a joint statement on fisheries management.³³

When the previous Fisheries Bill was introduced in the 2017–19 session, the Scottish Government and the UK Government disagreed over which of its provisions required legislative consent. The Scottish Government argued that the provisions giving the secretary of state powers to determine fishing opportunities (clause 23 in the new bill) would require legislative consent.³⁴

³⁰ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), July 2018, Cm 9660, p 26.

³¹ Department for Environment, Food and Rural Affairs, '[Management of Fishing Quotas to be Devolved](#)', 18 May 2012; and [Concordat on Management Arrangements for Fishing Quotas and Licensing in the UK](#), 18 May 2012.

³² Cabinet Office, [Revised Frameworks Analysis](#), April 2019, p 2. At the time this document was written, there was no Northern Ireland Executive.

³³ *ibid*, pp 7–8.

³⁴ Scottish Parliament Information Centre, [UK Fisheries Bill](#), 17 December 2018, p 27.

The Scottish Government stated that it was not in a position to recommend consent to the bill.³⁵ It requested amendments regarding quota and effort limits, seafood levies and funding for coastal communities.

The Welsh Government was also critical of the drafting of the provision giving the secretary of state powers to determine fishing opportunities, although it was generally supportive of the previous bill.³⁶

Speaking on the publication of the new bill, Douglas Ross, Parliamentary Under Secretary of State at the Scotland Office, said the new bill gave the Scottish Government more powers at their request.³⁷ He hoped that the Scottish Parliament would grant legislative consent.

4. Bill Provisions

4.1 Fisheries Objectives, Fisheries Statements and Fisheries Management Plans (Clauses 1 to 11 and Schedule 1)

Clauses 1 to 11 establish objectives for the fisheries policy authorities and create a requirement for them to publish a joint fisheries statement setting out how they intend to achieve those objectives. The “fisheries policy authorities” are the secretary of state, the Scottish ministers, the Welsh ministers and the Northern Ireland department.

These clauses have been redrafted since the previous version of the bill. Some new requirements have also been added.

Clause 1 sets out and defines the UK fisheries objectives. They are:

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

The Government has stated that objectives (a) to (d) “replace equivalent objectives” in article 2 of the basic regulation on the Common Fisheries

³⁵ Scottish Parliament Information Centre, [UK Fisheries Bill](#), 17 December 2018, pp 2–3.

³⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No 2\): Fisheries Bill](#), p 2.

³⁷ Ailean Beaton, [‘Post-Brexit Fisheries Bill to be Introduced by UK Government’](#), *Holyrood*, 29 January 2020.

Policy.³⁸ Clause 1 reuses some of the wording from article 2 but does not replicate it exactly. For example:

- The precautionary objective in clause 1 omits the requirement in the EU regulation to achieve the maximum sustainable yield exploitation rate by 2020 (at the latest) for all stocks. However, there are other requirements relating to maximum sustainable yield in clause 6 of the bill.
- The ecosystem objective in the EU regulation requires fisheries to be managed “so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised”. The ecosystem objective in clause 1 goes further, setting an objective to ensure that negative impacts are “minimised and, where possible, reversed”.

The Government has stated that objectives (e) to (h) in clause 1 “reflect other priorities for the UK after it has left the CFP”. The bycatch objective replaces the discards objective that appeared in the previous version of the bill. The discards objective would have sought to “gradually eliminate discards, on a case-by-case basis”, by avoiding and reducing unwanted catch and gradually ensuring that catches were landed. The new “bycatch objective” seeks to avoid or reduce the catching of fish that are below minimum conservation reference size; record and account for catches; and to land bycatch fish, but only where it does not create an incentive to catch fish below the minimum conservation reference size. Further information about discards is set out in the section of this briefing covering clauses 28 to 32 (discard prevention charging schemes).

The national benefit objective and the climate change objective are additions to this bill that did not appear in the previous version. The Government has described the climate change objective as “a new objective to move us towards ‘climate-smart fishing’ in UK waters”.³⁹

Clause 2 requires the secretary of state, the Scottish ministers, the Welsh ministers and the Northern Ireland department, referred to collectively as the “fisheries policy authorities”, to publish a joint fisheries statement (JFS). The JFS would have to set out the policies for achieving the fisheries objectives set out in clause 1. It would also have to set out how the fisheries policy authorities proposed to use fisheries management plans to achieve the objectives and would need to list fisheries management plans already in force and proposed for future publication. If a proposed fisheries management plan was not going to be published jointly by all the fisheries policy authorities, the reason for that would have to be explained.

³⁸ [Explanatory Notes](#), p 16.

³⁹ Department for Environment, Food and Rural Affairs, ‘[Sustainable Fisheries Enshrined in Law as UK Leaves EU](#)’, 29 January 2020.

The bill's requirements relating to fisheries management plans are new. Fisheries management plans were not featured in the version of the bill introduced in the 2017–19 session.

The first JFS would have to be published within 18 months of the bill receiving royal assent.

The Government has said that the purpose of the JFS is “to recognise that, although fisheries is devolved, none of those authorities acting alone could achieve the fisheries objectives”.⁴⁰ The Government intends the effect of the JFS to be “to set out and coordinate fisheries policies after the UK has left the CFP”.

Clause 3 allows the fisheries policy authorities to update or replace the JFS at any time. They would be obliged to review it at least every six years and publish a new one if they concluded that changes were required. The Government has stated that it has agreed with the devolved administrations that marine plans made under the Marine and Coastal Access Act 2009 will also be reviewed every six years; the intention is for the review periods to align.⁴¹

Part 1 of schedule 1 requires the fisheries policy authorities acting jointly to publish a consultation draft and to lay the draft consultation document before the appropriate legislature before they can publish a JFS.⁴²

Clause 4 allows the fisheries policy authorities to publish a JFS that omits a “relevant secretary of state policy” that would otherwise be required to be included. A “relevant secretary of state” policy is defined as one involving:

- the exercise of a UK quota function, ie determining catch or effort quotas under clause 23, or determining how much of a catch or effort quota can be distributed in England, Scotland, Wales or Northern Ireland; or
- a reserved matter.

If this happened, clause 4 would require the secretary of state to make a secretary of state fisheries statement (SFSS) within six months of the JFS being published or amended. The SFSS would have to provide details of the policy(ies) not covered in the JFS.

Clause 5 contains similar provisions relating to an SFSS as clause 3 does for

⁴⁰ [Explanatory Notes](#), p 17.

⁴¹ *ibid.*

⁴² Therefore, the Secretary of State must lay a draft before Parliament, the Scottish ministers before the Scottish Parliament, the Welsh ministers before the National Assembly for Wales, and the Northern Ireland department before the Northern Ireland Assembly.

the JFS. Clause 5 would allow the secretary of state to update or replace an SFSS at any time. It would also require the secretary of state to review an SFSS at least every six years and update it if he or she concludes changes are required. Part 2 of schedule 1 requires the secretary of state to publish a consultation draft and to lay the draft consultation document before Parliament before he or she can publish an SFSS. Under clause 5, if a new or updated JFS comes into effect that includes the policies in the SFSS or that supersedes the SFSS, the secretary of state would be able to revoke the SFSS.

Clause 6 requires the relevant fisheries policy authority(ies) to publish the fisheries management plans proposed in the list in the JFS. Clause 6 sets out several details each plan would have to specify:

- the relevant fisheries policy authority(ies) that published it;
- the stock of sea fish, type of fishing and geographical area to which the plan relates; and
- indicator(s) to be used to monitor the effectiveness of the plan.

Each plan would also have to comply with requirements on sustainable levels of fishing. For each stock of sea fish covered by the plan, the plan would have to specify whether the available scientific evidence is sufficient for the authority(ies) to assess the stock's maximum sustainable yield.

“Maximum sustainable yield” is defined in the EU's basic CFP regulation as “the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without sufficiently affecting the reproduction process”.⁴³ Article 2 of the regulation contains a commitment to achieve the maximum sustainable yield exploitation rate “by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks”. The CFP has been criticised because the fisheries ministers of EU member states have continued to set the annual total allowable catch at levels which allow overfishing, despite the binding 2020 target to achieve maximum sustainable yield.⁴⁴

The bill adopts a very similar definition of maximum sustainable yield, although it specifies a “marine stock under existing environmental conditions” (clause 48) rather than “a stock under existing average environmental conditions”.

Under clause 3(6), if the available scientific evidence is sufficient to determine the stock's maximum sustainable yield, then the fisheries management plan must set out the authority's policies for restoring the

⁴³ [EU Regulation 1380/2013](#), article 4(7).

⁴⁴ Fiona Harvey, ‘[EU Ministers Opt to Continue Overfishing, Despite 2020 Deadline](#)’, *Guardian*, 18 December 2019.

stock to, or maintaining it at, sustainable levels. A “sustainable level” is defined in clause 48 as a level of the marine stock “above biomass levels capable of producing maximum sustainable yield”.

If the scientific evidence is not sufficient to determine the stock’s maximum sustainable yield, then the plan would have to set out the authority’s policies for maintaining or increasing levels of the stock. These policies would have to adopt the precautionary approach to fisheries management. This is defined in clause 1 as:

[...] an approach in which the absence of sufficient scientific information is not used to justify failing to take management measures to conserve target species, associated or dependent species, non-target species or their environment.

The plan would also have to specify what the authority was doing to obtain the scientific evidence necessary to determine the maximum sustainable yield or explain why no such steps were being proposed.

The Government has said that “a new legal requirement for all fish stocks to be fished at sustainable levels” is “at the heart of the bill”.⁴⁵ The Government said this delivered on its manifesto commitment to ensure that there would be sustainability plans for each fish stock. The Conservative Party’s 2019 manifesto stated:

There will be a legal commitment to fish sustainably and a legal requirement for a plan to achieve maximum sustainable yield for each stock.⁴⁶

If a fisheries policy authority publishes a fisheries management plan, or amends an existing one, due to a change of circumstances, and the plan is no longer consistent with the proposals contained in the JFS, then the new or amended plan must explain how and why it differs from the JFS. The plan would still have to comply with the requirements in clause 6. Subsection 7(6) gives examples of relevant changes of circumstances, such as:

- changes in the UK’s international obligations;
- the effects of actions or inactions of another country on the marine and aquatic environment;
- changes in scientific evidence; or
- changes in evidence relating to the social, economic or environmental elements of sustainable development.

⁴⁵ Department for Environment, Food and Rural Affairs, ‘[Sustainable Fisheries Enshrined in Law as UK Leave EU](#)’, 29 January 2020.

⁴⁶ Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 42.

The list in subsection 7(6) is not exhaustive.

Clause 8 is similar to clauses 3 and 5. It would allow a fisheries management plan to be replaced or updated at any time, as long as it covered the same stock(s) of sea fish, type(s) of fishing and geographical area(s). It would require the relevant authority(ies) to review the plan at least every six years and update it if they concluded changes were required. Part 3 of schedule 1 requires a consultation draft to be published; however, in this case, there is no requirement for the consultation draft to be laid before any of the legislatures.

Clause 9 would allow fisheries management plans to be published before the first JFS is published. As noted above, the fisheries policy authorities have 18 months from the passing of the bill to publish a JFS. Any fisheries management plans already in force would have to be listed in the first JFS.

Clause 10 requires the national fisheries authorities to exercise their functions relating to fisheries, fishing and aquaculture in accordance with the applicable policies contained in a JFS, SFSS or fisheries management plan, “unless a relevant change in circumstances indicates otherwise”. The national fisheries authorities are all the fisheries policy authorities and the Marine Management Organisation (MMO). The MMO manages quotas and compliance with fishing regulations in England.⁴⁷

Subsection 10(4) contains the same non-exhaustive list of examples of a relevant change of circumstances as in subsection 7(6). If a relevant change of circumstances caused a national fisheries authority to diverge from the applicable policy set out in a JFS, SFSS or fisheries management plan, the authority would have to publish a document explaining why.

Clause 11 would require reports to be published every three years on the JFS and the SFSS. The reports would have to describe how the policies had been implemented and what effect they had had on achieving the fisheries objectives. Reports on the JFS would also have to describe how fisheries management plans listed in the JFS had been implemented and what effect they had had on fish stock levels. The reports would have to be laid before the relevant legislature. The previous version of the bill did not contain a requirement for progress reports on the JFS and SFSS.

The Government has stated that fisheries management plans will be “tailored to the UK’s ‘mixed fisheries’, which have lots of fish stocks swimming together and where certain fishing practices can have a significant impact on the marine environment”.⁴⁸ It said the plans would also recognise that many

⁴⁷ Marine Management Organisation, ‘[About Us](#)’, accessed 31 January 2020.

⁴⁸ Department for Environment, Food and Rural Affairs, ‘[Sustainable Fisheries Enshrined in UK Law as UK Leaves the EU](#)’, 29 January 2020.

of the stocks are ‘shared stocks’ that swim in the waters of both the UK and other coastal states. The Government said that for these stocks, negotiation with other coastal states would be “crucial as sustainable catches cannot be achieved through UK action alone”.

4.2 Access to British Fisheries and Regulation of Foreign Fishing Boats (Clauses 12 to 13 and Schedule 2)

Article 5 of the basic CFP regulation provides that EU fishing vessels have “equal access to waters and resources” in all EU waters. This article is revoked by paragraph 2 of schedule 10 so it would no longer apply after the end of the transition period. Access to UK waters for foreign fishing vessels would be governed by clause 12.

Clause 12 contains provisions about when foreign fishing boats could enter British fishery limits. This equates to the UK’s exclusive economic zone (EEZ).⁴⁹ Foreign fishing boats could only enter these limits to fish in accordance with a sea fishing licence, or for a purpose recognised by international law or an international agreement to which the UK was party. The foreign fishing boat would have to return outside British fishery limits as soon as its lawful purpose was fulfilled. The explanatory notes state that this clause replaces section 2 of the Fishery Limits Act 1976, which allows the secretary of state and devolved administrations to designate by order the foreign countries whose vessels may enter British fishery limits.⁵⁰ This section would be repealed by the bill.⁵¹

Clause 13 introduces schedule 2, which makes consequential amendments to subordinate legislation to ensure that foreign vessels fishing in UK waters would be subject to the same regulations as British vessels.

4.3 Licensing of Fishing Boats (Clauses 14 to 18)

Clauses 14 to 18 set out provisions relating to the granting of licences to both British and foreign fishing boats. Clause 14 provides that fishing anywhere by a British fishing boat is prohibited unless authorised by a licence. There are certain exceptions to this, which are listed in subsection 14(2). The secretary of state can make regulations, subject to the affirmative procedure, to amend the list of exceptions. However, this could only be done with the consent of the Scottish ministers, the Welsh ministers and the Northern Ireland department. The Government has stated that this “respects the devolution settlement but at the same time ensures that the

⁴⁹ [Explanatory Notes](#), p 20. A state’s exclusive economic zone (EEZ) is the zone that extends from the outer limit of the state’s territorial sea (12 nautical miles from the state’s baseline) up to 200 nautical miles from the baseline, or to the median line with another coastal state’s EEZ (ibid, p 12).

⁵⁰ ibid, p 20.

⁵¹ Paragraph 4 of schedule 4.

requirements are consistent across the UK”.⁵²

The Delegated Powers and Regulatory Reform Committee said that the proposed new arrangements for changing the list of exceptions would be “more transparent than, and [offer] fuller parliamentary scrutiny than, the present law”.⁵³ The committee was commenting on the previous version of the bill, but this provision is substantially unchanged. The Law Society of Scotland noted that the new arrangements would effectively “replicate the status quo: that a licence issued by a UK Fisheries administration will be effective throughout UK waters” for British boats.⁵⁴ The current licensing arrangements are set out in section 4 of the Sea Fish (Conservation) Act 1967. This section would be repealed by the bill.⁵⁵

Clause 15 would empower the Scottish ministers, the Welsh ministers, and the Northern Ireland department to grant licences to Scottish, Welsh and Northern Irish fishing boats respectively. It would also empower the Marine Management Organisation (MMO) to license other British fishing boats, namely English fishing boats, and crown dependency fishing boats that need a UK licence.

Clause 16 specifies that fishing within British fishery limits by a foreign fishing boat is prohibited without a licence. This would not apply in the territorial waters of the Isle of Man.

The requirement for foreign fishing boats to have a UK-issued licence to fish within British fishery limits is new. The Government has stated that this “reflects the fact that, in future, access for foreign vessels to fish in UK waters will be a matter for negotiation, implemented partly through UK licensing”.⁵⁶ As with licences for British fishing boats, the secretary of state would be able to make regulations to add, remove or vary exceptions to the prohibition on fishing without a licence. Again, this would be subject to the affirmative procedure and could only be done with the consent of the devolved administrations.

Clause 17 would empower the Scottish ministers, the Welsh ministers and the Northern Ireland department to grant licences to foreign fishing vessels authorising them to fish in the zone for which the administration is responsible. In other words, a licence granted by the Scottish ministers would not authorise a foreign vessel to fish outside Scotland and the Scottish zone. The MMO could grant licences to foreign fishing boats to fish within British fishery limits, but not within the areas for which the devolved

⁵² [Explanatory Notes](#), p 21.

⁵³ House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill](#), 15 November 2018, HL Paper 226 of session 2017–19, p 2.

⁵⁴ Law Society of Scotland, [Fisheries Bill](#), November 2018, p 4.

⁵⁵ Paragraph 6 of schedule 4.

⁵⁶ [Explanatory Notes](#), p 22.

administrations are responsible. This is different from the approach for licensing British fishing boats, where, for example, the Scottish ministers would be responsible for licensing Scottish fishing boats, but the licence would be valid throughout UK waters.

Clause 18 introduces schedule 3 which contains further provisions about the licences issued under clauses 15 and 17, which are collectively referred to as “sea fishing licences”. Schedule 3 covers:

- The power to attach conditions to a sea fishing licence—for example, restricting the time a boat may spend at sea or imposing environmental conservation measures.
- The power to vary, suspend or revoke a sea fishing licence.
- The power to obtain information from the master, owner or charterer of a boat named in a licence.
- The duty to comply with a request from another sea fish licensing authority—the Government has stated the purpose of this provision is to prevent different sea fish licensing authorities undermining each other where one licensing authority has imposed conditions in respect of an area of water where boats licensed by different authorities may fish.⁵⁷
- The use of licensing functions to limit sea fishing activity—for example, to limit the number or type of boats fishing in a particular area.
- The power for a licensing authority to delegate its licensing functions.
- The power for the secretary of state or the devolved administrations to make regulations about how the sea fishing licence authority for which they are responsible can exercise its functions—for example, imposing charges or restricting time spent at sea. The secretary of state could make regulations covering the devolved areas with the consent of the relevant devolved administration.

4.4 Access and Licensing (Offences and Consequential Amendments) (Clauses 19 to 22 and Schedule 4)

Clause 19 sets out penalties for those convicted of licensing or access offences. They could be fined, disqualified from holding a licence, and/or have to forfeit the fish caught and the nets or fishing gear used when committing the offence. However, any fine imposed could not be greater than the value of the fish that was fished during the offence. A court would not be allowed to impose a fine and also order the fish to be forfeited in respect of the same offence. These penalties replicate those already provided for in

⁵⁷ [Explanatory Notes](#), p 34.

section 4 of the Sea Fish (Conservation) Act 1967, which would be repealed by the bill.⁵⁸

Clause 20 provides that a body corporate and the officer of a body corporate (eg a director, manager or secretary) could be found guilty of an offence.

Clause 21 relates to the jurisdiction of the courts to try licensing and access offences. It would allow such offences to be treated as though they had been committed in any place in the UK.

Clause 22 introduces schedule 4, which would make consequential and minor amendments relating to clauses 1 and 14 to 21. This would include the repeal of section 4 of the Sea Fish (Conservation) Act 1967, which establishes the current licensing regime.

4.5 Fishing Opportunities (Clauses 23 to 27 and Schedule 5)

A “fishing opportunity” is a quantified legal entitlement to fish, expressed in terms of catch and/or fishing effort.⁵⁹ Under the CFP, fishing opportunities within the EU are managed as follows:

Some fish stocks in European waters are managed through multi-annual plans and most have annual catch limits called total allowable catches (TACs). A multi-annual plan is a regionalised strategy to manage stocks on longer time frames and can include specific management objectives and measures. Annual TACs are set using ICES [International Council for the Exploration of the Sea, an intergovernmental marine science organisation] advice after negotiations between the EU Council (for stocks shared by EU member states only). For stocks shared between EU and non-EU states, TACs are negotiated through bilateral and multilateral agreements. TACs are divided among states as quotas. Multi-annual plans consider multiple stocks and the interactions between them and set ranges within which future TACs and quotas should be set. While ICES provides scientific advice, it is the responsibility of ministers to set TACs, which are often set higher than the advice suggests. Not all stocks are managed using TACs and quotas [...] These non-quota species include most commercial shellfish.

EU member state quota shares are determined using an allocation method known as ‘relative stability’. This is based on an historical reference period from the 1970s and was adopted into the CFP in

⁵⁸ [Explanatory Notes](#), p 22.

⁵⁹ European Court of Auditors, [Have EU Measures Contributed to Adapting the Capacity of the Fishing Fleets to Available Fishing Opportunities?](#), 2011, p 6.

1983. The relative shares remain constant to provide economic stability for fishing fleets. However, it cannot easily account for changes in fishing patterns or stock distributions.⁶⁰

Clauses 23 to 27 set out how fishing opportunities would be managed in the UK once the CFP no longer applies.

Clause 23 states that the secretary of state may determine, for a calendar year:

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

Different maximums could apply for different types of fishing boat, different types of sea fish and different areas of sea. However, different maximums could not be determined by reference to a boat’s home port or connection to a particular place in the UK.

The clause replaces the current provision in EU law that allows the European Council to determine fishing opportunities for all EU waters, including UK waters.

Subsection 23(2) specifies that such a determination could only be made for the purpose of complying with the UK’s international obligations to determine its fishing opportunities. The Government has stated that international obligations might arise under:⁶¹

- an agreement with the EU;
- an agreement with another coastal state;
- the UK’s obligations under the UN Convention on the Law of the Sea (UNCLOS); or
- the UK’s membership of a regional fisheries management organisation (RFMO)—an international organisation made up of countries that share a practical and/or financial interest in managing and conserving fish stocks in a particular region.⁶²

The House of Lords Delegated Powers and Regulatory Reform Committee said that this clause “sets out what would otherwise be a prerogative power

⁶⁰ Parliamentary Office of Science and Technology, [UK Fisheries Management](#), 21 February 2018, p 3.

⁶¹ [Explanatory Notes](#), p 23.

⁶² Pew Trusts, [‘FAQ: What is a Regional Fishery Management Organisation?’](#), accessed 3 February 2020.

and makes the process of determining UK quota more transparent”.⁶³ The committee was commenting on the previous version of the bill, but this provision is substantially unchanged.

Subsection 23(6) specifies that the secretary of state could set a catch quota or an effort quota of zero. He or she could also replace or withdraw a determination that had already been made, as long as this was done before the end of the calendar year to which it related. The Government has stated that this would allow quotas to be adjusted in-year to respond to environmental changes or depletion of the fish stocks.⁶⁴

The secretary of state would be obliged to consult with the Scottish ministers, the Welsh ministers, the Northern Ireland department and the Marine Management Organisation before making or withdrawing a determination under clause 23. However, the secretary of state would not be obliged to obtain their consent in order to make or withdraw a determination.

Clause 23 relates to setting UK-wide catch and effort quotas to reflect international agreements reached with other states, such as the EU, Norway, Iceland and the Faroe Islands. Once the UK quotas are agreed, they are then distributed between England, Scotland, Wales and Northern Ireland. Each of the fisheries administrations then further distributes the portion of the UK quotas for which it is responsible. Theresa May’s Government said in the 2018 fisheries white paper that existing fishing opportunities would continue to be distributed using the current methodology:

Currently, opportunities (largely quota) are apportioned administratively to each of the four fisheries administrations by the secretary of state. The apportionment is done using a methodology set out in the UK Quota Management Rules (QMRs) under arrangements made in the 2012 Fisheries Concordat. Each of the fisheries administrations is then able to allocate its quota to its industry as it wishes. This methodology uses Fixed Quota Allocations (FQAs). FQAs were established in 1999, based on a reference period of 1993 to 1996, and we recognise that fishermen have invested in FQAs. We will continue to use this methodology for the apportionment of existing quota.⁶⁵

Clause 25 would amend article 17 of the Common Fisheries Policy regulation. Under the European Union (Withdrawal) Act 2018 (as amended), this EU regulation will be retained in domestic law after the end of the

⁶³ House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill](#), 15 November 2018, HL Paper 226 of session 2017–19, p 3.

⁶⁴ [Explanatory Notes](#), p 24.

⁶⁵ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), July 2018, Cm 9660, p 26.

transition (implementation) period. Currently, article 17 sets out that each EU member state will use transparent and objective criteria to allocate the fishing opportunities available to it and will seek to incentivise fishing using gear or techniques with a lower environmental impact. Clause 25 would amend the wording of this article so that it applied to the national fisheries authorities (the secretary of state, the MMO, the Scottish ministers, the Welsh ministers and the Northern Ireland department) distributing the fishing opportunities available to them.

Clause 26 would impose a duty on the national fisheries authorities to exercise their functions in such a way as to ensure that catch quotas and effort quotas for that year are not exceeded.

Theresa May's Government said in the fisheries white paper that although it did not intend to change the method for allocating existing quota, it would look at new ways of allocating additional fishing opportunities that the UK gained by leaving the CFP and becoming an independent coastal state.⁶⁶ This could include allocating some fishing opportunity through a tendering or auction system.

Clause 27 would give the secretary of state the power to make regulations to enable the sale of English catch or effort quota rights for a year. The regulations could include provision for the rights to be sold by competitive tender or auction. The regulations could also include provision for matters such as conferring functions to manage the tender or auction process, and eligibility to purchase the rights. The regulations would be subject to the affirmative procedure. The MMO would be required to exercise its functions to ensure, as far as possible that anyone exercising rights sold under this clause complied with the requirement to have a sea fishing licence and any conditions attached to the licence.

The Government has set out how it envisages the sale of additional quota would work:

The intention is that regulations would provide for the tender or auction of a proportion of the additional fishing opportunities that are gained following the UK's withdrawal from the EU. The sale of quota would only be used to allocate a portion of UK quota which may be allocated by the MMO or the secretary of state to English fishing boats. The regulations could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria. The regulations could therefore require fishing opportunities to be allocated on criteria other than price.⁶⁷

⁶⁶ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), July 2018, Cm 9660, p 12.

⁶⁷ [Explanatory Notes](#), p 25.

The explanatory notes that accompanied the previous version of the bill stated less equivocally that: “It is not intended that a scheme would be used to sell fishing opportunities exclusively on the basis of price”.⁶⁸ The Delegated Powers and Regulatory Reform Committee (DPRRC) recommended that this intention should be enshrined on the face of the bill.⁶⁹ In response to this recommendation, the Government tabled an amendment at committee stage of the 2017–19 bill amending this provision to confirm that regulations could require or permit conditions other than price to be taken into account when deciding who to sell fishing opportunities to under the scheme.⁷⁰

Examining the previous bill, the DPRRC also recommended that the exercise of the power to sell English quota rights be preceded by consultation.⁷¹ The Government accepted this recommendation, and introduced an amendment to the previous bill at committee stage, requiring consultation of “such persons as the secretary of state thinks appropriate”.⁷² This also appears in the current bill.

The DPRRC also stated that the Government’s intention to use this provision to allow some English quota to be allocated in a different way than under the current system “does not find adequate translation on the face of the bill”.⁷³ It recommended this should be clarified. The Government did not address this point in its response to the committee’s report. The new version of the bill does not appear to have been amended in light of this recommendation.

Clause 27 also introduces schedule 5, which confers a corresponding power on the Welsh ministers to make regulations enabling the sale of rights to Welsh catch or effort quotas for a calendar year. This was not included in the previous version of the bill.

4.6 Discard Prevention Charging Schemes (Clauses 28 to 32)

Article 15 of the CFP regulation sets out a ‘landing obligation’, which was phased in between 2015 and 2019.

⁶⁸ [Explanatory Notes to the Fisheries Bill \(Bill 278 of session 2017–19\)](#), p 24.

⁶⁹ House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill](#), 15 November 2018, HL Paper 226 of session 2017–19, p 3.

⁷⁰ House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill: Government Response](#), 29 January 2019, HL Paper 274 of session 2017–19, p 10.

⁷¹ House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill](#), 15 November 2018, HL Paper 226 of session 2017–19, p 3.

⁷² House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill: Government Response](#), 29 January 2019, HL Paper 274 of session 2017–19, p 10.

⁷³ House of Lords Delegated Powers and Regulatory Reform Committee, [Fisheries Bill](#), 15 November 2018, HL Paper 226 of session 2017–19, p 3.

It requires:

All catches of species which are subject to catch limits and, in the Mediterranean, also catches of species which are subject to minimum sizes [...] shall be brought and retained on board fishing vessels, recorded, landed and counted against the quotas [...]

The landing obligation was introduced to eliminate discarding, which the European Commission has described as follows:

Discarding is the practice of returning unwanted catches to the sea, either dead or alive, because they are undersized, due to market demand, the fisherman has no quota or because catch composition rules impose this.⁷⁴

The landing obligation is also known as the discard ban. The European Commission has described it as “a radical change in fisheries management [that] aims to improve fishing behaviour through improvements in selectivity”.⁷⁵

In the fisheries white paper of July 2018, Theresa May’s Government said it remained “fully committed to ending the wasteful discarding of fish”.⁷⁶ However, it identified difficulties in implementing the landing obligation in UK waters:

In mixed fisheries common in UK waters, where several species can be caught during fishing activities [...] there is the problem of ‘choke’ where the exhaustion of one quota prevents fishing continuing for other species.⁷⁷

The white paper proposed developing new ways to help fishers manage fish caught out of quota.⁷⁸ It said one option could be for such fish to be landed and subject to a charge related to the market value of the fish. The landings could be covered by a quota retained in reserve for this purpose. The white paper suggested that this flexibility would be “particularly important” in mixed fisheries where it could be difficult to avoid by-catch and where “traditional enforcement mechanisms such as quota penalties and prosecution might not always be appropriate”.

⁷⁴ European Commission, ‘[Discarding and the Landing Obligation](#)’, accessed 3 February 2020.

⁷⁵ *ibid.*

⁷⁶ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), July 2018, Cm 9660, p 30.

⁷⁷ *ibid.*

⁷⁸ *ibid.*, p 31.

The House of Lords European Union Energy and Environment Sub-Committee conducted an inquiry into the landing obligation after its first six months in full operation. It found the “new rules seem to have had little impact”.⁷⁹ The committee expressed “surprise” that choke points did not seem to have been reached as had been feared.⁸⁰ It also noted that the landing obligation had not had the expected result of more undersized fish being brought ashore.⁸¹ It said it was unclear whether this was due to improvements in fishing gear, or because fishers were ignoring the discard ban.

Clause 28 would give the secretary of state the power to make regulations establishing a discard prevention charging scheme for England. Under such a scheme, holders of English sea fishing licences or producer organisations with at least one member that held an English sea fishing licence would be defined as “chargeable persons”. They could be required under the scheme to pay a charge for an “unauthorised catch of sea fish”, ie a catch that exceeded the amount they were licensed by the MMO to catch. Charges could only be imposed on those registered under the scheme, and registration would be voluntary. The definitions of “chargeable persons” and “unauthorised catch of sea fish” are set out in clause 29.

Clause 30 would provide that if an unauthorised catch was subject to a charge under the scheme, and if any other conditions under the scheme were met, the scheme could allow the unauthorised catch to be ignored when determining whether a sea fishing licence had been breached.

Clause 31 would enable the secretary of state to make regulations about charge collectors to administer the charging scheme. Clause 32 sets out other elements that could be provided for under the charging scheme, such as payment liability, and the use of payments made under the scheme to cover the cost of collection by the charge collectors or to be used to fund conservation.

The Government has stated that the purpose of the charging scheme is to “charge for unauthorised catches at a level which deters overfishing and thereby incentivises fishers to use more sustainable fishing practices and avoid unwanted catches”.⁸² In its report, the House of Lords European Union Committee was critical of the idea of incentivising fishers to comply with the legally binding landing obligation.⁸³

⁷⁹ House of Lords European Union Committee, [The EU Fisheries Landing Obligation: Six Months On](#), 16 July 2019, HL Paper 395 of session 2017–19, p 4.

⁸⁰ *ibid*, p 5.

⁸¹ *ibid*, p 8.

⁸² [Explanatory Notes](#), pp 25–6.

⁸³ House of Lords European Union Committee, [The EU Fisheries Landing Obligation: Six Months On](#), 16 July 2019, HL Paper 395 of session 2017–19, p 13.

4.7 Grants and Charges (Clauses 33 to 35 and Schedules 6 and 7)

The European Maritime and Fisheries Fund (EMFF) is one of the EU's five European structural and investment funds.⁸⁴ It seeks to help the fishing industry in transitioning to sustainable fishing; support coastal communities in diversifying their economies; and support sustainable aquaculture developments. The EMFF runs from 2014 to 2020. The fund is used to co-finance projects with national funding. The UK's allocation for the 2014–20 period was €310 million, €243 million of which was from EU funds.⁸⁵ In December 2018, Theresa May's Government announced an additional £37.2 million of funding, in addition to the EU funding, which it said would “boost the UK fishing industry during the implementation period”.⁸⁶

Boris Johnson's Government confirmed that four new funding schemes comparable to the EMFF would be created, one for each nation within the UK, to support the fishing industry from 2021 onwards.⁸⁷ Each devolved administration would lead on its own scheme.

Clause 33 would enable the secretary of state to make regulations establishing a financial assistance scheme covering England, English fishing boats and areas within the UK marine area not covered by the Scottish, Welsh or Northern Irish zones. The regulations would be subject to the affirmative procedure.

Subsection 33(1) sets out the purposes for which financial assistance could be given. When the previous bill was introduced in the 2017–19 session, these included conservation of the marine and aquatic environment, the promotion of commercial fish or aquaculture activities and the promotion or development of recreational fishing. This list has now been expanded to include other areas such as health and safety, training, the economic development and social improvement of fishing communities, and improving arrangements for the use of catch quotas and effort quotas. The Government has stated that clause 33 would allow grant and loan schemes to be established for England that “replicate the breadth of what can currently be funded under the EMFF”.⁸⁸

⁸⁴ European Commission, [‘European Maritime and Fisheries Fund \(EMFF\)’](#), accessed 3 February 2020.

⁸⁵ European Commission, [‘EU Adopts €310m Investment Package for the UK Fisheries and Aquaculture Sectors’](#), 3 December 2015.

⁸⁶ Department for Environment, Food and Rural Affairs, [‘Bolstered Fisheries Bill and £37m Boost for UK Fishing Industry’](#), 10 December 2018.

⁸⁷ Department for Environment, Food and Rural Affairs, [‘£15.4 Million Boost for English Fishing Industry’](#), 24 October 2019.

⁸⁸ [Explanatory Notes](#), p 27.

Clause 33 also introduces schedule 6 which contains corresponding powers for the Scottish ministers, the Welsh ministers and the Northern Ireland department to set up financial assistance schemes for their own areas. The previous version of the bill only covered the Welsh ministers and the Northern Ireland department. The inclusion of Scotland in this bill is new.

Clause 34 would allow the secretary of state to make regulations allowing the MMO to impose charges for carrying out its functions relating to:

- fishing quotas;
- ensuring that commercial fishing activities are carried out lawfully;
- registration of buyers and sellers of first-sale fish; and
- catch certificates for importing and exporting fish.

This clause also introduces schedule 7, which contains corresponding powers for the Scottish ministers, the Welsh ministers and the Northern Ireland department to impose charges in respect of the same functions in their areas. The previous version of the bill only covered Northern Ireland. The inclusion of Scotland and Wales in this bill is new.

The fisheries white paper stated that allowing costs to be recovered for fisheries management functions would make the service as efficient as possible and encourage behaviour change in the fishing industry.⁸⁹

Clause 35 amends section 3(5) of the Fisheries Act 1981 to require the Sea Fish Industry Authority (Seafish) to recover the full cost of any services it provides to persons in other countries. The Government has described this as a technical correction which arises as a consequence of Brexit. Currently, Seafish is required to recover the full costs of services it provides to those in other countries, but cannot charge those in EU member states more than those in the UK.

4.8 Powers to Make Further Provision (Clauses 36 to 42 and Schedule 8)

Clause 36 would give the secretary of state power to make regulations:

- for the purpose of implementing the UK's international obligations relating to fisheries, fishing or aquaculture;
- for a conservation purpose; or
- for a fish industry purpose (promoting or developing commercial fish or aquaculture; improving the traceability of fisheries

⁸⁹ Department for Environment, Food and Rural Affairs, [Sustainable Fisheries for Future Generations](#), July 2018, Cm 9660, p 36.

products; disseminating information about fisheries products).

Regulations could only be made if they related to one of the matters listed in subsection 36(4). However, this list would not apply to any regulations made to give effect to a requirement or recommendation arising from a regional fisheries management organisation.

The Government has stated that this clause would give the secretary of state power to make provision on technical matters currently regulated by the EU under the CFP.⁹⁰ It has argued the powers are “vital” for the UK to be able to operate as an independent coastal state and:

- 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.⁹¹

Clause 37 sets of definitions of terms used in clause 36.

Clause 38 would give the secretary of state the power to make regulations about aquatic animal diseases.

Clause 39 sets out some restrictions on the way the regulation-making powers in clauses 36 and 38 could be used. They could:

- confer a function;
- impose fees; or
- create a criminal offence, but not one punishable with imprisonment.

They could not:

- Make provision that would be within the legislative competence of the Scottish Parliament, the National Assembly for Wales or

⁹⁰ [Explanatory Notes](#), p 28.

⁹¹ Department for Environment, Food and Rural Affairs, [Fisheries Bill: Memorandum from the Department for Environment Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee](#), 25 October 2018, p 29. This memorandum relates to the previous version of bill in the 2017–19 session, but the substance of this clause is unchanged.

the Northern Ireland Assembly (unless that provision is merely incidental to, or consequential on provision which would be outside their legislative competence). However, clause 40 would allow such provision to be made with the consent of the Scottish ministers, Welsh ministers or Northern Ireland department respectively.

- Modify the functions of the secretary of state, the Scottish ministers, the Welsh ministers or the Northern Ireland department relating to the licensing of fishing boats as set out in clauses 14 to 18 and schedule 3 of the bill. However, clause 40 would allow such provision to be made with the consent of the Scottish ministers, Welsh ministers and Northern Ireland department.

The powers in clauses 36 and 38 could be used as Henry VIII powers to amend, repeal or revoke any enactment, with the exception of clauses 36 to 42, schedule 8 and the relevant definitions in clause 48 of the bill.⁹²

Clause 41 would require the secretary of state to consult with the Scottish ministers, the Welsh ministers, the Northern Ireland department and anyone else he or she considered appropriate before making regulations under clauses 36 or 38. The regulations would be subject to the affirmative procedure if they amended or repealed primary legislation; amended article 17 of the Common Fisheries Policy regulation; imposed fees; created a criminal offence or increased the penalty for a criminal offence; or related to the regulation of a UK producer organisation or inter-branch organisation. Otherwise the regulations would be subject to the negative procedure.

Clause 42 introduces schedule 8, which would confer corresponding regulation-making powers on the Scottish ministers, the Welsh ministers and the Northern Ireland department. The previous version of the bill would have given Scottish ministers the power to make regulations relating to aquatic diseases but would not have given them a power corresponding to clause 36.

4.9 Miscellaneous and Final Provisions (Clauses 43 to 51 and Schedules 9 and 10)

Clause 43 would amend the Government of Wales Act 2006 to extend the legislative competence of the National Assembly for Wales to make primary legislation for the whole of the Welsh zone in relation to fishing, fisheries and fish health. This clause was added to the previous version of the bill at committee stage. George Eustice, Minister of State at the Department for

⁹² Henry VIII powers are powers that enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation.

Environment, Food and Rural Affairs, explained it “addressed an inconsistency in the devolution settlements” and would bring Wales into line with Scotland and Northern Ireland to have both executive and legislative competence over this matter.⁹³ Mr Eustice said the clause had been developed in consultation with the Welsh Government.⁹⁴

Clause 44 introduces schedule 9, which would make amendments to the Marine and Coastal Access Act 2009. This would allow the MMO to carry out certain functions beyond the UK marine area.⁹⁵ It would also extend the powers of the Scottish and Welsh ministers to make byelaws in relation to the exploitation of sea fisheries resources for marine conservation purposes. The Government has stated that the purpose of these provisions is to replace certain EU measures for the protection of the marine environment in offshore zones.⁹⁶ Similar powers already apply in Northern Ireland.⁹⁷

Clause 45 introduces schedule 10. This would make minor and consequential amendments to the Common Fisheries Policy regulation as it is retained in domestic law as part of the body of retained EU law.

Clause 46 would ensure that amendments made by the bill to subordinate legislation would be treated as having been made under the existing power to make subordinate legislation. This would ensure that any such provisions could be further amended by subordinate legislation in future.⁹⁸

Clause 47 sets out some procedural provisions about regulations made under the bill.

Clause 48 defines terms used in the bill.

Clause 49 sets out the bill’s territorial extent. It extends to England and Wales, Scotland and Northern Ireland, although the three parts of schedule 8 each cover one of the three jurisdictions only.

Clause 50 covers the bill’s commencement. Some clauses would come into force on the day the Act was passed. Some clauses would not come into force until the end of the transition (or implementation) period. This includes the provisions on access to UK waters and the licensing of fishing boats.

Clause 51 gives the bill’s short title.

⁹³ [HC Hansard, 17 December 2018, col 350.](#)

⁹⁴ *ibid*, col 351.

⁹⁵ [Explanatory Notes](#), p 31.

⁹⁶ *ibid*.

⁹⁷ House of Commons Library, [The Fisheries Bill 2017–19](#), 11 April 2019, p 43.

⁹⁸ [Explanatory Notes](#), p 32.

5. Reaction

The National Federation of Fishermen’s Organisations (NFFO) welcomed the bill as “an important and necessary step towards managing our fisheries in ways that can bring real advantages to our coastal communities”.⁹⁹ Barrie Deas, chief executive of the NFFO, said the fishing industry was looking for the Government to negotiate a fisheries agreement with the EU that was “annual, balanced and reciprocal”, along the lines of the existing agreement between the EU and Norway. He said such an agreement would respect “the regulatory autonomy of each party in their own exclusive economic zone” and provide “an agile and adaptive framework capable of dealing with the dynamic character of the stocks and of the fishing industry itself”.

The Scottish Fishermen’s Federation (SFF) said that “failure by the Government to gain full control of access to UK waters in the next phase of Brexit would be a colossal betrayal of the fishing industry”.¹⁰⁰ The SFF is seeking an agreement under which the UK “can negotiate with the EU and others on an annual basis in international forums” which, over time, would “allow the UK to obtain a much fairer share of the quota in its own waters than the 40 per cent it is entitled to under the CFP”.

Luke Pollard, the Shadow Environment Secretary, said that the bill would not provide what the Government was promising on fisheries.¹⁰¹ In his view, the future of fishing would be “determined not by this new law but by the EU trade negotiations where fishing access could be sold out for financial services, automotive or aerospace”. He also argued that the Government could do more to protect British fishermen and coastal communities under existing powers:

[...] this government should use the powers it already has to redistribute fishing quota from foreign-owned multinationals to small boats which are the backbone of the British fishing fleet, and also require the fish caught under a UK quota to be landed in a UK port, creating jobs around our coastline.

The environmental group Greenpeace acknowledged that the new bill puts “greater emphasis on sustainable fishing” than the previous version by requiring national fisheries authorities to publish binding management plans that set out how they will restore and maintain fish stocks at sustainable levels.¹⁰² However, it said the bill was “severely weakened by loopholes”,

⁹⁹ National Federation of Fishermen’s Organisations, [‘Incredible Levels of Support Across Parliament’](#), 30 January 2020.

¹⁰⁰ Scottish Fishermen’s Federation, [‘No Brexit Betrayal, Warns SFF’](#), 28 January 2020.

¹⁰¹ Labour Party, [‘Future of Fishing Determined Not by New Law But by EU Trade Negotiations—Luke Pollard’](#), 29 January 2020.

¹⁰² Greenpeace, [‘Ministers Give Themselves ‘Licence to Fail’ as They Dodge Urgent Nature Targets’](#), 31 January 2020.

which would allow the management plans to be amended, replaced or revoked in a wide range of circumstances and allow the national fisheries authorities to “carry on as normal, without delivering their sustainability plans”.

6. Further Information

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