

Fisheries Bill: Greener UK evidence submitted to the EFRA committee

26 November 2018

Executive summary

1. Greener UK welcomes the introduction of the Fisheries Bill, especially the inclusion of fisheries objectives and the powers to further safeguard species and habitats including Marine Protected Areas.

2. However, there are a number of key issues and omissions in the Fisheries Bill, most importantly a duty on all relevant public authorities to achieve the fisheries objectives and a duty to set catch limits at or below Maximum Sustainable Yield (MSY). These shortcomings risk undermining the government's aim of world-leading fisheries management.

3. The Fisheries Bill must be amended to ensure that UK domestic legislation delivers truly sustainable and accountable fisheries management that minimises impacts on the marine environment and supports dependent coastal communities.

Background

4. Greener UK is a group of 14 major environmental organisations, with a combined public membership of over 8 million. We are united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment and we believe that the Fisheries Bill forms a key part of this goal.

5. Greener UK welcomes the introduction of the Fisheries Bill, recognising that it is a piece of framework legislation, providing tools for fisheries management rather than setting out detailed policies. The inclusion of fisheries objectives on the face of the Fisheries Bill is a good start, but their legal impact must be strengthened. The increased powers the Fisheries Bill extends to the Marine and Coastal Access Act 2009, which will allow the UK to take control of managing Marine Protected Areas (MPAs) and our wider seas in the UK's offshore environment are welcome.

6. Although the Fisheries Bill generally provides a framework for operability of fisheries management on leaving the EU, it also repeals crucial sustainability requirements set out in the Common Fisheries Policy (the CFP).

7. A significant omission is the lack of a duty placed on authorities to achieve the sustainability objectives. This risks undermining the government's aim of delivering truly sustainable fisheries management and with it thriving, healthy stocks, and consumer confidence that UK seafood is sustainably produced.

8. In addition, the Fisheries Bill repeals the requirement set out in Article 2(2) of the CFP to set fishing mortality at sustainable levels by 2020. It is critical for the health of our oceans that there is a duty to set fishing mortality at or below MSY to prevent overfishing.

9. The Fisheries Bill also makes no firm commitment that shared stocks will be managed sustainably. Given that the UK shares over 100 stocks with the EU alone, it is critical that clear sustainability criteria apply to the management of shared stocks.

10. We address these and other key issues in detail below.

Key issues on the proposed scope, provisions and powers in the Fisheries Bill

11. Greener UK has identified the following areas where the Fisheries Bill must be improved if the UK is to deliver sustainable fisheries that are truly 'world leading':

12. A duty on all relevant public authorities to achieve the fisheries objectives and a requirement for annual updates on progress against objectives.

12.1. The fisheries objectives must be framed with a clear legal duty on relevant authorities to achieve them. As currently drafted, national authorities must exercise their functions in accordance with the policy statement which sets out how they will achieve the objectives. There are three legal concerns with this approach:

a. There is little guidance or restriction on how strongly the policy statements will deal with the objectives and this leaves a lot of discretion to the policy makers. Consequently, there is no guarantee that the policy statements will contain effective policies that will actually achieve the objectives;

b. Only national authorities must act in accordance with the policy statements (the Secretary of State, MMO, Scottish and Welsh ministers and the Northern Ireland department). Other public authorities that make fisheries decisions (including IFCA, the Environment Agency and Natural Resources Wales) would not be bound by this duty; and

c. The national authority is, in certain circumstances, entitled to act against the policy statement. There is no detail in the Fisheries Bill on what these circumstances would be and there is therefore a significant risk that authorities will disregard the policy statement, and therefore the fisheries objectives.

12.2. The Fisheries Bill must therefore include a specific duty to achieve the fisheries objectives. In addition, the scope of the duties relating to the current

measures is too limited. To be fully effective, the duty to achieve the fishing objectives should apply not only to national authorities but to any relevant public authority having any function relating to fishing activities or fisheries management.

12.3. Lastly, there should be a requirement on each national authority to publish an annual update on progress against objectives to ensure adequate accountability.

13. A commitment to ensure that fishing limits cannot be set above MSY (the scientifically recommended levels that would deliver the objective to restore fish stocks to a healthy biomass).

13.1. There must be a target for fishing limits to be set at sustainable levels by 2020 and an immediate duty to deliver on restoring stocks to healthy biomass levels. The setting of fishing limits is within our direct control and the 2020 target is certainly achievable and already represents the latest date by which exploitation rates must be set at sustainable levels (the date was previously set at 2015 and 2020 represented the ultimate backstop). The target is set out in the CFP and the United Nations Sustainable Development Goal (SDG) 14 to end overfishing by 2020. Its absence therefore represents a regression of environmental standards. This target should apply to both stocks subject to fishing limits and non-quota stocks, for example shellfish, squid and cuttlefish. Where the rate of fishing mortality cannot be determined according to the best available science, there must be a suitable proxy to ensure that fishing mortality will still be set at sustainable limits.

13.2. This is vital to protect against short-term political pressure to set catch limits higher than scientific advice, which would lead to overfishing and damage the health of our oceans.

14. An approach which seeks to ensure shared stocks are managed sustainably.

14.1. The Fisheries Bill does not make any firm commitment on how shared stocks will be managed. This is extremely concerning as setting clear sustainability criteria in relation to negotiations with other countries would help avoid, for example, another 'mackerel wars' scenario, particularly in areas where the British Fisheries Limit Extent is not defined such as between Northern Ireland and the Republic of Ireland.

14.2. The UK will need to negotiate with the EU, Norway, and other states to agree an overall total allowable catch and allocations for each state of many commercially important shared stocks. Unlike most existing negotiations with third countries which involve just a handful of fish stocks, the UK shares over 100 stocks with the EU, which means it is critical that a clear and robust process is developed. In approaching these negotiations, the UK must be required to adhere to scientific advice and take all reasonable steps to avoid any agreement, or lack thereof, that results in overfishing.

15. A clear objective in the Fisheries Bill that fisheries management should be coherent with UK (including the devolved administrations) and international environmental legislation.

15.1. Fisheries management does not take place in isolation and the impacts of fishing activity can have significant implications for the health of the wider marine environment. The Fisheries Bill states that the Secretary of State fisheries statement should include policies for delivering Good Environmental Status as defined in the Marine Strategy Framework Directive. We suggest a duty on relevant public authorities to deliver fisheries management in a way that is coherent with other relevant environmental legislation and that contributes to Good Environmental Status.

16. A mandate to allocate all fishing opportunities - existing and new - on the basis of transparent and objective environmental and social criteria, and to incentivise the most sustainable fishing practices.

16.1. Article 17 of the CFP is retained and amended in the Fisheries Bill by stating that the relevant national authorities (the Secretary of State and the MMO) shall use transparent and objective criteria including those of an environmental, social and economic nature when allocating fishing opportunities.

16.2. However, under the existing regime there is still a significant lack of transparency in how fishing opportunities are distributed. Article 17 does not mandate what the criteria for distribution shall be, or how environmental, social and economic criteria should be defined. As a result, historic catch levels have often ended up being the basis upon which quota has been allocated, giving rise to a vastly unequal situation, where a small number of wealthy families control vast swathes of fishing rights, to the detriment of local, low-impact fishermen. Over a quarter (29%) of the UK's fishing quota is owned or controlled by just five families and half (49%) of English quota is held by companies based overseas. Whereas the majority of UK fishing boats (79%) are small-scale, the small scale fleet holds only 6% of UK quota.

16.3. This issue can be addressed through strengthening the provision of Article 17 and requiring that all fishing opportunities - both in existing areas around UK shores and any potential new areas in waters beyond - are allocated on the basis of transparent and objective environmental and social criteria, thereby recognising the fishery as public property held on trust for the people. This amendment, by giving explicit priority to environmental and social criteria, would be likely to lead to an increase in quota available to local fishing fleets using passive gear and providing local employment.

17. A commitment to full documentation of catches.

17.1. There are no provisions in the Fisheries Bill on ensuring full documentation of catches. If we fail to achieve full documentation of UK fisheries we will not have a true picture of what is being removed from the seas and therefore will not have accurate scientific data to ensure effective management of the shared stocks in UK waters.

18. A commitment to robust monitoring and enforcement mechanisms.

18.1. There are no provisions in the Fisheries Bill to deal with monitoring and enforcement, a fundamental part of effective fisheries management.

18.2. EU legislation, specifically Regulation 1224/2009/EC of 20 November 2009 (the Control Regulation) and Regulation 1005/2008/EC of 29 September 2008 (the IUU Regulation), creates a framework for the enforcement of the rules of the CFP and combating illegal, unreported and unregulated fishing. This EU legislation is directly legally binding in Member States, meaning the UK fisheries authorities must abide by it. Nevertheless, the EU legislation lacks detail in various respects, and, as such, the exact nature of how it is implemented is decided through national legislation, non-legal codes and guidance documents. The enforcement system in the UK does not fulfil many of the criteria set out in the Control Regulation and IUU Regulation and is based on lengthy and expensive criminal proceedings. Very often the prosecutors will decide not to open proceedings because they are not specialised in fisheries offences and do not see cases of illegal fishing as a major problem.

18.3. The Fisheries Bill should therefore strengthen existing mechanisms. Vessel monitoring systems should be carried by all vessels regardless of size transmitting position data at least every 20 minutes and sharing such position data with the relevant fisheries policy authorities. In addition, remote electronic monitoring with CCTV should be required for all large vessels (over ten metres) and for select smaller vessels to ensure accountability, assist with data on removal rates catch and bycatch of all marine life, and improve enforcement. The Fisheries Bill should also ensure that an appropriate sanctioning system can be put in place to ensure that the provisions of the Fisheries Bill are effectively enforced.

19. Access of foreign vessels to UK waters should be contingent on compliance with the same environmental standards applicable to UK boats.

19.1. There is no provision in the Fisheries Bill that foreign boats must comply with the same standards as UK boats, which is essential to ensure a level playing field and a high level of environmental protection.

19.2. The provisions on access are set out in clauses 7 and 8 of the Fisheries Bill and provide that foreign boats must only fish in UK waters in accordance with the terms of their licence. The licence can limit the area in which fishing is authorised, the period, the types of fish that can be caught and the method of fishing. However,

there must be an explicit requirement in the Fisheries Bill that access of foreign vessels to UK waters should be contingent on compliance with the same environmental standards applicable to UK boats to ensure that both the environment and the UK fishing industry are not undercut by foreign vessels.

20. A formal consultation procedure to scrutinise secondary legislation.

20.1. There are a number of provisions in the Fisheries Bill that give powers to the Secretary of State and ministers of the devolved administrations to create legislation, including on discards and provisions for 'conservation purposes' and 'fish industry purposes'. The use of these powers could result in major changes to fisheries management measures and therefore any powers provided by the Fisheries Bill to create secondary legislation should be subject to appropriate wider scrutiny, including by stakeholders.

20.2. The powers set out in clause 31 are particularly problematic. While clause 36 sets out constraints on these powers, these are simply procedural: that the Secretary of State must consult the national authorities 'and any other persons likely to be affected by the regulations'. The regulations would be subject to a negative resolution procedure unless they, inter alia, amend or repeal primary legislation or amend article 17 of the CFP (which sets out that criteria for the allocation of fishing opportunities must include the impact of fishing on the environment and include incentives to use selective fishing gear or using fishing techniques with a reduced environmental impact), where they will be subject to the affirmative procedure.

20.3. Given the wide-ranging powers afforded to ministers, it is imperative that a formal consultation procedure is established with wide stakeholder engagement.

Conclusion

21. Although the Fisheries Bill provides a helpful starting point as a framework for fisheries legislation, it is Greener UK's view that, as currently drafted, it will not deliver sustainable fisheries. We have a once in a generation opportunity to create bespoke domestic legislation that delivers for fish stocks, the wider marine environment and for coastal communities which needs to be seized. The key deficiencies outlined above must be addressed if the UK is to achieve truly world-leading sustainable fisheries and marine management.

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Greener UK is a coalition of 14 major environmental organisations united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment.

Greener UK is working in partnership with:



Greener UK is also working in partnership with Wildlife and Countryside Link:



GREENER UK

