

FISHERIES BILL

**Memorandum from the Department for Environment, Food and Rural Affairs to
the Delegated Powers and Regulatory Reform Committee**

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A INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Fisheries Bill (the Bill). It has been prepared by the Department for Environment, Food and Rural Affairs (the Department) and identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why a power has been taken and explains the nature of, and the reason for, the procedure selected.
2. The Bill contains powers to make delegated legislation, some of which allow amendments to be made to primary legislation or retained EU law. Clause 31 contains a broad power to make provision in relation to specific purposes and specific matters. It could have been divided into a number of separate powers but is one power because of overlaps between subject matter and to provide clarity on the government's intentions. The Bill confers some delegated powers on Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs of Northern Ireland (DAERA). These powers are set out in schedules to the Bill but are referred to in discussions of the equivalent Secretary of State/Marine Management Organisation's power. The Bill also contains powers to extend provisions of the Bill to the Crown Dependencies by Order in Council and to commence the Bill's provisions.
3. This memorandum refers to some powers in the Bill which do not confer powers to make delegated legislation, but which involve Parliamentary scrutiny or relate to charging powers or administrative functions which will be of interest to the Committee. These are set out in **Annex C**.
4. The Department has carefully considered the powers in the Bill and the Department's view is that they are necessary and justified. In the Department's view, we have struck the right balance between the need for Parliamentary scrutiny and the need to be able to react quickly to make what are often technical amendments by secondary legislation.

B PURPOSE AND EFFECT OF THE BILL

5. When the UK leaves the European Union (EU), it will manage its own waters as an independent coastal state. The UK Government and the Devolved Administrations will be able to move away from the EU's Common Fisheries Policy (CFP) and the Bill supports this process. It is only part of the picture, however, and will complement statutory instruments made under the EU (Withdrawal) Act 2018 making CFP

measures operable, existing UK legislation, legislation introduced by the devolved legislatures and administrative arrangements between the UK's Fisheries Administrations. Fisheries is a devolved matter and the Bill respects this - many powers returning from the EU will transfer to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly or to the Devolved Administrations, in line with the devolution settlements.

Fisheries White Paper

6. The government set out its vision for sustainable fisheries after the UK's withdrawal from the EU in its White Paper *Sustainable Fisheries for Future Generations*. As part of that consultation, the Department proposed that a number of delegated powers should form part of the Bill. The Bill is the outcome of that consultation and reflects feedback that the Department received. There is consensus between the UK Fisheries Administrations, the fishing industry and environmental Non-Governmental Organisations that the UK needs a dynamic system of fisheries management that has the capability to respond quickly to changes in the marine environment, changes in scientific advice and to international commitments.

Summary of regulation making powers in the Bill

7. The Bill provides a number of powers which will enable UK Ministers, and the Devolved Administrations in some cases, to introduce secondary legislation. These will help support the UK's move away from the CFP and provide for effective, and dynamic, fisheries management. Regulations under the Bill could:
 - amend UK law (including retained EU law) in relation to a finite list of matters and for specified purposes (where provision is necessary to implement the UK's international obligations, for conservation purposes or for certain fishing industry purposes (clause 31));
 - amend UK law (including retained EU law) to give effect to the measures of regional fisheries management organisations (relating to international arrangements for conserving and managing fish stocks) (clause 31(4));
 - make provision for the prevention and control of aquatic animal diseases (clause 33);

- set up a scheme for the sale of rights to fish for annual “English” fishing quota for a calendar year (clause 22);
- set up a discard prevention charging scheme so that fishermen could choose to pay a charge for landing unauthorised catch rather than be prosecuted for doing so (clause 23);
- specify when fishing boat licences aren’t needed and make provision about fishing licences (clauses 9 and 11 and Schedule 2, paragraph 7);
- allow the Marine Management Organisation (the MMO) to charge for some of its fisheries management functions (clause 29); and
- set up grant schemes (clause 28).

Powers for Devolved Administration Ministers

8. Fisheries is a devolved matter and the Bill contains a number of powers which will be exercisable by the Devolved Administrations as well as by the Secretary of State. To support a consistent approach to fisheries management across the UK, it also contains some powers which are exercisable by the Secretary of State in relation to devolved matters – but with the consent of the Devolved Administrations. The Bill also extends the powers of the MMO to make byelaws to control the impact of fishing on the marine environment and confers equivalent powers on Scottish Ministers and Welsh Ministers.

The purpose of delegated powers in this Bill

9. The Bill will create a dynamic fisheries regime. The Department recognises that, in order to do this, the Bill contains a number of broad delegated powers but has considered the scope of these powers very carefully. It has sought to balance the need for powers broad enough to allow us to react quickly to changes in the international fisheries management regime and to scientific advice against the need for effective Parliamentary oversight. It has considered carefully the nature of the powers being sought. Many fisheries measures are highly technical and in the Department’s view they are best dealt with in future secondary legislation. Others will be of more interest to Parliament and the Bill recognises this. By setting out the power of the Secretary of State to determine the UK’s fishing opportunities, it constrains what is currently a prerogative power. The Bill also provides for scrutiny by Parliament, the Scottish

Parliament, the National Assembly for Wales and the Northern Ireland Assembly, of a Joint Fisheries Statement which the UK Fisheries Administrations must adopt, setting out how their policies will achieve or contribute to the achievement of key UK fisheries objectives. It is UK Government policy to consult wherever appropriate but the Bill contains a number of provisions requiring consultation of the Devolved Administrations and of others likely to be affected by regulations made under the Bill.

10. The delegated powers in the Bill are designed to:

- allow us to implement the new fisheries agreements and arrangements we will enter into with other countries as an independent coastal state. Under the United Nations Convention on the Law of the Sea (UNCLOS), the UK is obliged to cooperate with other coastal states to preserve fish stocks. In the Department's view, the UK must be in a position to implement those agreements quickly and effectively;
- allow government policy to evolve in response to changing environmental priorities and changing social and economic circumstances;
- respond to scientific and other expert advice; and,
- move away from the constraints of the CFP.

11. Overall, the Department's view is that the Bill represents a significant increase in the scrutiny that Parliament will have over fisheries policy. For the last 45 years, Parliament has had little choice but to accept EU-derived rules.

12. The Department has considered whether any of the delegated powers in the Bill should be subject to a sunset provision. The powers are different from the powers in section 8 of the EU (Withdrawal) Act 2018 (which can be used for two years to make retained EU law operate effectively in UK law). The powers in the Bill will need to be exercisable indefinitely so that we can continue to update retained EU law – within the parameters set out in the Bill. They need to be exercisable indefinitely so that we can introduce and make amendments to the new schemes for funding and charging contemplated in the Bill. But the details of such schemes are set out in detail in the Bill and we have included what are, in the Department's view, appropriate safeguards before such powers can be exercised.

13. The Department has set out, in as much detail as possible, how powers in the Bill would be exercisable, in particular a long but finite list of matters in clause 31

C. SUMMARY OF DELEGATED POWERS

| POWER | JUSTIFICATION | SCRUTINY |
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| <p>Clauses 2 to 6 and Schedule 1: duties relating to a Joint Fisheries Statement and a Secretary of State Fisheries Statement</p> | <p>This is not a legislative power but it may be of interest to the Committee. It is described in Annex C.</p> <p>The Fisheries Administrations are required to adopt a Joint Fisheries Statement stating how their policies will achieve or contribute to the achievement of key UK fisheries objectives listed in clause 1. The Statement must be laid in draft before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. The Secretary of State must publish an additional Statement of his or her policies for achieving additional objectives. The Fisheries Administrations/SoS must pursue the policies set out in the Statements unless relevant considerations indicate otherwise.</p> <p>These provisions, and the provisions in clause 1 setting out the UK's fisheries objectives, are key to demonstrating the UK Fisheries Administrations' commitment to sustainable fishing and will support a coherent approach to fisheries management across the UK.</p> | |
| <p>Clause 9(3): power for the Secretary of State to add, remove or vary exceptions to the prohibition on unlicensed fishing</p> | <p>The Fisheries Administrations may need to extend the prohibition on unlicensed fishing to those who are currently exempt. Current exceptions are set out in secondary legislation made under s4 Sea Fish (Conservation) Act 1967 and subject to negative procedure.</p> | <p>Affirmative procedure</p> <p>The Secretary of State must obtain the consent of the Devolved Administrations</p> |

| POWER | JUSTIFICATION | SCRUTINY |
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| <p>Clauses 10, 12 and Schedule 2: powers to grant licences and attach conditions</p> | <p>These are not legislative powers but may be of interest to the Committee. They are described in Annex C.</p> <p>The Fisheries Administrations may grant licences for limited purposes or subject to conditions. These clauses largely replace existing licensing powers in s4 Sea Fish (Conservation) Act and we propose that the flexibility afforded by a licensing regime should continue.</p> | |
| <p>Clause 11(2): power for the Secretary of State to create or add, remove or vary exceptions to the prohibition on unlicensed fishing by foreign boats</p> | <p>The Fisheries Administrations may need to introduce exceptions to the prohibition on unlicensed fishing by foreign vessels. This could be necessary to implement any agreement with the EU or other countries on the conditions for access to UK waters.</p> | <p>Affirmative procedure</p> <p>The Secretary of State must obtain the consent of the Devolved Administrations</p> |
| <p>Clauses 18 and 19: power for the Secretary of State to determine UK fishing opportunities</p> | <p>These are not legislative powers but may be of interest to the Committee. They are described in Annex C.</p> <p>The Bill sets out in legislation what would otherwise be a prerogative power and makes the process for determining UK quota more transparent.</p> <p>The proposed power is exercisable after consultation with the Devolved Administrations and the MMO. The Secretary of State must notify Parliament of any determination.</p> | |

| POWER | JUSTIFICATION | SCRUTINY |
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| <p>Clause 18(8): power for the Secretary of State, by regulations, to make provision in relation to determining the number of days a fishing boat is to be regarded as spending at sea</p> | <p>This power allows the Secretary of State to make provision about how to determine how days spent fishing at sea are to be calculated. This relates to means of calculation, a technical matter.</p> | <p>Negative procedure.</p> |
| <p>Clause 22(1): power for the Secretary of State to make provision for the sale to the English industry of “English” quota for a calendar year</p> | <p>The Department proposes that the Secretary of State should have a power to sell some of the additional annual fishing quota which may be available to the UK when it controls access to its waters after leaving the EU. The power relates to the quota which could be allocated to the English industry. Details of what any scheme might include are set out in the Bill. Rights would be to use quota for a calendar year, there would be eligibility criteria and the aim of the scheme would be for quota or sale proceeds to support industry (including through the funding of science). The UK will negotiate with the EU and other countries annually so we need the flexibility to introduce schemes through secondary legislation.</p> | <p>Affirmative procedure.</p> |
| <p>Clause 23(1): power to establish a discard</p> | <p>The Bill proposes a power for the Secretary of State to introduce a mechanism to help prevent the wasteful discarding of fish while addressing the problem of “choke species” and encouraging the uptake</p> | <p>Affirmative procedure.</p> |

| POWER | JUSTIFICATION | SCRUTINY |
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| <p>prevention charging scheme</p> | <p>of more sustainable fishing practices. In mixed fisheries, it can be difficult for fishermen to target specific stocks and to make sure they keep within their quota limits for all species. By charging rather than prosecuting them for landing unauthorised catch, there would be more incentive to land rather than discard fish. We need the flexibility to make and amend schemes through regulations as the stocks to which any scheme might apply and the level of the charge for landing will need to be changed regularly for the scheme to work effectively.</p> | |
| <p>Clause 38 and Schedule 7: power of the MMO to make byelaws relating to marine conservation and power of the Welsh Ministers and the Scottish Ministers to make similar provision by order</p> | <p>The MMO already has powers to make byelaws to protect Marine Conservation Zones in the English inshore area. The Devolved Administrations already have similar powers in their inshore area. The Bill extends the powers of the MMO, Scottish Ministers and Welsh Ministers so that they are exercisable in the offshore area and in relation to fishing outside Marine Conservation Zones. This is necessary to replace the current EU regime for the protection of sites in the offshore area. We also need to make sure that byelaws and emergency byelaws (and order-making powers and powers to make interim or urgent orders in the case of Scottish Ministers and Welsh Ministers) can be made – and quickly made – where this is necessary to minimise the impact of fishing on the marine environment. DAERA can manage sea fishing for the purpose of nature conservation under</p> | <p>No parliamentary procedure in relation to MMO byelaws and orders of Welsh Ministers.</p> <p>MMO byelaws are not subject to any parliamentary procedure but must (except in the case of emergency byelaws) be confirmed by the Secretary of State.</p> <p>Orders and interim orders made by Welsh Ministers are not subject to review by the National Assembly for Wales.</p> |

| POWER | JUSTIFICATION | SCRUTINY |
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| | <p>the Fisheries Act (Northern Ireland) 1966 so provisions do not apply to them.</p> | <p>We are discussing with the Scottish Government if orders by Scottish Ministers should be laid before the Scottish Parliament: orders under s85 Marine (Scotland) Act 2010 are laid before the Scottish Parliament.</p> |
| <p>Clause 29(1): power for Secretary of State to make regulations allowing the MMO to impose charges</p> <p>Schedule 5: equivalent power for the Northern Ireland department</p> | <p>The power is needed to enable the MMO to recover the costs of exercising certain key fisheries management functions. These are listed in the Bill, which also contains detailed provision about what may be included in regulations. It is appropriate for the MMO to recover its costs from the fishing industry rather from general tax payers.</p> <p>Similar powers for DAERA are included in Schedule 5.</p> | <p>Negative procedure.</p> |
| <p>Clause 28(2): power for the Secretary of State to provide financial assistance to the fishing industry</p> | <p>This provision would allow for the replacement of the existing EU funding regime (the European Maritime and Fisheries Fund) (EMFF). The provision revokes and replaces existing grant making powers. The new power would allow funding to be given for fisheries and for broader marine conservation purposes. The Department wants to be able to</p> | <p>Affirmative procedure.</p> |

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| Schedule 4: equivalent powers for the Welsh Ministers and DAERA | introduce and amend schemes through regulations so that we can respond to the needs of industry. | |
| Clause 30: power of the Sea Fish Industry Authority to charge for its services (revocation of exception relating to Member States) | This is not a legislative power. The Fisheries Act 1981 allows the Sea Fish Industry Authority to charge for its services. If it provides services in countries other than the UK, it must recover the full cost of those services. The amendment removes the exception for Member States and is a necessary change for when we leave the EU. | |
| Clause 31 and Schedule 6: power of the Secretary of State, Welsh Ministers and DAERA to amend UK law (including retained EU law) for listed fisheries purposes and in relation to listed fisheries matters | <p>This is a regulation making power to allow for the effective management of fisheries. In the Department's view this is necessary so that we can implement international agreements as a coastal state, react quickly to scientific advice on fisheries management and make changes to CFP technical fisheries measures which will be incorporated into retained EU law. The Department has sought to narrow the scope of the power as much as possible:</p> <p>(1) It must be exercised for a listed purpose and (except in relation to the implementation of regional fisheries management agreements) in relation to a listed matter. (In the case of regional fisheries management agreements, we must have implementing powers in place otherwise we will not be able to sign up to these agreements. We will need to sign up</p> | <p>Affirmative procedure if provision is made:</p> <ul style="list-style-type: none"> • amending primary legislation; • amending Article 17 of the CFP Regulation (criteria for the allocation of fishing opportunities); • imposing fees; • creating a criminal offence or increasing the penalty for or widening the scope of a criminal offence; |

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| | <p>to these when the UK ceases to be a member through membership of the EU and joins instead as an independent coastal state.)</p> <p>(2) The power cannot be used to create criminal offences punishable with imprisonment.</p> <p>(3) The power is subject to affirmative resolution in appropriate cases – see next column.</p> <p>The power is exercisable by the SoS in relation to devolved matters, with Devolved Administration consent, so will help support a consistent approach to fisheries management across the UK where the Fisheries Administrations agree this is effective</p> | <ul style="list-style-type: none"> • conferring functions on, modifying functions of or relating to the management of producer organisations or inter-branch organisations. <p>In other cases, negative procedure.</p> |
| <p>Clause 33 and Schedule 6: power for the Secretary of State, Scottish Ministers, Welsh Ministers and DAERA to make provision for the purpose of monitoring, controlling or preventing diseases of</p> | <p>This is a broad regulation making power but in the Department’s view it is needed for the UK is to be able to act quickly to prevent and control aquatic animal diseases.</p> <p>This power is subject to the same limitations as apply in relation to clause 31 (see above).</p> | <p>Regulations using this power are subject to the same procedures as apply to regulations made under clause 31 (see above).</p> |

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| fish or other aquatic animals. | The power would allow the SoS to make provision in relation to devolved matters, with Devolved Administration consent. This would help achieve a consistent approach to disease control across the UK. | |
| Schedule 2, paragraph 7(1): power for Secretary of State, Scottish Ministers, Welsh Ministers and DAERA to make regulations about the licensing of fishing boats. | This provision restates a regulation-making power in s4 Sea Fish (Conservation) Act 1967. The Bill revokes and replaces s4 with clearer licensing provisions. In the Department's view this existing regulation-making power is necessary so that the UK's licensing authorities may make provision about the operation of their licensing regimes, for example with regard to the manner in which they issue licences. | Affirmative procedure if, in regulations setting out the principles for applying conditions relating to the days fishermen can spend fishing, provision is made for a reduction in this amount of time. In other cases, negative procedure. |
| Schedule 2, para 7(3): power for Secretary of State, Scottish Ministers, Welsh Ministers and DAERA to make provision authorising the making of charges in relation to a sea fishing licence | This reproduces a provision in s4 Sea Fish (Conservation) Act 1967. The power is exercisable by the SoS in relation to devolved matters, with Devolved Administration consent, so will help support a consistent approach to fisheries management across the UK. | Negative procedure |
| Schedule 2, para 7(5): duty on Secretary of State, Scottish Ministers, Welsh Ministers and DAERA to | This reproduces a provision in s4 Sea Fish (Conservation) Act 1967 and so in the Department's view this power should be preserved. | Affirmative procedure |

| POWER | JUSTIFICATION | SCRUTINY |
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| make provision as to the principles applying in relation to licence conditions relating to time spent at sea | | |
| Schedule 3: consequential amendments | These are not new powers but consequential amendments to existing powers, including some regulation-making powers. | |
| Clause 39: power to make consequential, supplementary, incidental, transitional or saving provision | This is a standard power, in other regulations under the Bill, to make consequential, supplementary, incidental, transitional or saving provision. It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required, particularly given that we do not yet know the outcome of EU exit negotiations. The Department's view is that the power is needed to avoid any legal uncertainty or legal lacunae after the Bill comes into force. | Determined by the procedure applying to the relevant regulations |
| Clause 41(5): power, by Order in Council, to extend provisions to the Crown Dependencies | The Crown Dependencies are not part of the UK and we would seek to extend any relevant provisions in the Bill to them by Order in Council, after seeking their consent. | |
| Clause 42: power to make commencement provisions | This is a standard power to bring provisions of the Bill into force | No procedure. |

D EXAMPLES IN THIS MEMORANDUM

This memorandum includes examples of how the Department intends to use the delegated powers in the Bill. One of the reasons for taking delegated powers is that this Bill will be before Parliament before the terms of the UK's withdrawal from the EU are known and before the UK signs up to new international fisheries agreements. There are existing models for fisheries agreements; the EU negotiates annually with Norway and other coastal states on total allowable catches (TACs) and the EU adopts measures on behalf of Member States through its membership of Regional Fisheries Management Agreements (set up under UNCLOS). The Department has used these models in giving examples of how fisheries management might develop in the future. The Fisheries Administrations are developing future fisheries policies with the fisheries sector and other stakeholders.

E ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 9: power for the Secretary of State to add, remove or vary exceptions to the prohibition on unlicensed fishing

Power conferred on: Secretary of State (with the consent of the Devolved Administrations)

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Affirmative

Context and purpose

14. The Sea Fish (Conservation) Act 1967 provides for a fishing boat licensing regime. Under s4 of that Act, the Fisheries Administrations may, by order, require UK fishing boats and foreign fishing boats to be licensed. They may also specify the circumstances in which licences are not required. Orders are currently in place requiring UK boats to be licensed and setting out a number of exceptions to the licensing requirement. These are fishing for salmon and migratory trout, common eels, by unpowered boats 10 metres or less in length, by recreational fishing boats and in waters around the Isle of Man and the Channel Islands (the Crown Dependencies have their own licensing regimes). The 1967 Act has been amended many times. Devolution legislation has amended s4 and has made provision in relation to functions under s4. The scope of these amendments is often unclear (particularly in relation to the scope of each Fisheries Administration's concurrent powers to license its own vessels in another

Fisheries Administration's waters and to license another Fisheries Administration's vessels in its waters).

15. Clause 17 and Schedule 3, Part 2 of the Bill revoke s4 Sea Fish (Conservation) Act 1967 and clause 9 sets up a new licensing regime. As well as clarifying the licensing regime, clause 9 simplifies the licensing process: the prohibition on unlicensed fishing is included in the Bill, which also sets out the exceptions to the licensing requirement.

Justification for the power

16. The Department's view is that we should be able to amend these exceptions in the future. The power to make such exceptions is currently an order-making power and the Department's view is that this should continue to be the case to allow a quick response to changes in the marine environment. Any amendments would only relate to the circumstances in which a fishing boat did not require a licence. The Department's view is that it must be able, for example, to remove an exemption to improve fisheries management or respond to changes in scientific advice.
17. Overall, in making changes to s4 of 1967 Act, the Department proposes to narrow the breadth of the existing delegated power and give Parliament real scrutiny over the exceptions listed on the face of the Bill and the terms on which fishing should be licensed.

Justification for the procedure

18. The current power in s4 of the 1967 Act is subject to negative resolution procedure. As the new power would be to amend exceptions set out in the Bill, we have suggested regulations should be subject to affirmative procedure. This will give Parliament greater opportunity to scrutinise what would be amendments to primary legislation and oversight over any proposals to narrow or extend the scope of the licensing requirement.
19. As the current order-making power is exercisable by each Fisheries Administration, the Department's view is that the Secretary of State regulations amending the list of exceptions should be subject to the consent of the other Fisheries Administrations.

Clause 11: power for the Secretary of State to create, add, remove or vary exceptions to the prohibition on unlicensed fishing by foreign fishing boats

Power conferred on: Secretary of State (with the consent of the Devolved Administrations)

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Affirmative

Context and purpose

20. Clause 11 of the Bill requires any foreign fishing boats authorised to fish in British Fishery Limits to have a UK licence as well as a home state licence. Under the CFP, fishing boats are licensed by their home state. When we leave the EU, we will establish a level playing field, with foreign vessels subject to the same rules and licence controls as UK vessels.
21. The prohibition on foreign fishing boats fishing in British Fishery Limits without a UK licence would not, until this power is exercised, be subject to any exceptions.

Justification for the power

22. The Department's view is that the same flexibility to introduce exceptions to this prohibition is needed as that for UK fishing boats. The prohibition in clause 11 on foreign fishing boats fishing in British Fishery Limits without a UK licence would not be subject to any exceptions, unless this power is exercised. The power to make such exceptions in relation to UK boats is currently exercisable by statutory instrument and it is appropriate for this to remain the case in relation to foreign as well as UK boats. Any amendments would only relate to the circumstances in which a fishing boat did not require a licence.
23. In the future, the Department needs to be ready to make exceptions to the requirement that foreign fishing boats are licensed. This may be to implement an international agreement (for example that research vessels do not require a licence). It is not the government's intention to use this exception-making power to remove the general requirement that foreign fishing vessels are licensed.

Justification for the procedure

24. The current power in s4 of the 1967 Act is subject to negative resolution procedure. Although the exceptions to the prohibition are not set out in the Bill, we have suggested regulations should be subject to affirmative procedure, to match the procedure applying in relation to exceptions for British boats. This will give Parliament greater opportunity to scrutinise what would be amendments to primary legislation and to oversee any proposals to narrow or extend the scope of the licensing requirement for foreign fishing boats.
25. As with the equivalent provision for UK boats, the Department's view is that regulations made by the Secretary of State amending the list of exceptions should be subject to the consent of the other Fisheries Administrations: the current order-making power is exercisable by each Fisheries Administration.

Clause 18(6): power for the Secretary, by regulations, to make provision in relation to determining the number of days a fishing boat is to be regarded as spending at sea

Power conferred on: Secretary of State

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Negative

Context and purpose

26. Restricting access to quota and restricting the number of days boats can spend fishing are key to regulating fisheries. TACs, quota and "effort days" or "days at sea" are used to divide fishing opportunities between coastal states. Currently, the EU determines an EU TAC, agreeing shares with other countries, such as Norway. TACs, quota and days at sea are set in an annual TACs and Quota Regulation, which is often amended during the year. CFP Regulations provide for how effort is to be determined.
27. When we leave the EU, the UK will negotiate with the EU and other coastal states on fishing opportunities. It will need its own process for setting these (see clause 18) and will also need to determine how effort is calculated. This power allows the Secretary of State to make provision about how to determine how days spent fishing at sea are to be calculated. This relates to means of calculation, a technical matter. It relates to how the UK pot of fishing opportunities is calculated.

Justification for taking the power

28. There needs to be a flexible means to make and amend such a regulation. The Department may need to respond to new approaches either internationally or in response to scientific advice and technological developments. We need also to ensure that the UK as a whole is using up a UK resource in a consistent way: exploitation by one part of the UK using different criteria would otherwise be at the expense of other parts of the UK.
29. This power relates to a highly technical matter: how to calculate a “day at sea”. It could be used, for example, to determine when a boat is deemed to have left or returned to port, entered the UK’s inshore waters or, by stowing its fishing gear, not to be fishing.

Justification for the procedure

30. This power relates to a highly technical matter: how to calculate a “day at sea”. In the Department’s view, Parliament will want the opportunity to scrutinise these regulations but, as they are likely to be detailed and technical, we suggest that the negative procedure will provide Parliament with that oversight.

Clause 22: power for the Secretary of State to make provision for the sale to the English industry of quota for a calendar year

Power conferred on: Secretary of State

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Affirmative

Context and purpose

31. The UK’s fishing opportunities are distributed using a mechanism based on historic fishing in the 1990s. “Fixed Quota Allocations” (FQAs) are used to distribute fixed shares of particular fish stocks, with the actual amount varying depending on the amount available to the UK each year. This system has been seen by some parts of the fishing industry as inflexible and as not always benefiting all parts of the industry. The Fisheries White Paper proposed that in England, EU exit presented the opportunity to move towards different distribution methods in relation to any additional quota available to the UK when it leaves the EU.

32. The Bill provides a power for the Secretary of State to sell quota available in a calendar year for the benefit of English vessels. The purpose of any such scheme would not be cost recovery or revenue raising: eligibility rules could, for example, require those bidding for the quota to demonstrate they are engaged in sustainable fishing.
33. Clause 22 sets out in detail what provision may be made in regulations setting up any sale scheme. These include provision for sale by competitive tender, for the designation of and conferral of functions on a person running a sale, eligibility criteria and limits on the amount of quota that can be sold to one person. To ensure that quota is used by fishers who meet eligibility criteria (including any relating to sustainable fishing practices), regulations could also prohibit the transfer of rights sold under the scheme. Regulations may also make provision about appeals. The regulation power may be used for pilot schemes so that we can try out tendering schemes for a small number of stocks first.

Justification for taking the power

34. The power provides a mechanism for some “English” quota to be allocated in a different way than under the current system. Eligibility criteria could be used to benefit those who benefit less under the current regime and to encourage sustainable fishing. The Department wants to be able to create a flexible system so that we can introduce new schemes annually if necessary, extend schemes or make new schemes for new stocks or change eligibility criteria as fishing practices change. Fishing quota is negotiated annually (with frequent in-year changes). The amount of overall quota and the quota for the c.120 quota stocks for which UK fishing boats currently fish will vary as there are frequent changes to stock levels in UK waters. A flexible regulation-making power will allow us to react to changes in scientific advice so that we can impose appropriate conditions on those wanting to buy quota for stocks which are at less sustainable levels.

Justification for the procedure

35. Any new scheme would be a change in direction in the way quota is currently managed. It would also allow charges to be made to those bidding for quota. The Department’s view is that it is right that Parliament scrutinises these proposals and that

there is time to debate them so proposes that the regulations are subject to the affirmative procedure.

Clause 23: power to establish a discard prevention charging scheme

Power conferred on: Secretary of State in relation to English vessels

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Affirmative

Context and purpose

36. Fish discards have been considered an issue in European and global fisheries for many years. Given the high mortality rates associated with catching and subsequently discarding fish, the practice has a significant impact on marine ecosystems. This in turn can result in market failure and failures in the fishing industry.
37. Historically, the CFP approach to quota management meant fishermen were required to discard some of their catch before they landed at ports, leading to up to a million tonnes of fish being thrown back into European waters each year. Recent reforms to the CFP include an obligation to land all species subject to catch limits catch, known as the ‘discard ban’ or ‘landing obligation’. It has been phased in on an annual basis since 2015 and will be implemented in full from 1st January 2019, at which point all UK vessels will be required to land catches of all species subject to catch limits, unless specifically exempted.
38. In mixed fisheries (common in UK waters), where several species can be caught during fishing activities, there are practical difficulties in implementing the landing obligation. One particular problem is that the exhaustion of quota for one “species prevents fishing continuing for other species, known as “choke”. The CFP provides some mechanisms to address this but they are not sufficient to mitigate the risk of choke totally.
39. Without a more flexible approach for mixed fisheries, there could be early closure of fisheries or problems with compliance measures and large-scale illegal discarding. Early closures would result in UK fishers not using all their quota, reducing revenues as well as the quantity of fish available for both consumption and export.

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

41. A discard prevention charging scheme would operate alongside other mechanisms for reducing the wasteful discarding of fish. These include the use of fishing gear which allows certain species to escape, prohibiting fishing in certain areas and requiring vessels to have cameras on boats.

Justification for taking the power

42. The Department's view is that detailed regulations will need to be in place for the scheme to be effective, in particular in the setting of an appropriate level of charge to drive behaviour change and incentivise the uptake of more sustainable fishing practices. The only practicable way for detailed methodology to be prescribed, while allowing it to be changed quickly if needed, is secondary legislation. The level of charge would have to be set at an optimum level – too high a charge could incentivise discarding and too low a charge could encourage overfishing. Schemes may need to be ended for some stocks but introduced for others, depending on the stocks most at risk from discarding. A further variable is market value.

Justification for the procedure

43. Any new scheme would be a change in direction in the way discarding is currently regulated. It would also provide for charges to be made. The Department's view is that such a change warrants close Parliamentary scrutiny and time for debate, and so has proposed that the regulations are subject to the affirmative procedure.

Clause 28 and Schedule 4: power to provide financial assistance to the fishing industry

Power conferred on: Secretary of State, Welsh Ministers, DAERA

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Affirmative

Context and purpose

44. Currently, funding for the fishing industry is largely through the EU's European Maritime and Fisheries Fund (EMFF). This provides funding for those engaged in the catching, harvesting, processing and marketing of sea fisheries and produce from aquaculture. Payments can be made to support developments which lead to sustainable fishing, for example for new types of fishing gear and for research. Payments are also made to help coastal communities. The current EMFF funding programme runs until 2020, although payments on applications approved before the end of 2020 may continue until 2023. In the event of the UK leaving the EU without a deal, the Chief Secretary to the Treasury announced on 24 July 2018 that all EMFF projects approved before the closure date of the current programme (December 2020) will be fully funded under a Treasury guarantee. This guarantee applies across the UK.
45. The Department wants to be able to replace the EMFF so that we can continue to support the UK fishing industry and promote sustainable fishing. Decisions on replacement domestic arrangements will be subject to the Spending Review in 2019, alongside decisions on all other domestic spending priorities.
46. There are existing funding powers in Fisheries Act 1981. Section 15(1) provides a power for the Secretary of State and the Devolved Administrations to set up funding schemes in secondary legislation for the purpose of "*re-organising, developing or promoting the sea fish industry or of contributing to the expenses of those engaged with it.*" Section 31(1) provides a power for the Secretary of State, Scottish Ministers and the Welsh Ministers to set up grant schemes for fish farming.
47. The Bill repeals and replaces these provisions. The powers to make grants under the new provisions are broader and include, in particular, a power to provide financial assistance for marine conservation purposes and in relation to recreational fishing.

Justification for taking the power

48. Fishing has a significant impact on the marine environment and fisheries regulation must reflect this. The Department wants to ensure that funding schemes replacing the EMFF support sustainable fishing and can be used for broader marine conservation purposes than is possible under existing powers.
49. We need to be able to introduce and amend schemes through regulations so that we can respond quickly to scientific advice, the needs of industry and can protect the marine environment. That will mean that funding schemes will need to be amended on a regular basis as the government adapts its approach. For this reason, and because of the detailed methodology required for future funding schemes, the Department's view is that this is a matter that is best dealt with in secondary legislation.

Justification for the procedure

50. The new power revokes and replaces an existing grant-making power which is subject to affirmative resolution. We consider that the affirmative procedure is also appropriate for the new power. Given that any future scheme would be significant for the fishing industry, the Department's view is that it is right that Parliament has the opportunity thoroughly to scrutinise the regulation.

Clause 29 and Schedule 5: power to make regulations allowing the MMO and DAERA to impose charges

Power conferred on: Secretary of State, DAERA

Nature of power: Regulations by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

51. The MMO exercises a number of fisheries management functions, including vessel licensing, quota management, monitoring fishing activity and enforcing compliance. The MMO has further functions in relation to marine licensing.
52. The MMO has some existing cost recovery powers. Section 27(1) Marine and Coastal Access Act 2009 (MACA) provides a power for the MMO to "charge fees in respect of

the costs of providing its services as appear to it to be reasonable”. Section 27(3) of MACA cross refers to the MMO’s functions under other provisions in MACA, which relate to the provision of copy guidance, making available the results of research, advice, assistance and training facilities and providing information. Section 67 of MACA provides a power to charge in relation to marine licensing.

53. The Bill supplements these powers, setting out the fisheries management functions of the MMO for which regulations may permit them to charge. It will allow the MMO to recover its costs in relation to functions relating to fishing quotas, ensuring that fishing is carried out lawfully, the registration of buyers and sellers of first-sale fish and catch certificates for the import and export of fish. Clause 29(4) set out in detail what regulations may cover. The Secretary of State must consult before making any regulations.

54. Examples, in practical terms, of the services which the Department would make provision for the recovery of costs include:

- a) allocating quota to Producer Organisations (which manage quota on behalf of their members);
- b) managing the regime for the transfer of quota between vessels and between Producer Organisations;
- c) monitoring compliance (including through satellite monitoring systems);
- d) maintaining the registry of buyers and sellers of first sale fish and systems for processing sales notes; and
- e) checking, issuing and validating catch certificates for the import and export of fish.

55. Schedule 5 confers equivalent powers on DAERA.

Justification for taking the power

56. The Department needs the flexibility to be able to add to the list of functions for which the MMO may recover its costs over time. When we leave the EU, the UK will control access to its territorial waters and its EEZ (out to 200 nautical miles or the median line with the EEZs of other coastal states). There will be an increased burden on regulators and those involved in monitoring and enforcement and it is appropriate that we can react to allow the MMO to recover its costs where this is appropriate. The power is

needed to enable the MMO to recover the costs of exercising certain key fisheries management functions. These are listed in the Bill, which also contains detailed provision about what may be included in regulations. It is appropriate for the MMO to recover its costs from the fishing industry rather than from general tax payers.

57. Similar arguments apply in relation to the conferral of equivalent powers on DAERA in Schedule 5.

Justification for the procedure

58. In the Department's view, the negative procedure would give Parliament the right level of scrutiny of these regulations. The Bill sets out the functions which the MMO could be permitted to charge for in a finite list and the Secretary of State would consult before making any regulations. There is an express consultation provision in clause 29(7). The same is true of any regulations made by DAERA.

Clause 31(1) and Schedule 6: power of the Secretary of State, Welsh Ministers and DAERA to amend UK law (including retained EU law) for listed fisheries purposes and in relation to listed fisheries matters

Power conferred on: Secretary of State, Welsh Ministers, DAERA

Nature of power: Regulations, by statutory instrument

Parliamentary Procedure: affirmative if: amending primary legislation; amending Article 17 of the CFP Regulation (criteria for the allocation of fishing opportunities); imposing fees; creating a criminal offence or increasing the penalty for or widening the scope of a criminal offence; conferring functions on, modifying functions of or relating to the management of producer organisations or inter-branch organisations. In other cases, negative procedure.

Context and purpose

59. UK fisheries policy has been governed by the CFP for over 40 years. When the UK leaves the EU, it will operate as an independent coastal state. It will set its own fishing opportunities, negotiating with the EU and other coastal states. It will join international fisheries bodies in its own right. It is vital that the UK has measures in place to implement its international obligations and to move away from the CFP measures incorporated into retained EU law under the EU (Withdrawal) Act where this is appropriate. The CFP is due to be reviewed in the next few years and we need also to

ensure that, where appropriate, the UK can introduce equivalent measures to ensure that UK fisheries management is world-leading. Fisheries and the management of the impact of fisheries on the marine environment is dynamic, change throughout the year, and can prove difficult because of the availability of data. The Department's view is that, in order to manage fisheries effectively, we need delegated powers to be able to respond to scientific advice quickly. **Annexes A and B** provide relevant supplementary information to support the proposals in the body of this document.

60. Clause 31 confers regulatory updating powers on the Secretary of State. Equivalent powers are conferred on Welsh Ministers and DAERA in Schedule 6.

61. These powers are constrained in several ways:

- a) They must be exercised for a listed purpose;
- b) They can only be exercised in relation to a listed subject matter (except if they are being exercised to implement measures of international fisheries bodies (regional fisheries management organisations)); and
- c) They cannot create criminal offences punishable with imprisonment.

62. As discussed below, the exercise of these powers would also be subject to affirmative resolution in certain cases.

Purposes for which the powers are exercisable

63. The regulatory updating powers are only exercisable for finite purposes (clause 31).

“Conservation purpose” is defined in clause 31(2) and “fish industry purpose” is defined in clause 31(3).

64. Except in relation to the implementation of regional fisheries management organisation measures, the regulatory updating powers may only make provision about:

- (a) the quantity of sea fish that may be caught;
- (b) the amount of time that fishing boats may spend at sea;
- (c) the landing of sea fish;
- (d) bycatch;
- (e) catching, landing or selling sea fish that are below a certain size;
- (f) setting and enforcing targets relating to stocks of sea fish;
- (g) the design of sea fishing equipment;

- (h) the use of sea fishing equipment;
- (i) the retrieval of lost or discarded sea fishing equipment;
- (j) methods of sea fishing;
- (k) the processing of sea fish on fishing boats;
- (l) the use to which the Secretary of State may put information obtained in the exercise of the Secretary of State's functions relating to fisheries or aquaculture;
- (m) the functions, objectives or regulation of producer organisations or inter-branch organisations;
- (n) the marketing of fishery products (including labelling);
- (o) keeping, disclosing or publishing accounts, records or other documents or information by persons involved in—
 - (i) commercial fish activities or commercial aquaculture activities,
 - or
 - (ii) monitoring, or enforcing, compliance with the regulation of commercial fish activities or commercial aquaculture activities;
- (p) the use in aquaculture, or transport, of aquatic organisms that are members of an alien species or a locally absent species;
- (q) monitoring, or enforcing, compliance with the regulation of any of matters mentioned in the preceding paragraphs of this subsection.

Justification for taking the power

65. The Department accepts that this proposal is a broad regulation making power and considered the benefits of proposing separate, and on the face of it, narrower individual delegated powers in relation to each of the subject matters above. On balance, the Department's view is that it is clearer for the subject matter to be dealt with together. Our proposal is that regulations on these subjects are needed so that we can implement international agreements, react quickly to scientific advice on fisheries management and make changes to CFP technical fisheries measures which will be incorporated into retained EU law. As noted above, we have sought to narrow the scope of the powers as much as possible:

- a. they must be exercised for a listed purpose and (except in relation to the implementation of regional fisheries management agreements) in relation to a listed matter. (In the case of regional fisheries management agreements, we must have implementing powers in place otherwise we will not be able to sign up to these agreements.)

- b. they cannot be used to create criminal offences punishable with imprisonment;
- c. they are subject to affirmative resolution in appropriate cases.

66. The Department's position is that we need to be able to amend or revoke CFP measures in retained EU law so that we can update fisheries law. As we seek to demonstrate below, existing UK law could be used to regulate many of the matters listed in this clause, but for CFP measures. The powers will enable us to make changes to those measures, when they become retained EU law. They supplement the power in clause 8 of the EU (Withdrawal) Act 2018, which only allows amendments to be made for operability purposes, but set out in a detailed and finite list the matters for which provision might be made. The power to amend retained EU law is in clause 34(7) and (8).

67. Under clause 35, the powers are exercisable by the Secretary of State in relation to devolved matters, with the Devolved Administrations' consent, so this will help support a consistent approach to fisheries management across the UK.

68. These powers are vital if the UK is to operate as an independent coastal state as soon as we leave the EU. They are, in particular, needed so that the UK can:

- 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.

69. As is clear from clause 31(4), many of the subject matters for which provision may be made are technical in nature. There would be general powers in existing UK law to regulate many of them, but for the fact that technical CFP measures are currently in place. They are similar in substance to the provision which may be made in byelaws by the MMO and Inshore Fisheries Conservation Authorities (IFCAs) under MACA. Relevant MMO and IFCA powers are set out in Annex A.

70. After providing detail of why we need the powers, we set out how they might be used and indicate why the nature of the powers sought justifies their inclusion in the Bill.

The need to comply with the UK's international obligations

71. As an independent coastal state, the UK wants to meet world leading standards in fisheries management and marine conservation. It will also continue to be bound by international law, including obligations relating to the management of fisheries under UNCLOS. Being a signatory to UNCLOS commits the UK to demonstrating sustainable fishing. This may require the UK to adopt new international standards swiftly. If it cannot, trade with other countries may be affected if the UK is deemed to be practising "illegal, unlawful and unregulated fishing" under the international and EU "IUU fishing" regime. The UK will also need to be able to implement any fisheries agreements it reaches with the EU and Norway. There are annual negotiations on quota, days at sea and other technical measures (including landing obligations) and the UK will need to be in a position to implement any such agreements. The UK's credibility as an international partner and our influence in global organisations will depend in large part on our ability to implement obligations effectively and quickly.

72. The UK is currently a member of a number of international fisheries management organisations (regional fisheries management organisations (RFMOs)). Some manage all the fish stocks found in a specific area, while others focus on highly migratory species. In most cases, the UK is a member through its membership of the EU (fisheries being a matter of exclusive EU competence). The UK wishes to remain a member of a number of these RFMOs so as to be at the forefront of the sustainable management and conservation of fish stocks and the marine environment. Doing so would maintain the UK's international standing and allow us to participate with other coastal states on fisheries management. It is vital, therefore, that we have the powers we need to sign up to RFMOs and to implement their measures. For this reason, the power in clause 31 to implement RFMO measures does not require provision to be made in relation to the list of measures. In the vast majority of cases, RFMO measures would be within scope of that list but we want to make sure that we can implement all necessary measures.

73. RFMOs typically introduce control and enforcement schemes which contracting parties are expected to comply with. These schemes - for example the North East Atlantic Fisheries Convention Control and Enforcement Scheme - are subject to amendment on

a frequent basis and we would need to be able to implement them quickly. Further examples include cases where parties to an RFMO decide to prohibit a gear type in a certain area within a fishery regulated by an RFMO or identify a vulnerable marine ecosystem, such as an area of deep sea corals, and agree to prohibit fishing in that area. The Department's view is that the UK has to be able to implement these agreements.

The management of fisheries

74. The Department's position is that it needs a new regulatory updating power so that we can, where necessary, revoke and replace retained EU law, much of which is highly technical in nature. There are around 100 CFP Regulations, many provisions of which relate to net sizes, net types, minimum conservation reference sizes, fish stocks subject to the landing obligation and scientific and economic data collection requirements. The Department's view is that the future domestic management of fisheries requires this sort of power for the following reasons.
75. First, the CFP regulations sit alongside a number of other fisheries management powers, in particular conditions contained in fishing licences, orders under existing powers and byelaws. Licence conditions are a well-established means of managing fisheries. Existing licensing powers and order-making powers would in theory allow us to make provision in relation to many of the matters listed in the Bill. But we need a new regulatory updating power so that we can revoke and replace provisions in retained EU law first. We will need to revoke and replace these with measures to adapt to technological developments, new data and scientific advice. We may also need to update them where the EU has updated its own rules, where this is necessary (for example, to ensure access to markets or to demonstrate that we are fishing sustainably). This issue is considered in further detail below.
76. Secondly, the volume of regulations required to manage fisheries, as the exploitation of a vulnerable ecosystem, sets it apart from other areas. Each year, the Department submits approximately 20 explanatory memorandums on EU fisheries proposals to the European Scrutiny Select Committee. Since 2014, the Commission has passed 51 delegated acts and 53 implemented acts related to fisheries – an average of 34 legislative changes per year.

77. Thirdly, many of the EU's regulations deal with highly technical matters which will need to be updated. The EU's Technical Conservation Regulations contain detailed requirements about vessel size, use of gear and landing sizes. These Regulations will be amended and consolidated next year and government will want to be able to adopt the technical measures which advance sustainable fishing. Without the regulatory updating power, changes to technical measures of this sort would not be possible without further primary legislation. This would have significant implications for the UK, risking its ability to manage fisheries effectively or sustainably. It would become more difficult to demonstrate that the UK is fishing sustainably or in compliance with international requirements – both of which would have a detrimental effect on fishing and international trade.
78. The CFP is reviewed and reformed every ten years and the next review is due shortly after the UK leaves the EU. The European Commission has already stated that the CFP control and enforcement regulations are “*not entirely fit for purpose*”. Any new CFP rules will not become part of retained EU law and we may need to update outdated CFP measures in retained EU law. It may be hard to justify an outdated regime which others have decided is not fit for purpose and this gives rise to significant implications internationally: if the UK is not fishing sustainably, it could be deemed to be engaged in illegal, unlawful and unregulated fishing and be subject to trade sanctions.
79. A further example is the EU's Data Collection Framework (“DCF”) which is a highly prescriptive fisheries data collection and reporting framework. For example, the DCF mandates yearly data collection on fish stocks, but the UK's Chief Fisheries Adviser has advised that surveys every two to four years could produce an equally strong scientific result. The current system places burdens on the UK to participate in or fund stock-based research which is of little interest to the UK (for example on Atlanto-Scandic herring and blue whiting). There are new technologies emerging such as fishing vessel-based computerised fish identification that could be deployed more swiftly within a programme based nationally. Defra is funding a project led by the Centre for Environment, Fisheries and Aquaculture Science (“Cefas”) to consider what the data collection strategy and systems for monitoring, analysis and advice should be once the UK has left the EU. This project will advise on the future monitoring framework by the end of March 2019 and the enabling power would mean we could make appropriate changes to the DCF Regulation in retained EU law.

80. There might be an immediate need, in a no-deal scenario, to revoke or amend the TACs and Quota Regulation which will be agreed by the EU at the end of 2018, setting quota and effort for Member States (see above) and will expire at the end of 2019.

Why the nature of the power justifies its inclusion in the Bill

81. The matters listed in clause 31(4) are mostly technical in nature: existing domestic law already provides for many of these matters to be regulated by secondary legislation (including byelaws in some cases) and licence condition. This section sets out in further detail the powers to manage fisheries in existing UK legislation. The Bill complements these powers and allows amendments to be made to retained EU law which could prevent them being exercised.

82. Clauses 9 to 17 of and Schedules 2 and 3 to the Bill repeal and replace the licensing provisions in s4 Sea Fish (Conservation) Act 1967. They largely reproduce the broad licensing powers conferred on the Fisheries Administrations in the 1967 Act. The licensing power includes a power to limit authority by reference to area, the periods, times or particular voyages during which fishing is authorised, the descriptions and quantities of fish which may be taken and the method of sea fishing. A licence may authorise fishing “subject to such conditions as appear to the Minister granting the licence to be necessary or expedient for the regulation of sea fishing”. Conditions may relate to the landing of fish or parts of fish (including specifying the ports at which the catch is to be landed) and may specify the use to which the fish taken may be put. Conditions may also be imposed for the purposes of “conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas” and of “conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment”.

83. Section 5 of the 1967 Act confers a power, by order, to restrict fishing for sea fish. Section 5 of the Sea Fisheries Act 1968 confers a power, by order, to “regulate the conduct of, and safeguarding, fishing operations and operations ancillary thereto, including provision with respect to the identification and marking of fishing boats and fishing gear”.

84. Further to this, there are broad MMO and Inshore Fisheries Conservation Authority (IFCA) byelaw making powers in the Marine and Coastal Access Act 2009. **Annex A** sets these out and indicates where they cover similar matters.

85. **Annex B** sets out in detail why, in the Department's view, it is essential to be able to regulate the specific subject matters in clause 31(4).

Justification for the procedure

86. The Bill provides for the regulation-making power to be subject to negative procedure except in the following cases (where we consider the affirmative procedure to be more appropriate):

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

87. The Department's view is that these matters are of such significance that they should be subject to the significant Parliamentary scrutiny of the affirmative procedure. To elaborate on the reasons for the Department's view:

- a. Amending primary legislation: it is a well-established principle that amendments to primary legislation should generally be subject to the affirmative procedure;
- b. Article 17 of the CFP Regulation: the Department has considered responses received over the recent consultation and held many discussions with our stakeholders. Our conclusion is that Article 17 is of significant importance to the way that quotas are managed in the UK and that the scrutiny of affirmative resolutions offers the right level of oversight over any changes to the Article. Clause 20 of this Bill corrects retained EU law to give this Article effect in UK law;
- c. imposing fees: as regulations imposing fees could have a financial impact on the fishing industry, affirmative regulations would offer Parliament and our

stakeholders the assurance that future regulations have been thoroughly scrutinised;

- d. creating a criminal offence or increasing the penalty for or widening the scope of a criminal offence: the Department's view is that changes to criminal offences could entail serious consequences for members of the public and so suggests that this should prompt the need for thorough Parliamentary scrutiny and debate;
- e. conferring functions on, modifying functions of or relating to the management of producer organisations or inter-branch organisations: Producer Organisations are set up under EU law and are fundamental to fisheries management in the UK. Their memberships make up a large proportion of the UK fishing fleet. The Department considers that any amendment to PO functions could have a major impact on POs themselves and on the fishing industry. On this basis, the Department proposal is for regulations on these issues to subject to the detailed Parliamentary scrutiny that the affirmative procedure provides.

88. The Department carefully considered whether amendments to retained EU law, as well as to primary legislation, should be subject to affirmative resolution. As most relevant retained EU law is highly technical in nature, the Department's proposal is that it is more logical to consider the nature of the measure to be amended rather than its source. As noted above, many EU measures make provision in relation to matters which can be regulated by byelaw or licence condition under current domestic law. In those cases, we have suggested that the negative procedure is appropriate.

Clause 33 and Schedule 6: power for the Secretary of State, Scottish Ministers, Welsh Ministers and DAERA to make provision for the purpose of monitoring, controlling or preventing diseases of fish or other aquatic animals.

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, DAERA

Nature of power: Regulations, by statutory instrument

Parliamentary Procedure: affirmative if: amending primary legislation; amending Article 17 of the CFP Regulation (criteria for the allocation of fishing opportunities); imposing fees; creating a criminal offence or increasing the penalty for or widening the scope of a criminal offence; conferring functions on, modifying functions of or relating to the management of producer organisations or inter-branch organisations. In other cases, negative procedure.

Context and purpose

89. The UK has a higher aquatic animal health status than most places in the world. This is critical to industry viability. In 2017 the UK exported £1.91 billion of seafood.
90. The EU regime for the control of aquatic animal diseases in Council Directive 2006/88/EC is implemented in England and Wales by the Aquatic Animal Health (England and Wales) Regulations 2009. A new EU framework Regulation (Regulation 2016/429) comes into force in 2021, after we leave the EU. It will not, therefore, be part of UK law under the EU (Withdrawal) Act.
91. Clause 33 provides a power for the Secretary of State to make provision “for the purpose of monitoring, controlling, preventing or eradicating diseases of fish or other aquatic animals”. Regulations may be made in relation to the importation, exportation, movement, storage or handling of fish and other things which may carry disease.
92. The power could be used to alter the list of notifiable diseases set out in what will be retained EU law. It could also be used to change authorisation or certification requirements so that the UK complies with international standards. It might also be used to place controls on the importation of non-native live fish to prevent disease,
93. This power is subject to the same restrictions as apply to the regulatory updating power in clause 31. As with the power in clause 31, it is exercisable by Welsh Ministers and DAERA as well as by the Secretary of State. It is also exercisable by Scottish Ministers. The Secretary of State may exercise the power in relation to devolved matters, with the consent of the Devolved Administrations.

Justification for taking the power

94. The Department’s proposal is that we should be able to make any changes necessary to update the UK regime (whether to mirror changes in EU law or because, more fundamentally, changes are necessary for the control of disease). It is vital that we preserve the UK’s high aquatic animal health status. The UK’s aquaculture industry is very important and it relies heavily on its accredited status. If the UK is unable to maintain standards on aquatic animal health, the viability of the UK aquaculture industry will be at risk.

95. This is a regulation making power but is necessary if the UK is to be able to act quickly to prevent and control aquatic animal diseases.
96. This power is subject to the same limitations as apply in relation to clause 31 (see above).
97. The power would allow the SoS to make provision in relation to devolved matters, with Devolved Administration consent. This would help achieve a consistent approach to disease control across the UK.

Justification for the procedure

98. Regulations using this power are subject to the same procedures as apply to regulations made under clause 31 and are justifiable for similar reasons (see above).

Clause 38 and Schedule 7: power of the MMO to make byelaws relating to marine conservation and power of the Scottish Ministers and the Welsh Ministers to make similar provision by order

Power conferred on: Marine Management Organisation, Scottish Ministers, Welsh Ministers

Nature of power: Byelaws subject to Secretary of State consent (except in the case of emergency byelaws); Orders by Scottish Ministers/Welsh Ministers

Parliamentary Procedure: None (for MMO byelaws and Orders of the Welsh Ministers). We are discussing with the Scottish Government if Orders of the Scottish Ministers should be laid before the Scottish Parliament

Context and purpose

99. Fishing has a significant impact on the marine environment. This, as well as fish stock levels, must inform fisheries regulation. As discussed above, the CFP includes sustainability objectives. Article 11 of the main CFP Regulation (conservation measures necessary for compliance with obligations under Union environmental legislation) provides a mechanism for Member States to introduce fisheries measures to ensure compliance with this environmental legislation. This includes measures to protect habitats, marine species and birds and legislation on marine planning. The CFP mechanism involves other Member States and the European Commission and will no longer be appropriate when we leave the EU.

100. EU environmental legislation will be made operable and be incorporated into UK law as retained EU law when we leave the EU. Statutory instruments under the EU (Withdrawal) Act 2018 will achieve much of this. However, where changes amount to more than operability changes, other legislative routes are necessary. As UK law already contains a regime for the management of Marine Protected Areas (MPAs), the Bill extends the existing regime. It will be extended to the offshore region (12 to 200 nautical miles) and will apply in relation to fishing outside as well as inside MPAs.
101. MPAs include marine conservation zones (MCZs) (designated under MACA), Sites of Special Scientific Interest (SSSIs) (notified under the Wildlife and Countryside Act 1981 (WCA)) and Ramsar Sites (wetlands) which are also designated as SSSIs.
102. Under Part 5 of MACA, the MMO can make byelaws to protect MPAs in territorial waters (0-12 nautical miles from the coast). Article 11 of the main CFP Regulation governs the process for regulating the impact of fisheries on MPAs in the offshore area. The Bill revokes the CFP measures, replacing them with new provisions extending the MMO's byelaw-making powers in Part 5 of MACA. This will ensure a more joined up, consistent approach to marine conservation. The MMO will have powers to make byelaws generally for the protection of MPAs in the inshore and will have powers to make byelaws to manage the impact of fisheries on the marine environment in the inshore and the offshore. Schedule 7 confers equivalent powers on Scottish and Welsh Ministers. They concurrently manage MPAs using order-making powers in their legislation and under MACA and these powers will be extended so that they can be used to regulate the impact of fishing on the marine environment in the offshore area generally, not only in MPAs. DAERA can manage sea fishing for the purpose of nature conservation under the Fisheries Act (Northern Ireland) 1966 so provisions do not apply to them.

Justification for taking the power

103. The Bill extends existing byelaw and order-making powers. It is appropriate to expand existing powers to ensure a joined-up approach to fisheries management. Fishing activity may take place across the inshore and offshore areas and a consistent approach is vital. The purposes for which byelaws can be made are set out in detail in MACA. Byelaws regulate technical matters such as the areas which can be fished, the use of particular fishing gear and periods when fishing can take place. The byelaw-

making provisions in MACA are set out below. The MMO can issue permits (s129 MACA), but only within the scope of their byelaw-making powers. The process for making byelaws is detailed and set out in s130 MACA. Unless the MMO needs to make an emergency byelaw (which it can only do in urgent cases, with the byelaw lasting for a maximum of 12 months), byelaws must be confirmed by the Secretary of State.

104. We need to replace the current EU regime for the protection of sites in the offshore area. We also need to make sure that byelaws and emergency byelaws (and order-making powers and powers to make interim orders in the case of the Devolved Administrations) can be made – and quickly made – where this is necessary to minimise the impact of fishing on the marine environment. Extending current secondary legislation powers is the best way to achieve this.

105. Similar points apply in relation to the Order-making powers of Scottish Ministers and Welsh Ministers.

Justification for the procedure

106. The Department's view is that the extended powers should, in the case of MMO byelaws and the order-making powers of Welsh Ministers, continue be subject to the processes which currently apply in relation to byelaws and orders.

107. There is no parliamentary procedure in relation to MMO byelaws but they must (except in the case of emergency byelaws) be confirmed by the Secretary of State.

108. Orders and interim orders made by Welsh Ministers are not subject to review by the National Assembly for Wales.

109. We consider the procedures applying currently to MMO byelaws and orders by Welsh Ministers should apply in relation to byelaws and orders under the powers to be amended by the Bill. Byelaws are technical and local in nature and consultation processes coupled with the need for Secretary of State consent in the case of MMO byelaws follow established practice.

110. The Department is in discussions with the Scottish Government as to whether orders by Scottish Ministers should be laid before the Scottish Parliament. This is because

orders by Scottish Ministers under s85 Marine Scotland Act 2010 are laid before the Scottish Parliament.

Clause 39(1): Power to make consequential provision

Power conferred on: Marine Management Organisation, Scottish Ministers, Welsh Ministers

Nature of power: Regulations made by statutory instrument

Parliamentary Procedure: this provision allows regulations making powers in the Bill to make consequential, supplementary, incidental, transitional or saving provision and so the procedure would depend on the initial regulation making power

Context and purpose

111. Clause 39(1) provides that regulations under this Bill may make consequential, supplementary, incidental, transitional or saving provision as well as different provision for different purposes or areas.

Justification for taking the power

112. This power may only be exercised in connection with a provision of the Act. It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required, particularly given that we do not yet know the outcome of EU exit negotiations. The Department's view is that the power is needed to avoid any legal uncertainty or legal lacunae after the Bill comes into force.

Justification for the procedure

113. The procedure would depend on the initial regulation making power in this Bill.

Clause 41(5): power, by Order in Council, to extend provisions to the Crown Dependencies

114. The Crown Dependencies are not part of the UK and extension of UK legislation to them by Order in Council is the constitutional norm. As is accepted practice, the government would seek the consent of the Crown Dependencies before seeking such an Order.

Clause 42(3) and (5): power to make commencement provisions

115. This is a standard power to bring provisions of the Bill into force.

Schedule 2, paragraph 7(1): power for relevant national authority to make regulations about the licensing of fishing boats.

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, DAERA

Nature of power: Regulations, by statutory instrument

Parliamentary Procedure: negative

Context and purpose

116. Section 4B of the 1967 Act provides a power for the Fisheries Administrations, by order, to make provision about how licensing functions are to be exercised. Provision can, for example, be made in relation to how licences and licence variations are notified.

117. As the Bill revokes and replaces section 4 of the 1967 Act, Schedule 2 reproduces these existing powers.

Justification for taking the power

118. This provision restates an order-making power in s4 Sea Fish (Conservation) Act 1967. The Bill revokes and replaces s4 with clearer licensing provisions. The regulation-making power is necessary so that each of the UK's licensing authorities can make provision about the operation of their licensing regime.

Justification for the procedure

119. As with the current order-making power, this regulation-making power is subject to negative procedure. We think this is appropriate as the power relates to technical requirements relating to the Fisheries Administrations' licensing functions.

Schedule 2, para 7(3): power to make provision authorising the making of charges in relation to a sea fishing licence

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, DAERA

Nature of power: Regulations, by statutory instrument

Parliamentary Procedure: negative

Context and purpose

120. Section 4(1) and (4) of the Sea Fish (Conservation) Act 1967 provide powers for the Fisheries Administrations to make orders authorising charges to be made for fishing boat licences. As the Bill revokes and replaces section 4 of the 1967 Act, Schedule 2 reproduces these powers.

121. There is no current intention to introduce charges for fishing boat licences but it is possible that such charges could be introduced in the future.

Justification for taking the power

122. This clause reproduces a provision in s4 Sea Fish (Conservation) Act 1967. It is reasonable for the cost of fisheries management to be met by fishers rather than general tax payers.

Justification for the procedure

123. As with the existing power, this power is subject to negative procedure. We think this is appropriate. Schedule 2, paragraph 7(4) sets out the scope of the power in detail.

Schedule 2, para 7(5): duty to make provision as to the principles applying in relation to licence conditions relating to time spent at sea

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, DAERA

Nature of power: Regulations, by statutory instrument

Parliamentary Procedure: affirmative

Context and purpose

124. Section 4(6C) of the 1967 Act requires the Fisheries Administrations, by order, to make provision as to the principles on which the time which vessels may spend at sea is to be arrived at for the purposes of licence conditions. In many cases, CFP measures determine how effort regimes operate. There is an existing order setting out relevant principles - the Sea Fish Licensing (Time at Sea) (Principles) Order 1993.

125. As the Bill revokes and replaces section 4 of the 1967 Act, this provision restates s4(6C) in the Bill.

Justification for taking the power

126. This reproduces a provision in s4 Sea Fish (Conservation) Act 1967. It is likely that the UK will use effort controls as well as quota limits to regulate fishing when we leave the EU. On this basis, we have reproduced a provision which will ensure there is transparency in determining the principles which may be applied in setting effort conditions. The current Order was made in 1993 and it is possible that it will need to be amended in the future.

Justification for the procedure

127. The current order-making power is subject to affirmative procedure and we have suggested that the same procedure should apply to the restated provision. This will give Parliament an increased scrutiny role in relation to any new regulations setting out how days at sea are to be calculated.

Schedule 3: access and licensing – consequential amendments

128. These are not new powers but consequential amendments to existing powers, including some regulation-making powers.

ANNEX A: BYELAW MAKING POWERS IN THE MARINE AND COASTAL ACCESS ACT 2009

1. This Annex sets out relevant provisions from the Marine and Coastal Access Act 2009 which provide byelaw making powers for the Marine Management Organisation and the Inshore Fisheries Conservation Authorities. The purpose of this is to demonstrate that many of the subject matters covered by the regulation making power in clause 31 are technical in nature or are otherwise appropriately regulated by secondary legislation.
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S. 129 Byelaws for protection of MCZs in England (MMO byelaws)

- (1) The MMO may make one or more byelaws for the purpose of furthering the conservation objectives stated for an MCZ in England.
- (2) A byelaw under this section may be made so as to apply to any area in England.
- (3) The provision that may be made by a byelaw under this section includes, in particular, provision—
 - (a) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by persons or animals;
 - (b) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by vessels or (where appropriate) vehicles;
 - (c) restricting the speed at which any vessel may move in the MCZ or in any specified area outside the MCZ where that movement might hinder the conservation objectives stated for the MCZ;
 - (d) prohibiting or restricting the anchoring of any vessel within the MCZ;
 - (e) prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the MCZ;
 - (f) prohibiting or restricting the doing of anything in the MCZ which would interfere with the sea bed or damage or disturb any object in the MCZ.
- (4) The provision that may be made by a byelaw under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.
- (5) A byelaw under this section may provide for the MMO to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaw.

(6) The MMO may attach to a permit under subsection (5) any condition which the MMO thinks appropriate to attach to that permit.

(7) A byelaw under this section may be made subject to specified exceptions.

(8) A byelaw under this section may make different provision for different cases, including (in particular)—

- (a) different parts of the MCZ;
 - (b) different times of the year;
 - (c) different means or methods of carrying out any activity.
- (9) In this section “specified” means specified in the byelaw.

S155 Provision that may be made by byelaw (IFCA byelaws)

(1) The provision that may be made by a byelaw under section 155 includes provision falling within any one or more of the Heads set out in—

- (a) subsection (3) (prohibition or restriction of exploitation of sea fisheries resources),
- (b) subsection (4) (permits),
- (c) subsection (5) (vessels, methods and gear),
- (d) subsection (6) (protection of fisheries for shellfish),
- (e) subsection (7) (monitoring of exploitation of resources);
- (f) subsection (8) (information).

(2) In the following provisions of this section “specified” means specified in the byelaw.

(3) Head 1 is provision prohibiting or restricting the exploitation of sea fisheries resources, including—

- (a) provision prohibiting or restricting such exploitation in specified areas or during specified periods;
- (b) provision limiting the amount of sea fisheries resources a person or vessel may take in a specified period;
- (c) provision limiting the amount of time a person or vessel may spend fishing for or taking sea fisheries resources in a specified period.

(4) Head 2 is provision prohibiting or restricting the exploitation of sea fisheries resources without a permit issued by an IFC authority, including—

- (a) provision for the charging of fees for permits;
- (b) provision enabling conditions to be attached to a permit;
- (c) provision enabling an IFC authority to limit the number of permits issued by it.

(5) Head 3 is—

- (a) provision prohibiting or restricting the use of vessels of specified descriptions;
- (b) provision prohibiting or restricting any method of exploiting sea fisheries resources;
- (c) provision prohibiting or restricting the possession, use, retention on board, storage or transportation of specified items, or items of a specified description, that are used in the exploitation of sea fisheries resources;
- (d) provision for determining whether such items are items of a specified description.

(6) Head 4 is provision for and in connection with the protection of fisheries for shellfish, including—

- (a) provision requiring shellfish the removal or possession of which is prohibited by or in pursuance of any Act to be re-deposited in specified localities;
- (b) provision for the protection of culch and other material for the reception of the spat or young of shellfish;
- (c) provision requiring such material to be re-deposited in specified localities;
- (d) provision constituting, within an IFC district, a district of oyster cultivation for the purposes of subsection (2)(c) of section 16 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (which prohibits the sale of oysters between certain dates);
- (e) provision directing that section 17(2) of that Act (which affords a defence to a person charged with an offence under that section) does not apply.

(7) Head 5 is provision for and in connection with the monitoring of exploitation of sea fisheries resources, including—

- (a) provision requiring vessels to be fitted with specified equipment;
- (b) provision requiring vessels to carry on board specified persons, or persons of a specified description, for the purpose of observing activities carried out on those vessels;
- (c) provision requiring specified items, or items of a specified description, that are used in the exploitation of sea fisheries resources to be marked in such manner as may be specified.

(8) Head 6 is provision requiring persons involved in the exploitation of sea fisheries resources in an IFC district to provide the authority for the district with specified information.

ANNEX B: BACKGROUND ON SUBJECT MATTER IN CLAUSE 31(4)

1. The list of matters in clause 31(4) is intended to be a clear explanation of the intended use of the power in relation to each subject matter. To provide the Committee with further information, we set out below what each matter covers and give examples of what provision might be made in relation to each matter. We also set out where there are existing powers which could be exercised in relation to the matter, but for the existence of relevant provisions in what will become retained EU law.
2. Making provision by regulations subject to Parliamentary scrutiny would increase the level of Parliamentary control envisaged by this legislation. We would make clear when introducing any regulations under the Bill if we intended to rely on licence conditions rather than on amended provisions in retained EU law.

(a) the quantity of sea fish that may be caught

3. This matter would cover how many fish subject to quota controls could be caught. It would also cover limits on non-quota stocks (for example bag limits).
4. The power would be used to set, amend or remove quota limits for different stocks of fish. It might also be used to set catch limits for vulnerable species that are not currently subject to catch limits. Provision might also be made amending or revoking provisions in the EU's TACs and Quota Regulation for 2019, should the need arise in a no-deal scenario. This Regulation will specify the quota available to Member States, often by stock and by area. We will need to make sure that we can make appropriate amendments to this Regulation.
5. Provisions in existing UK law on the management of quota include the following:
 - Power to issue a fishing boat licence limited by reference to the descriptions and quantities of fish which may be caught (section 4(5)(c) Sea Fish (Conservation) Act 1967);
 - Power to make IFCA byelaw limiting the amount of sea fisheries resources a person or vessel may take in a specified period (section 155(3)(b) Marine and Coastal Access Act 2009).

(b) the amount of time that fishing boats may spend at sea

6. This matter relates to how many days fishing boats can spend fishing. The EU TACs and Quota Regulation contains provisions on days at sea as well as quota and we may need to amend these provisions in the 2019 Regulation as well as those on quota.
7. We may also need to amend the rules on the days vessels can spend fishing in Council Regulation (EC) No 1954/2003, which sets limits for the fishing of shellfish in “Western Waters”, off the West coast of the UK.
8. Provisions in existing UK legislation on the days vessels may spend fishing include:
 - Power to make orders relating to periods when fish can be caught (s4(2) of the 1967 Act);
 - Power to impose licence conditions relating to the periods when fishing may take place (section 4(4A) of the 1967 Act);
 - Power to make an IFCA byelaw limiting the amount of time a person or vessel may spend fishing (section 155(3)(c)).

(c) the landing of sea fish

9. This matter relates to the obligation to land fish and to where fish should be landed. Provision might be made amending discard plans introduced by the EU under Article 15 of the main CFP Regulation. These set out detailed measures for different stocks and some minor exemptions to the discarding ban. For example, emerging evidence of high survivability may necessitate the exemption of a species from the obligation to land catches.
10. Provisions in existing UK law relating to the landing of fish include:
 - Power to make an order prohibiting the landing of fish (section 6 of the 1967 Act);
 - Power to grant a fishing boat licence limited by reference to the landing of fish (section 4(4A)(6) of the Sea Fish (Conservation) Act 1967).

(d) bycatch

11. This matter relates to the catching of fish other than those which fishers have targeted. This is an issue or concern to many fishers as there are many “mixed” fisheries in UK water, with different stocks swimming together. This is one reason why we are introducing provisions for a discard prevention charging scheme in the Bill.
12. The power might be used to specify the avoidance measures fishers should take to minimise the risk of bycatch of marine mammals, marine reptiles, seabirds, and other non-commercially exploited species or what they may do with bycatch. Bycatches of seabirds could constitute a serious threat to the conservation status of particular seabird species.
13. Provisions in existing UK law include:
 - Power, by order, to restrict fishing for specified descriptions of sea fish or by a specified method (section 4(2) of the 1967 Act and section 5(1) of the 1968 Act);
 - Power to grant a licence limited by reference to method of sea fishing (section 4(5)(d) of the 1967 Act)
 - Power to impose licence conditions relating to the use to which fish caught may be put (section 4(6)(b) of the 1967 Act);
 - Power, by IFCA byelaw, to prohibit or restrict any method of sea fishing (section 155(5)(b) MACA 2009).

(e) catching, landing or selling sea fish that are below a certain size

14. This matter relates to minimum sizes for fish. Provision will need to be made to amend measures on mesh sizes and minimum landing sizes in several EU Technical Standards Regulations (including Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and Commission Regulation (EC) No 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets).

15. Commercially exploited marine species are mostly subject to 'minimum conservation reference size' (MCRS) specifications for sustainability purposes. Existing MCRS specifications are generally stable – but scientific studies can show that maturation ages/size specifications have changed with environmental factors, were incorrectly set originally, or need to change to reflect the developing needs of a specific stock. For example, stocks might become subject to recovery measures to maximise reproduction by redirecting fishing to larger fish that have had spawning opportunities.

16. Provisions in existing UK law include:

- Power, by order, to specify requirements as to the construction, design, material or size of fishing gear (section 3(1) of the 1967 Act);
- Power, by order, to prohibit the sale of fish below a certain size (section 1 of the 1967 Act);
- Power, by IFCA byelaw, to require vessels to be fitted with specified equipment (section 155(7)(a) of MACA 2009).

(f) setting and enforcing targets relating to stocks of sea fish

17. This matter relates to targets for particular stocks of fish and to methods to ensure that those targets are met. Provision might be made setting a target for the number of a particular stock which might be caught sustainably in a particular area. This could be important to ensure that the UK complies with international agreements on quota levels. Provision might also be made to extend quota controls to stocks not currently subject to them or to amend multiannual plans. These set targets, which could be amended in response to scientific advice. The CFP's multiannual plan for cod stocks has been amended every few years.

18. Provisions in existing UK law include:

- Power to grant licence restricted by reference to area (section 4(5)(a) of the 1967 Act);
- Power, by order, to restrict fishing by area (section 5(1)(b) of the 1967 Act);
- Power, by IFCA byelaw, to prohibit fishing in specified areas (section 155(3)(a) MACA 2009).

(g) the design of sea fishing equipment

19. This matter relates to the design of fishing equipment, such as nets. Provision might be made amending provisions on the design of nets in the EU's Technical Conservation Regulations referred to above. Fishing gear innovation is ongoing and requires legislative changes to incorporate new gear types shown to be effective, to amend specifications for gear types, or to introduce new selectivity standards for fishing equipment to avoid by-catch. We might, for example, wish to set new and more effective specifications for acoustic deterrent devices ('pingers') that are attached to fishing gear to reduce cetacean by-catch levels.

20. The power may also be used to mandate or incentivise the use of gears which reduce or remove the catching of juvenile species in order to protect the stock and allow for larger percentages of fished for stocks to reach reproductive maturity before being caught.

21. Provisions in existing UK law include:

- Power, by order, to specify requirements as to the construction, design, material or size of fishing gear (section 3(1) of the 1967 Act);
- Power, by order, to prohibit the sale of fish below a certain size (section 1 of the 1967 Act);
- Power, by IFCA byelaw, to require vessels to be fitted with specified equipment (section 155(7)(a) of MACA 2009);

(h) the use of sea fishing equipment

22. This matter relates to how fishing equipment may be used. Provision might be made prohibiting the use of certain fishing gear in Marine Protected Areas. It might also be made to prohibit more generally the use of gear which leads to unsustainable fishing. For example, it could prohibit the use of certain fishing gear types to minimise the impacts of fishing activity on the environment or on certain species. This could include preventing the use of bottom fishing methods in areas where the seabed habitat is vulnerable to such activity.

23. Provision in existing UK law includes the following:

- Power, by order, to limit fishing by a specified method (sections 4(2) and 5 of the 1967 Act);
- Power to grant licences restricted by reference to methods of sea fishing (section 4(5)(d) of the 1967 Act);
- Power, by MMO byelaw, to prohibit or restrict the doing of anything in a Marine Conservation Zone which would interfere with the sea bed or damage or disturb any object in the MCZ (section 129(3)(f) MACA 2009).

(i) the retrieval of lost or discarded sea fishing equipment

24. This relates to retrieving sea fishing equipment (or recovering the costs of doing so from those who discard fishing gear). Lost or discarded fishing gear is a cause of harm to the marine environment. The gear moves with ocean currents causing marine species to be caught or otherwise entangled.

25. Provision in existing UK legislation includes:

- Power, by order, to make provision about the identification and marking of fishing gear (section 5 of the 1968 Act).
- Power, by MMO byelaw, to prohibit or restrict the doing of anything in a Marine Conservation Zone (MCZ) which would interfere with the sea bed or damage or disturb any object in the MCZ (section 129(3)(f) MACA 2009).
- Power, by IFCA byelaw, to required gear to be marked (section 155(7)(c) MACA 2009).

(i) methods of sea fishing

26. This relates to the methods of sea fishing which can be employed. Restrictions may be placed, for example, on using certain methods of fishing in an MCZ or in an area where fishing gear restrictions are in place to protect spawning stocks.

27. This power could also be used to change which methods are prohibited, in response to scientific studies of gear development, where this is thought necessary to address the environmental cost of existing methods. Electric pulse beam trawling in the southern North Sea is permitted under EU rules and might be something we wished to regulate in the future.

28. Provisions in existing UK legislation include:

- Power, by order, to restrict fishing for specified descriptions of sea fish or by a specified method (section 4(2) of the 1967 Act and section 5(1) of the 1968 Act);
- Power to grant a licence limited by reference to method of sea fishing (section 4(5)(d) of the 1967 Act)
- Power to impose licence conditions relating to the use to which fish caught may be put (section 4(6)(b) of the 1967 Act);
- Power, by IFCA byelaw, to prohibit or restrict any method of sea fishing (section 155(5)(b) MACA 2009).

(k) the processing of sea fish on fishing boats

29. This relates to operations such as filleting, sorting and freezing fish on fishing boats.

Methods of processing fish on board vessels can be used to obfuscate or circumvent other fisheries controls or conservation methods. For example scallops are cut from their shells to prevent fisheries officers from determining the minimum conservation reference size of the shell. In addition, use of technology such as automatic grading equipment can encourage the discarding of lower graded, low value fish.

30. Provisions in existing UK law include:

- Power, by licence, to impose conditions as to the landing of parts of fish (section 4(6)(a) of the 1967 Act);
- Power, by order, to prohibit the transshipment of fish (section 4A of the 1967 Act).

(l) the use to which the Secretary of State may put information obtained in the exercise of the Secretary of State's functions relating to fisheries or aquaculture

31. This relates to what the Secretary of State may do with information gathered in relation to his fisheries functions.

32. Provision might be made, for example, for the Secretary of State to share information with international bodies for the purpose of demonstrating UK compliance with international standards or for scientific research. As noted above, it is possible that we would want to amend the EU's Data Collection Framework (DCF).

33. Information gathered from fisheries control measures, for example positional data from vessel monitoring systems and/ or catch data from fishing vessel logbooks, is used for enforcement purposes, but may also be of great interest to scientific research bodies to inform future fisheries management decisions.

(m) the functions, objectives or regulation of producer organisations or inter-branch organisations

34. Regulation (EU) 1379/2013 on the Common Organisation of the Markets of Fishery and Aquaculture Products and other EU Regulations provide for the establishment of Producer organisations and inter-branch organisations. These have various roles and, in the UK, they represent fishers and other bodies representing fishers. Producer organisations manage quota on behalf of their members.

35. The regime for the recognition and monitoring of these organisations is set out in EU law and in UK implementing legislation. In the UK, these organisations play an important role in managing quota and it is possible that we will need to amend retained EU law to make sure that such functions are effectively regulated.

(n) the marketing of fishery products (including labelling)

36. The marketing requirements for fish and fishery products are currently contained in Regulation (EU) 1379/2013 on the Common Organisation of the Markets of Fishery and Aquaculture Products (the CMO Regulation). This will become part of retained EU law. There are also provisions on the sale of fish in the Sea Fish (Conservation) 1967 Act and in the Food Act 1984.

37. The CMO sets rules on marketing standards (fish sizes and freshness), and consumer information (fish labelling requirements).

38. The CMO requirements complement the general rules on the provision of food information to consumers and contribute to more transparency in the market as they enable consumers to make informed choices on the products they buy.

39. In general the current CMO provisions meet the UK's consumer desire for information on sustainability, provenance and quality of fish and aquaculture products. There are, however, a few provisions that we wish to review to ensure they are effective:

- requirements regarding the date of catch and date of minimum durability. (We understand that some in the processing sector have found this to be a complicated requirement as they have different supply chains for frozen, processed and re-frozen products);
- requirements to include labelling information on the fishing gear used to catch fish. (There is some evidence that consumers base buying decisions on what gear has been used, even when fish have been sustainably caught).

(o) keeping, disclosing or publishing accounts, records or other documents or information by persons involved in—

(i) commercial fish activities or commercial aquaculture activities,

or

(ii) monitoring, or enforcing, compliance with the regulation of commercial fish activities or commercial aquaculture activities

40. It is vital that regulators can gather the information they need to monitor fishing activities. It is also important that this information can be shared where necessary. This helps incentivise good practice and may be necessary for any prosecutions. The Department acknowledges its duties under data protection legislation.

(p) the use in aquaculture, or transport, of aquatic organisms that are members of an alien species or a locally absent species

41. Council Regulation 708/2007 concerning the use of alien and locally absent species in aquaculture will become retained EU law. We may need to amend provisions in this Regulation and in UK implementing legislation to extend controls to other species.

42. This power would be used to make regulations about the conditions under which alien or locally absent species could be used safely in aquaculture. Our ability to trade and meet international obligations may depend on the UK having the appropriate controls in place to prevent the unintended spread of species.

(g) monitoring, or enforcing compliance with the regulation of any of matters mentioned in the preceding paragraphs of this subsection

43. The Department's proposal is that we will need to extend monitoring and enforcement measures so that they apply in relation to any provision made using this power. We may, for example, need to extend existing powers to search and to seize property where this is needed for criminal enforcement purposes. Provision might, be made, for example, requiring the seizure of unlawful fishing gear or of material which might harbour an aquatic animal disease. Enforcement bodies, such as the MMO, need to have adequate powers to make sure fisheries legislation can be enforced.
44. We suggest that the examples given above demonstrate why the Department is justified in seeking this power. Without it, the Government would need to introduce a continuous stream of primary legislation each time it needed to amend, replace or remove retained EU law or to make provision in relation to matters which are largely technical in nature.
45. The scientific community and various industry stakeholders within the fisheries sector have stated that a flexible and responsive system is needed. They have referred, for example, to the need to react to climate change impacts: fish stocks are moving further north and fish are maturing earlier.
46. Another justification for this power is that it supports a consistent approach to fisheries management across the UK. The power is exercisable by the Secretary of State in relation to devolved matters, with Devolved Administration consent. This means that the Fisheries Administrations can work together to make sure that technical rules do not vary unnecessarily in different areas of the UK's waters.

ANNEX C: NON-LEGISLATIVE POWERS

1. This annex includes analysis on non-legislative powers in the Bill.

Clauses 2 to 6 and Schedule 1: UK fisheries objectives and duties relating to Fisheries Statements

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, DAERA

Nature of power: Non-legislative (duty to adopt Fisheries Statements)

Parliamentary Procedure: scrutiny of the Statements

2. These provisions do not confer legislative powers but are referred to here as they confer functions on the Fisheries Administrations which are subject to scrutiny by the relevant legislatures. Clause 1 of the Bill revokes Article 2 of the main CFP Regulation (Regulation (EU) No 1380/2013) and replaces CFP sustainability objectives with UK sustainability objectives. Clause 2 requires the Fisheries Administrations to adopt a Joint Fisheries Statement (JFS) stating how their policies will achieve or contribute to the achievement of the UK fisheries objectives. The Fisheries Administrations must lay the draft FPS before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. If an appropriate legislature makes a resolution or recommendation on the draft during the scrutiny period, the relevant Fisheries Administration must lay a statement before that legislature setting out its response. The Secretary of State must publish an additional Statement, also subject to Parliamentary scrutiny, setting out his policies for achieving additional objectives.

Clauses 10, 12 and Schedule 2: powers to grant licences and attach conditions

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, DAERA

Nature of power: Non-legislative

Parliamentary Procedure: none

Context and purpose

3. This is not a legislative power. The Bill revokes and replaces S4 Sea Fish (Conservation) Act 1967, in clauses 8 to 17, Schedule 2 and Schedule 3. The s4 licensing power has been used since 1967 to manage fisheries, including through the implementation of CFP requirements. The restated power to grant a licence limited by

reference to certain matters is in clause 10(2) and 12(3). The matters are the area where fishing is authorised, the periods, times or particular voyages during which fishing is authorised, the descriptions and quantities of fish which may be caught and the method of fishing.

4. The restated power to attach conditions to licences is now in Schedule 2. Conditions may be attached where “necessary or expedient for the regulation of sea fishing (including conditions which do not relate directly to fishing”. They may include, in particular, conditions as to the landing of fish or parts of fish (including the ports at which catches are to be landed), the use to which fish caught may be put, restricting the time boats may spend at sea, and conserving or enhancing the marine and aquatic environment.

Justification for the power

5. Licensing of fishing boats is a well-established means of regulating fishing, from the starting point that all fishing is prohibited unless authorised by a licence, and this has been the case across the UK since 1967. Further to this, the Control Regulation of the CFP (Council Regulation (EC) No 1224/2009) requires EU Member States to authorise certain fishing activities.
6. The MMO and the other Fisheries Administrations manage fisheries by way of licences and conditions within those licences are regularly updated. The licence conditions are also published by the MMO.¹
7. The Department does not propose to change this process, and the purpose of these provisions’ inclusion in the Bill is to clarify and update existing law. The main policy change here is to extend the requirement that foreign fishing boats are licensed as a means of applying the same rules to foreign fishing boats as to UK fishing boats. The opportunity to do so only arises as the UK is leaving the EU.
8. The existing powers under s4 of the 1967 Act could be used to extend the licensing requirement to foreign vessels, but the Department proposes to legislate for this in the Bill. The aims are to clarify each Fisheries Administration’s functions in relation to the

¹ The MMO publish sea fishing licence conditions on their website and these can be found here: <https://www.gov.uk/guidance/understand-your-fishing-vessel-licence>

licensing of foreign vessels, to support a consistent UK regime and to provide Parliament with the opportunity to scrutinise the proposed new regime.

Justification for the procedure

9. As this provision largely restates existing licensing powers, the Department's view is that it should continue as a power without any Parliamentary procedure.

Clauses 18 and 19: powers and duties of Secretary of State in relation to the determination of fishing opportunities

10. This is not a legislative power. It sets out in legislation the power of the Secretary of State to determine the UK's fishing opportunities. The EU's Council of Ministers currently determines EU fishing opportunities and distributes these to Member States. Clause 18 sets out the scope of the Secretary of State power. Clause 19 requires the Secretary of State to consult with the Devolved Administrations and to lay a notice before Parliament. We consider it would be clearer and more transparent for this function to be set out in legislation than for the Secretary of State to rely on prerogative powers.

Clause 30: power of the Sea Fish Industry Authority to charge for its services (revocation of exception relating to Member States)

11. This is not a legislative power. The Fisheries Act 1981 allows the Sea Fish Industry Authority to charge for its services. If it provides services in countries other than the UK, it must recover the full cost of those services. The amendment removes the exception for Member States and is a necessary change for when we leave the EU.