

# FISHERIES BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Fisheries Bill (the Bill) will provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the Common Fisheries Policy (the CFP) at the end of the Transition Period at 11pm on 31 December 2020. The Bill creates common approaches to fisheries management between the Secretary of State for Environment, Food and Rural Affairs (the “Secretary of State”) and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management across the UK. It also confers additional powers on the Marine Management Organisation (“the MMO”) to improve the regulation of fishing and the marine environment in the UK and beyond.
- 2 The Bill was first introduced in the Commons in the previous Parliament where, in the 2017-2019 Session, it reached Report stage after completing a Public Bill Committee. Government amendments were tabled at Committee, but the Bill fell when Parliament was prorogued at the end of that Session.
- 3 Since the Bill was considered in the last Parliament, the Government has included additional provisions: a single set of UK-wide fisheries objectives (including a new climate change objective); a duty to create fisheries management plans to fish at sustainable limits for all stocks; and a broadening of the grant making power. The Bill also provides further powers for the Welsh and Scottish Governments that reflect a number of those granted to the Secretary of State, and a change to the commencement provisions.
- 4 The Bill started in the House of Lords in this Parliament and the Bill arriving in the Commons includes a number of changes from Government and non-government amendments. The non-government amendments include a changed sustainability objective in clause 1,
- 5 The Bill contains the following provisions:
  - Fisheries objectives, fisheries statements and fisheries management plans: the Bill replaces the objectives currently in Article 2 of the Basic Regulation of the Common Fisheries Policy (Regulation (EU) 1380/2013), with a new set of objectives for the Fisheries Administrations. These set out the priorities for the Fisheries Administrations once the UK leaves the CFP. The Fisheries Administrations are required to publish a joint fisheries statement setting out the policies which would achieve or contribute to the achievement of those objectives. The Secretary of State may publish a separate statement setting out policies on non-devolved matters if these are not included in the joint fisheries statement. The Fisheries Administrations must include a statement on fisheries management plans in the joint fisheries statement and must publish fisheries management plans setting out policies for restoring fish stocks to, or maintaining them at, levels capable of producing maximum sustainable yield where that is the appropriate measure. The Fisheries Administrations are required to pursue the policies contained in the statements and plans unless there is a relevant change in circumstances which would indicate a different approach is necessary.
  - Access: when the UK leaves the EU, any access for EU and other foreign vessels to UK waters will be a matter for negotiation. The Bill revokes the EU legislation which currently provides for automatic rights for vessels registered in the EU to access UK waters. By revoking provisions in the Fishery Limits Act 1976, it removes the need to designate which countries’ vessels are able to fish in UK waters and introduces a new requirement that foreign fishing in UK waters must be licensed by the MMO or one of the Fisheries Administrations to fish in UK waters or be for a purpose recognised under international

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law (for example, freedom of navigation).

- Fishing boat licensing: the Bill revokes, replaces existing powers for licensing authorities to license fishing in UK waters. For the most part, this is a consolidation of existing powers but the Bill makes several significant changes. It provides for equal access for UK vessels in UK waters by clarifying that licences issued by one of the licensing authorities are effective throughout UK waters. It also prohibits foreign vessels from fishing in UK waters unless they have a licence issued by a UK licensing authority.
- Fishing opportunities: the Bill revokes EU legislation which currently sets UK fishing opportunities and provides for the Secretary of State to determine the UK's fishing opportunities. Before doing so they must consult the Devolved Administrations and the MMO. The Secretary of State must also make certain notifications, including a notification to Parliament. The Bill also introduces powers to enable annual fishing opportunities to be sold to those in the English and Welsh fishing industries by the Secretary of State and the Welsh Ministers respectively.
- Discard prevention charging scheme: The Bill contains a regulation-making power to set up a scheme for charging English fishing licence holders that land fish in excess of their authorised quota. This will support compliance with the landing obligation (which requires all species under quota to be landed) by encouraging the uptake of more sustainable fishing practices.
- Marine environment: the Bill extends marine conservation powers to regulate fishing for the purposes of protecting the marine environment. The MMO, Scottish Ministers and Welsh Ministers will be able to regulate fishing outside territorial waters and outside marine protected areas. It extends the MMO's existing byelaw making powers and confers equivalent order making powers on the Scottish Ministers and Welsh Ministers. The Bill also enables the MMO to exercise certain research, training and advisory functions outside UK waters (e.g. to support the development of marine protected areas in the waters of an Overseas Territory as part of the "Blue Belt" programme).
- Cost recovery: the Bill extends the cost recovery powers of the MMO and the Devolved Administrations to enable them to charge for services they provide to the fishing industry.
- Financial assistance: the Bill provides powers for the Fisheries Administrations to introduce schemes of financial assistance for the fish and aquaculture industries, to improve the marine and aquatic environment, to develop areas in which fish or aquaculture activities are carried out, to promote the health and safety of fishers and to promote recreational fishing. The powers replace and broaden existing domestic funding powers and will allow new funding schemes to match the breadth of what is currently funded under the European Maritime and Fisheries Fund (EMFF).
- Power to amend UK law (including primary legislation and retained EU law) related to fisheries and aquaculture: the Bill provides a power, by regulations, to make provision in relation to listed fisheries matters and for listed purposes. The power is exercisable by the Secretary of State and the Devolved Administrations. The Secretary of State could also introduce UK-wide measures with the consent of the Devolved Administrations.

- Power to amend UK law (including primary legislation and retained EU law) related to aquatic animal health: the Bill provides a power, by regulations, to make provision in relation to listed matters related to the control of aquatic animal diseases and for listed purposes. The power is exercisable by the Secretary of State and equivalent powers are provided for the Devolved Administrations. The Secretary of State could also introduce UK-wide measures with the consent of the Devolved Administrations.
- Extension of the legislative competence of the Senedd Cymru: this enables the Senedd to make primary legislation on fishing, fisheries and fish health matters in the Welsh zone.

## Policy background

### Exiting the EU

- 6 On 1 January 1973 the UK joined the European Economic Community, which has since evolved to become today's European Union. As part of its membership, the UK joined the CFP, which has underpinned UK fisheries management policy for the 45 years since.
- 7 On 29 March 2017, the then Prime Minister gave notification of withdrawal of the UK from the EU under Article 50(2) of the Treaty on European Union (TEU).
- 8 The European Union (Withdrawal Agreement) Act 2020 received Royal Assent on 23 January 2020. This means that the UK will no longer be bound by the CFP's regulations from the end of the Transition Period on 31 December 2020. The Fisheries Bill will establish a domestic system of fisheries management.

### The Common Fisheries Policy (CFP)

- 9 The CFP has been reformed several times during the course of the UK's membership of the EU, but the principal matters which the CFP has covered are as follows:
  - Shared access for EU fishing vessels to EU Member States' waters;
  - Total Allowable Catch (TAC) and fishing opportunities for key fish stocks for each Member State are agreed annually in December between EU Member States;
  - The representation of EU Member States by the European Commission in negotiations with third countries and in international fisheries agreements; and,
  - Directly applicable fisheries management legislation, including on detailed technical measures and control and enforcement.

### Access

- 10 In relation to access arrangements, under the CFP, EU Member States share access to each other's Exclusive Economic Zones (EEZs) and territorial (inshore) waters in the following way:
  - 0 to 6 nautical miles: national vessels only, and subject to a specific arrangement between the Republic of Ireland and Northern Ireland - the voisinage arrangement. There are mutual access arrangements between France and Jersey under the Granville Bay Agreement;
  - 6 to 12 nautical miles: national vessels, and foreign vessels operating under

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historic access arrangements. Vessels from Belgium, France, Germany, Netherlands and the Republic of Ireland have had access to the UK 6 to 12 mile zone under the London Fisheries Convention (LFC), which is also reflected in the CFP Regulation. UK vessels also have some access to the zones of those countries;

- 12 to 200 nautical miles: EU waters, shared access between all Member States.

### The management of fishing opportunities

- 11 In the management of fishing opportunities, the explicit objectives of the CFP are to ensure that fishing is environmentally, economically and socially sustainable. Under the CFP, most fish stocks in the North East Atlantic (which includes the waters around the UK) are managed using TACs, which are shared between Member States as quotas. TACs cover more than 50 species split into over 200 stocks. Currently the UK has interests in 123 of those stocks. TACs are agreed following scientific advice provided by the International Council for the Exploration of the Sea (ICES). EU Member States and other countries that fish in the North East Atlantic, such as Norway, Iceland, the Faroe Islands and Russia, contribute to this advice by providing stock assessments produced by their national scientific bodies and by submitting catch data.
- 12 Although ICES makes recommendations on the level of TAC which reflect different management scenarios consistent with sustainable management of the stock, the TAC level set is negotiated and agreed between the parties fishing the stock.

### Coastal State negotiations

- 13 International law, including the UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (UNFSA), provides that coastal States control fisheries in their territorial waters and EEZ, and must co-operate with one another to manage shared fish stocks.
- 14 Under the CFP, TACs and quota shares are agreed between the EU Commission (acting on behalf of Member States) and other parties. Agreements are reached, for example, bilaterally with Norway and the Faroe Islands and within Regional Fisheries Management Organisations (RFMOs). RFMOs are international organisations formed by countries with fishing interests in an area (and driven by obligations under UNCLOS and UNFSA). Some of them manage all the fish stocks found in a specific area, while others focus on particular highly-migratory species, notably tuna.
- 15 The EU Commission leads on all external fisheries negotiations on behalf of Member States. It holds co-ordination meetings with interested Member States prior to and during negotiations.

### December Fisheries Council

- 16 The TAC for each stock for the following year is agreed annually at the December Fisheries Council. This involves complex negotiations between Member States and the EU Commission. The EU Commission and the Presidency secure agreement by a Qualified Majority in the Council to reach a deal. The TACs and Quota Regulation is a directly applicable Council Regulation.

### National quotas

- 17 Once EU TACs have been set, they are divided between Member States into national quotas. Quota is allocated to Member States in accordance with a method known as 'relative stability' – this grants EU countries a fixed percentage of quota for each fish stock covered by TACs. Relative stability shares (which vary by stock) were agreed in 1983 and based on Member States' historical fishing patterns dating back to the 1970s.

### Management regime

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18 The CFP has undergone a number of reforms since it was introduced. The most recent reform took place in 2013 and introduced a range of measures designed to conserve fisheries resources. These include a commitment to fish at maximum sustainable yield, a ban on discarding fish, and increased regionalisation of fisheries governance. Examples of the management reforms introduced in 2013 are:

- The landing obligation: one of the problems with the quota system is the incentive it provides for fishers to throw over-quota fish back into the sea. To end this wasteful practice, the latest CFP reform introduced a phased landing obligation in 2015, which now requires all catches to be landed.
- Regionalisation: enables only those Member States that share fisheries at a sea basin level to agree and enact regional decisions in EU or national law.

## European Maritime and Fisheries Fund

19 Funding for the fisheries industry in the EU is derived from the European Maritime and Fisheries Fund (EMFF). The UK was allocated €243m from the EMFF over 2014 to 2020, divided between England, Wales Scotland, and Northern Ireland.

## Fisheries management in the UK

### Quota distribution

20 Following agreement at December Council on the level of TACs, Defra allocates shares of the UK's quotas to each of the UK's four Fisheries Administrations. Allocations have been based on Fixed Quota Allocation (FQA) units and arrangements for allocating and transferring quota are set out in the Concordat between the Fisheries Administrations (*Concordat on management arrangements for fishing quotas and licensing in the UK* and in the Quota Management Rules (*Rules for the management of the UK's fisheries quotas in areas I, II, IV, VI and VI (and associated areas) and in Faroese waters (Vb)*). Each unit entitles the FQA holder to a specific percentage share of UK quota for a given stock. FQAs were allocated to vessel owners in 1999 based on historical fishing track records.

21 The fishing industry is divided into two categories for the purposes of distributing fishing opportunities:

- the "sector", which is comprised of vessels over 10 metres in length that are members of Producer Organisations (POs)(see below). POs manage the quota received on behalf of their members. Most over 10 metre vessels are members of POs in the UK; and
- the "non-sector", which is comprised of over 10 metre and under-10 metre vessels that are not members of POs. Their quota is managed by each fisheries administration using a shared pool system. For England, these pools are managed by the MMO, who issue monthly allocations of quota and, based on the level of catches recorded, the MMO will make decisions on whether the levels of quota allocated each month need to be changed.

22 Some quota is allocated outside of the FQA system to support certain policy objectives. For example, in England the under-10 metre fleet's allocation is adjusted to guarantee a minimum share in certain stocks.

### Producer Organisations

23 POs were established under the EU Regulation on the common organisation of the markets in

fishery and aquaculture products (No. 1379/2013 - the 'CMO Regulation'). POs are made up of fishery or aquaculture producers and their main objectives are promoting sustainable fishing, reducing unwanted catches, contributing to the traceability of fishery products, and the elimination of illegal, unreported and unregulated (IUU) fishing. They also play a role in marketing the products of their members and building a relationship with the supply chain (fish markets, processors, other purchasers, retailers and consumers) in order to promote market stability.

- 24 In addition to their responsibilities under the CMO Regulation, POs in the UK are responsible for managing quota on behalf of their members. PO staff also provide an administrative function to ensure accurate catch records for their members are maintained.

## Fisheries Management in England

- 25 The enforcement and management of fisheries is generally carried out by the MMO and the Inshore Fisheries Conservation Authorities (IFCAs).
- 26 The MMO's functions are set out in the Marine and Coastal Access Act 2009 (MCAA) and in general terms are to license, regulate and plan marine activities in the seas around England.
- 27 The IFCAs' functions are also set out in the MCAA. They are committees or joint committees formed from relevant local authorities within 10 areas across England. Their duties relate to the management of fisheries resources and the conservation of the marine environment within the inshore sea (0 to 6 nautical miles). Their powers include byelaw making powers.

## Devolution

- 28 Fisheries is generally a devolved matter: the Devolved Administrations regulate fisheries in their waters and in the case of Scotland and Northern Ireland, can regulate their vessels wherever they fish. The current UK-wide approach to fisheries is achieved because all the Fisheries Administrations are required to comply with EU law – including the CFP.
- 29 Also, as UK vessels fish throughout UK waters, the Fisheries Administrations work together to ensure a common or consistent approach to fisheries management where necessary or appropriate. This is currently provided for through the Concordat.

## Sustainable fisheries for future generations

- 30 On 4 July 2018, the Department for Environment, Food and Rural Affairs (Defra) published a White Paper for consultation ('Sustainable fisheries for future generation'). This set out the Government's vision for future fisheries management after leaving the EU and the CFP. The White Paper sets out the Government's aim to build a vibrant and sustainable UK fishing industry by taking responsibility for managing fisheries resources within UK waters, while continuing to protect and improve the marine environment, in line with the 25 Year Environment Plan which was published in January 2018. The purpose of the consultation was to seek views on the Government's proposals for all aspects of its emerging approach which were set out in the White Paper.
- 31 The consultation closed on 12 September 2018. In total, 34,667 responses to the consultation were received from a wide range of stakeholders including fishermen, POs, public bodies, local councils, non-governmental organisations, members of Parliament, IFCAs, academia, other industries and local groups.

## Legal background

### Legal background to the Common Fisheries Policy

32 Article 2(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the EU has exclusive competence in several areas. These are set out in Article 3(1) TFEU and include:-

“(d) the conservation of marine biological resources under the common fisheries policy”.

As an EU Member State, the UK therefore does not have competence to act in relation to the conservation of marine biological resources under the CFP. This means that the EU has made most of the law applicable in the UK in relation to fishing and the need for marine conservation in connection with fishing activities. The CFP does, however, provide for Member States to manage their territorial waters (provided they do so consistently with any CFP rules).

33 Under Article 3(2) of the TFEU, the EU generally has exclusive competence in relation to international matters where it has exclusive internal competence. The EU has entered into a large number of fisheries agreements with third countries and is a member of several RFMOs.

34 Article 2(2) TFEU provides that in areas of shared competence the Member States may exercise their competence to the extent that the EU has not exercised its competence. The areas of shared competence are set out in Article 4(2) TFEU and include

“(d) agriculture and fisheries, excluding the conservation of marine biological resources;

(e) environment”

35 There is therefore shared competence in relation to those aspects of fisheries which do not concern the conservation of marine biological resources, for example, in relation to freshwater fish.

36 In some areas, the CFP does allow Member States more autonomy. The CFP allows Member States to restrict access to their 0 to 12 nautical mile area to their own vessels and the vessels of other Member States which have historic fishing rights in that area and to supplement EU measures in their territorial waters, provided they are non-discriminatory and at least as stringent as measures under EU rules. Member States may also enact measures which apply to their own vessels fishing outside territorial waters, provided those measures are consistent with the objectives of the CFP, and are at least as stringent as measures under EU law. This allows the UK to apply technical measures to its own vessels, regardless of where they are fishing. In emergencies, Member States can also take temporary measures which apply to all vessels, not just their own, in waters within their jurisdiction. Such measures have a time limit of three months.

37 Member States have various other powers. These include: stipulating which vessels may have their nationality and thus fly their flag; licensing their own vessels; allocating quota amongst their own vessels; administering aspects of the EMFF; and carrying out various tasks in relation to the common organisation of the market in fisheries products. In addition Member States play a significant role in the enforcement of the CFP.

### London Fisheries Convention

38 The LFC provides certain EU Member States a right of access for their vessels to fish for certain species in certain areas of UK and Crown Dependency territorial waters within 6 to 12 nautical

miles from the coast.

- 39 It was concluded in 1964, before the UK joined the EU, and before subsequent international agreements (in particular, UNCLOS) established definitively which rights coastal States could exercise in their territorial seas and Exclusive Economic Zones.
- 40 The Netherlands, Germany, Belgium, France and Ireland can fish for certain species in certain areas of UK and Crown Dependency territorial waters under the agreement, whilst UK vessels have access to certain areas and for certain species 6 to 12 nautical miles from the coast of the Netherlands, Germany, France and Ireland.
- 41 The Fishery Limits Act 1964 provided a power for Ministers to give effect to other states' rights (such as rights under the LFC) of access to fish within British fishery limits (at that time extending to 12 nautical miles from the coast) by making orders designating which countries could fish within these waters. The 1964 Act was repealed and replaced by the Fishery Limits Act 1976, which extended British fishery limits to 200 nautical miles and contained a similar power for Ministers to designate which countries could fish within these new limits. This power was used to provide for access to fish in accordance with the provisions of the LFC. Rights of access under the LFC are also included in Annex 1 to the Basic CFP Regulation (1380/2013), except those rights that relate to the Crown Dependencies.
- 42 Article 15 of the LFC permits parties to withdraw from the LFC by giving two years' notice. On 3 July 2017, as part of the wider process of becoming an independent Coastal State, the UK formally gave notice of its intention to withdraw from the LFC as soon as it ceased to be a Member State. The UK's participation in the LFC therefore formally ends on 31 January 2020. It will continue to comply with the access arrangements set out in the CFP Regulation until the end of the implementation period on 31 December 2020.

## UK law relating to fisheries

- 43 In addition to EU law derived from the CFP, there are a number of principal pieces of UK primary legislation that relate to fisheries. These are summarised below.
  - **The Sea Fish (Conservation) Act 1967 (SF(C)A 1967)** contains a number of important provisions which allow the Secretary of State and Devolved Administrations to:
    - prescribe the size limits for sea fish and minimum net sizes;
    - license fishing boats;
    - regulate the trans-shipment of fish from vessel to vessel; and
    - restrict fishing in certain areas and the landing of foreign-caught fish.

The main licensing orders made under this Act are the Sea Fish Licensing Order 1992 and the Sea Fish Licensing (England) Order 2015. The 2015 Order is a consolidation and applies in relation to England. The 1992 Order continues to apply in relation to Scotland, Wales and Northern Ireland. The orders prohibit unlicensed fishing anywhere by UK fishing boats (subject to certain exceptions).

- **The Sea Fisheries Act 1968** adds to the framework of domestic UK fisheries legislation. In particular it provides that Ministers may make orders regulating the conduct of fishing and makes provision for British sea-fishery officers.
- **The Fishery Limits Act 1976** and designation orders made under it prescribe the fishery

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limits of the British Islands and the rights of the fishing boats of other countries to fish within those limits. British fishery limits are now, for the purposes of section 1 of the Fishery Limits Act, those limits as designated by the Exclusive Economic Zone Order 2013 which declares the area of the UK's Exclusive Economic Zone (in effect, the United Kingdom's 12 to 200 nautical mile area of sea).

- **The Fisheries Act 1981** created the Sea Fish Industry Authority, setting out its duties and powers (including a power to impose a levy on persons engaged in the sea fish industry). It also contains provisions on financial assistance to the sea fish and fish farming industry. It contains a provision making a breach of EU sea fisheries legislation an offence under the Act.
- **The Sea Fisheries (Wildlife Conservation) Act 1992** contains an overarching duty for the Fisheries Administrations and the MMO to have regard to the conservation of marine flora and fauna when carrying out their sea fisheries functions.
- **The Marine and Coastal Access Act 2009** established the MMO. The Act makes the MMO the licensing authority for English vessels. It also allows Ministers to delegate functions to the MMO and makes provision for the management of inshore fisheries by IFCA's. The Act sets out the regime for marine planning in the UK marine area and provides for the designation and protection of Marine Conservation Zones. The Act also makes provision for the enforcement of fisheries legislation by Marine Enforcement Officers.

### Legal background to the devolution of fisheries

- 44 Foreign affairs (including relations with the EU, other countries and other international organisations) is a reserved matter. Observing and implementing international obligations is not a reserved matter.
- 45 Subject to very few exceptions, the devolved legislatures and administrations have legislative and executive competence in relation to fisheries and marine conservation in their territorial waters.
- The regulation of sea fishing in the Scottish zone and the regulation of Scottish fishing boats anywhere are devolved matters.
  - The regulation of sea fishing in the Northern Ireland zone and the regulation of Northern Ireland fishing boats anywhere are devolved matters. In Northern Ireland, the foreshore and seabed are excepted matters.
  - The regulation of sea fishing is devolved in the Welsh inshore area but the National Assembly for Wales does not currently have legislative competence in relation to fisheries in the Welsh offshore area. Fisheries is not reserved under Schedule 7A to the Government of Wales Act 2006, so is devolved where provisions can be said to relate to Wales (which includes the inshore area). Welsh Ministers do have executive competence in relation to fisheries in the offshore region.
- 46 Subject to certain exceptions, the Devolved Administrations have devolved competence in relation to marine licensing in their inshore area and the Scottish Ministers and the Welsh Ministers have executive competence in relation to marine licensing in respect of their offshore area.
- 47 The Devolved Administrations have executive competence in relation to marine planning in their offshore area as well as competence over marine planning in their inshore area.

## International law: the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement and Regional Fishery Management Organisations

### UNCLOS

- 48 UNCLOS is the main international agreement governing the World's oceans and seas. The UK is a party to UNCLOS in its own right. UNCLOS covers a number of significant issues including setting limits for territorial waters and EEZs, navigation, archipelagic status and transit regimes, continental shelf jurisdiction, deep seabed mining, the exploitation regime for fish stocks, protection of the marine environment, scientific research, and settlement of disputes. In relation to fisheries, UNCLOS recognises a coastal State's rights and obligations with respect to fishing in its territorial sea, its EEZ and on the high seas.
- 49 The territorial sea is a zone extending up to 12 nautical miles from a coastal State's baselines (generally the low-water line along the coast). The coastal State's sovereignty extends to its territorial sea. The coastal State's sovereignty over its territorial sea is to be exercised in accordance with its international obligations, including obligations under UNCLOS (for example, to provide innocent passage to vessels from third States).
- 50 The EEZ is a zone extending from the outer limit of the coastal State's territorial sea to up to 200 nautical miles from its baselines or to the median line with another coastal State's EEZ. Within the EEZ, the coastal State enjoys exclusive rights in relation to natural resources and related jurisdictional rights.
- 51 Within the EEZ, the coastal State has "sovereign rights for the purpose of exploring and exploiting, conserving and managing" the fish stocks of the zone (UNCLOS, Article 56(1)). These rights are subject to a number of duties under UNCLOS, including the need to:
- determine the total allowable catch of the living resources in the EEZ – Article 61(1);
  - maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield – Article 61(3);
  - optimise utilisation of the living resources within its EEZ, without prejudice to Article 61 – Article 62(1);
  - determine the coastal State's own capacity to harvest those living resources – Article 62(2);
  - provide other States with access to any surplus if the allowable catch exceeds the coastal State's own capacity to harvest the living resources – Article 62(2);
  - provide due notice of conservation and management laws and regulations relating to living resources of its EEZ – Article 62(5); and,
  - cooperate with other Coastal States upon measures necessary to coordinate and ensure the conservation and development of shared stocks - Article 63.
- 52 Where coastal States allow access for fishing boats from other States to their EEZ, the coastal State can prescribe conditions to govern such fishing. Article 62(4) of UNCLOS provides that these conditions may, for example, require foreign fishers to have licences, to observe the coastal State's conservation measures, to provide information including catch and effort statistics and vessel position reports, to carry out research programmes, to land part or all of their catches in the coastal State, to carry on-board observers, to train coastal State personnel, and to comply

with enforcement procedures.

- 53 The rights and duties of other States in the coastal State's EEZ are set out in Article 58 of UNCLOS. Other States' rights include (i) the freedom of navigation, (ii) the freedom of overflight, and (iii) the freedom to lay submarine cables and pipelines. Other States must have due regard to the rights and duties of the coastal State and comply with the laws and regulations adopted by the coastal State adopted in accordance with UNCLOS and other rules of international law.
- 54 Whilst the overwhelming proportion of commercial fishing takes place within 200 miles of land, UNCLOS also contains provisions governing fishing on the high seas (i.e. beyond 200 miles) where many fish stocks spend part or the whole of their life cycle. UNCLOS provides that fishing is, in principle, open to all States on the high seas, subject to a number of general obligations relating to the conservation and management of high seas living resources (set out in Articles 117 to 120). These include the obligation to cooperate to establish RFMOs to this end.
- 55 UNCLOS includes a bespoke dispute settlement mechanism. When a dispute arises, parties to UNCLOS are under a general obligation to settle the dispute by peaceful means (Art 279). Parties must proceed expeditiously to an exchange of views regarding settlement by negotiation or other peaceful means (Art 283). If parties fail to reach a settlement through agreed procedures, one may invite the other to submit to the conciliation procedure laid out in Article 285 and Annex V. There are compulsory dispute resolution mechanisms provided by section 2 of Part XV of UNCLOS, which are engaged where settlement of a dispute is not possible by a means freely chosen by the parties, but there are exceptions to this compulsory procedure for fisheries disputes relating to a coastal State's sovereign rights relating to the living resources in its EEZ, including its determination of the TAC and harvesting capacity, its allocation of surpluses to other States and its conservation and management laws.

## UNFSA

- 56 UNFSA is a multilateral treaty intended to ensure the long-term conservation and sustainable use of straddling fish stocks (stocks which migrate between, or occur in both, the EEZ of one or more States and the high seas such as mackerel, herring and whiting) and highly migratory fish stocks (stocks listed in Annex 1 of UNCLOS which are capable of migrating long distances and which generally occur in both EEZs and the high seas) through effective implementation of the relevant provisions of UNCLOS (UNFSA, Article 2). In order to achieve this objective, UNFSA sets out various principles for the conservation and management of these stocks by the coastal state within its EEZ, and by the coastal State and other states on the high seas. The UK is currently a party to UNFSA in its own right.
- 57 Part III of UNFSA contains detailed provisions on the implementation of Articles 117 to 120 of UNCLOS. This includes provision on the establishment and functions of RFMOs and duties of States to cooperate with them (Articles 8-17). In particular, States fishing for stocks managed by a particular RFMO on the high seas and the relevant coastal States must either join that RFMO or agree to apply the conservation and management measures adopted by the RMFO (Article 8(3)). UNFSA also imposes duties on States to implement and enforce conservation and management measures adopted by RFMOs.

## Regional Fishery Management Organisations (RFMOs)

- 58 As envisaged by UNCLOS and UNFSA, a large number of RFMOs have been established by coastal States and States fishing on the high seas. RFMOs are established by multilateral treaties and are intended to strengthen regional cooperation in order to promote conservation and sustainable exploitation of fish resources on the high seas, straddling stocks and highly migratory species. While some RFMOs have a purely advisory role, most have management

powers to set catch and fishing effort limits, technical measures, and control obligations in order to establish measures for the control and monitoring of fishing activities. The EU is a member of 17 of these organisations. The EU's exclusive competence in this area means that the UK is currently a member of only two RFMOs on behalf of a number of its overseas territories.

- 59 After the UK leaves the EU, the UK intends to join a number of RFMOs in its own right and will be bound directly by the conservation and management measures adopted by these RFMOs as a result.

## Retained EU law

- 60 The directly applicable EU regulations of which the CFP is comprised will be retained in UK law under the European Union (Withdrawal) Act 2018. The Department has made a number of statutory instruments to correct retained EU law relating to fisheries to make it operable in UK law.

## Territorial extent and application

- 61 Clause 52 sets out the territorial extent of the Bill. This determines the legal systems of which the Bill will form part. The extent of a Bill is different from its application. Territorial application is about where a Bill produces a practical effect rather than where it forms part of the law. The Bill largely extends and applies to the whole of the UK. Repeals and amendments made by the Bill have the same territorial extent as the legislation that they are repealing or amending.
- 62 The UK Parliament will not normally legislate for areas within the competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the consent of the legislature concerned. The Government will therefore seek legislative consent for provisions where this is the case. See the table in Annex A for a summary of the position regarding territorial extent and application. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.



# Commentary on provisions of Bill

## Fisheries objectives, fisheries statements, and fisheries management plans

### Clause 1: Fisheries objectives

- 63 This clause lists and defines the UK fisheries objectives. The objectives are the subject of the Joint Fisheries Statement which is provided for in clause 2. In this clause, as in the rest of the Bill, fishing includes recreational as well as commercial fishing unless otherwise specified. Where specified, objectives and other provisions in the Bill also relate to aquaculture.
- 64 Subsection (1) lists the fisheries objectives. These are (a) the sustainability objective, (b) the precautionary objective, (c) the ecosystem objective, (d) the scientific evidence objective, (e) the bycatch objective (f) the equal access objective, (g) the national benefit objective and (h) the climate change objective. Objectives (a) to (d) replace equivalent objectives in Article 2 of the Common Fisheries Policy Basic Regulation while (e) to (h) reflect other priorities for the UK after it leaves the CFP.
- 65 Subsection (2) provides the meaning given to the “sustainability objective” which is to ensure that fishing and aquaculture activities do not compromise environmentally sustainable in the short or long term, and once that is secured, that fishing fleets are managed to achieve economic, social and employment benefits, and contribute to the availability of food supplies. It also seeks to ensure that the fishing capacity is managed to ensure economic viability without over-exploitation of stocks.
- 66 Subsection (3) states that the sustainability objective is the “prime fisheries objective”.
- 67 Subsection (4) provides the meaning given to the “precautionary objective” which is to apply the precautionary approach to fisheries management, and to ensure that exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.
- 68 Subsection (5) provides the meaning given to the “ecosystem objective” which is to implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and to ensure that incidental catches (e.g. of cetaceans) are minimised and eliminated where possible.
- 69 Subsection (6) provides the meaning given to the “scientific evidence objective” which is to contribute to the collection of scientific data, to work between the fisheries administrations where appropriate and share data, and to base fisheries management policy on the best available scientific advice.
- 70 Subsection (7) provides the meaning given to the “bycatch objective” which is, where appropriate, to avoid or reduce catches of unwanted bycatch, including undersized fish, to record and account for all catches, to ensure catches of fish are landed (rather than discarded at sea) but without incentivising the catching of undersized fish.
- 71 Subsection (8) provides the meaning given to the “equal access objective” which is to ensure that the access of UK fishing boats to any area within British fishery limits is not affected by the location of the fishing boat’s home port, or any other connection of the fishing boat, or any of its owners, to any place in the UK.
- 72 Subsection (9) provides the meaning given to the “national benefit objective” which is to ensure that the activities of British fishing boats bring social or economic benefits to the UK or a part of

the UK (e.g. by requiring at least some catches to be landed in UK ports, etc).

- 73 Subsection (10) provides the meaning given to the “climate change objective” which is that the adverse effect of fish and aquaculture activities on climate change is minimised, and that fish and aquaculture activities adapt to climate change.
- 74 Subsection (11) provides definitions for the terms “ecosystem-based approach” and “precautionary approach” to fisheries management for the purposes of clause 1.

## Clause 2: Joint fisheries statement

- 75 Subsection (1) of this clause introduces a duty on the Secretary of State and Devolved Administrations (the fisheries policy authorities) to set out their policies for achieving the fisheries objectives in clause 1, as well as to set out what use they plan to make of fisheries management plans in relation to the achievement of the fisheries objectives. The purpose of the statement is to recognise that, although fisheries is devolved, none of those authorities acting alone could achieve the fisheries objectives. The intended effect of the joint fisheries statement (JFS) would be to set out and coordinate fisheries policies after the UK has left the CFP.
- 76 Subsection (2) provides that the policies to be included in a JFS may in particular include policies relating to the distribution of catch quotas and effort quotas under clause 26 (distribution of fishing opportunities),
- 77 Subsection (3) provides that a JFS must include a list of fisheries management plans in force and another list outlining the fisheries management plans that the fisheries policy authorities propose to prepare and publish in the future. The JFS should also set out the rationale for deciding which stocks, types of fishing, and fisheries should be subject to fisheries management plans and which should not.
- 78 Subsection (4) provides that a document is not a JFS unless it contains a statement confirming it has been prepared for the purposes of this clause.
- 79 Subsection (5) requires a JFS to be prepared and published within 18 months of the Bill becoming an Act.
- 80 Subsection (6) defines a “fisheries management plan” for the purposes of the Bill.
- 81 Subsection (7) provides that certain policies of the Secretary of State that would otherwise be included in a JFS may be set out in a separate document (a Secretary of State fisheries statement).

## Clause 3: Joint fisheries statement: procedure

- 82 Subsection (1) to this clause provides that the fisheries policy authorities may at any time prepare and publish a replacement JFS or make amendments to an existing JFS.
- 83 Subsection (2) refers to Part 1 of Schedule 1 which outlines the mechanism for bringing the JFS into effect. Subsection (3) provides that the JFS only comes into effect when it has been published in accordance with that Part of that Schedule.
- 84 Subsections (4) to (6) provide that the JFS must be reviewed whenever it is appropriate, but no later than six years following its initial publication or within six years following any review. This is to align with a six-year review period for marine plans made under the Marine and Coastal Access Act 2009. A revised JFS or any amendments made to it must be published following a review. A review ends under this clause when the fisheries policy authorities conclude that no changes to the JFS are required or when a replacement JFS or amendments are published.

## Clause 4: Secretary of State fisheries statement

- 85 Subsections (1) and (2) of this clause provide that a JFS, or an amendment to a JFS, may omit a

relevant Secretary of State policy that could otherwise be included in it.

- 86 Subsections (3) to (5) provide that the Secretary of State may publish a Secretary of State's Fisheries Statement (SSFS) that sets out policies not included in the JFS under subsections (1) and (2). Subsection (6) ensures that an SSFS must contain a statement that it has been prepared for the purposes of this section, and subsection (7) ensures that if the requirements in subsections (1) and (2) have been met, the SSFS should be published no more than 6 months after a JFS, or an amendment to a JFS, has been published.
- 87 Subsection (8) defines a "relevant Secretary of State policy" for the purposes of this clause. This could include a "UK quota function" which is non-devolved, as well as reserved matters.

#### Clause 5: Secretary of State fisheries statement: procedure

- 88 Subsection (1) to this clause provides that the Secretary of State may at any time prepare and publish a replacement SSFS or make amendments to a published SSFS.
- 89 Subsection (2) refers to Part 2 of Schedule 1 which outlines the mechanism for bringing the SSFS into effect. Subsection (3) provides that the SSFS only comes into effect when it has been published in accordance with that Part of that Schedule.
- 90 Subsections (4) to (6) provide that an SSFS must be reviewed whenever it is appropriate, but no later than six years following the publication of the first SSFS or within six years of the publication of any replacement SSFS. A revised SSFS, or any amendments made to a SSFS, must be published following a review. A review ends under this clause when the Secretary of State concludes that no changes to the SSFS are required or when a replacement SSFS or amendments are published.
- 91 Subsections (7) and (8) provide that where a review of a JFS concludes that no policies that could otherwise be in an SSFS should be omitted from the JFS, the Secretary of State may revoke an SSFS setting out those policies and, should this happen, publish a statement that the SSFS has been revoked. Subsection (9) confirms that the revocation of the SSFS comes into effect when that statement is published.

#### Clause 6: Fisheries management plans

- 92 Subsection (1) imposes a duty on a relevant fisheries authority or authorities to prepare and publish the fisheries management plans proposed in the list in the JFS, as required by clause 2(3)(b).
- 93 Subsection (2) requires that a fisheries management plan must specify the relevant authority or authorities that published it and specify each stock, fishing activity and geographical area to which it relates. A plan must also specify any indicators used for monitoring the effectiveness of the plan. The plan must comply with subsection (3) which requires the plan to state whether available scientific advice is sufficient to make an assessment of the stock's maximum sustainable yield and, if it is, specify the policies for restoring or maintaining the stock at sustainable levels.
- 94 If such scientific advice is not available for a stock (e.g. if catch data is not collected), the plan must specify policies for maintaining or increasing the level of that stock. If the plan does not include such policies for that stock, the plan must specify the reasons for that. Subsection (4) requires the authority or authorities to adopt the precautionary approach (as per clause 1), when specifying policies for stocks where there is insufficient scientific evidence.
- 95 Subsection (5) requires a fisheries management plan to include a statement that it has been prepared and published for the purposes of this clause. Subsection (6) requires the relevant authority or authorities to comply with the timetables for producing plans set out in the JFS.

96 Subsection (7) defines terms used in this clause.

### Clause 7: Fisheries management plans: power to depart from proposals in the JFS

97 Subsections (1) to (4) of this clause set out the requirements for preparing and publishing replacement fisheries management plans, or amendments to existing plans, where there has been a relevant change in circumstances (set out in subsection (7)).

98 Subsection (5) requires the authority or authorities preparing a new plan to explain how and why it is different from the plan contemplated in the JFS.

99 Subsection (6) sets out that the information that must be included in a new plan should still meet the requirements in clause 6(2) to (5).

100 Subsection (7) sets out what is meant by a relevant change in circumstances. These include changes relating to the international obligations of the UK, things done or not done by other countries that affect the marine and aquatic environment, available scientific evidence and evidence relating to the social, economic or environmental elements of sustainable development.

### Clause 8: Fisheries management plans: amendment, review etc.

101 This clause provides for amendments to and replacements of fisheries management plans where the changes are to the same stock or stocks, type of fishing and geographical area.

### Clause 9: Fisheries management plans: transitional provision

102 This clause allows one or more fisheries policy authority to prepare and publish a fisheries management plan before a JFS has been agreed and published. Clause 2(2)(a) provides for the JFS to list plans already in force.

### Clause 10: Effect of fisheries statements and fisheries management plans

103 This clause requires the national fisheries authorities to pursue the policies outlined in the relevant fisheries statements or fisheries management plans that are applicable to them unless a relevant change in circumstances indicates otherwise. The purpose of this exception is to allow for flexibility in decision-making: it may occasionally be necessary to diverge from the policies in the statements. The national fisheries authorities are defined in subsection (5) as all the Fisheries Administrations and the MMO.

104 Subsection (1) requires the national fisheries authorities, which are all those listed in subsection (5), to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the JFS, SSFS, or fisheries management plans unless a relevant change in circumstances indicates otherwise. Subsection (2) requires a relevant national authority to describe the decision and the relevant change of circumstances, and explain how the relevant change in circumstances affected the decision.

105 Subsection (3) provides that policies in a JFS are applicable to a national fisheries authority in subsection (5) unless the JFS states that it is not applicable. Similarly, policies in the SSFS are applicable to the Secretary of State and the MMO. This subsection also sets out how a policy in a fisheries management plan can be applicable to a national fisheries authority.

106 Subsection (5) provides a non-exhaustive list of what might be considered a “relevant” change of circumstances in relation to this clause. These include changes resulting from new international obligations or the availability of new evidence that would suggest a different approach to one set out in the relevant document.

### Clause 11: Report on fisheries statements and fisheries management plans

107 This clause requires the relevant fisheries policy authorities to prepare reports on the extent to

which policies outlined in the JFS, fisheries management plans and SSFS have been implemented and how these policies have achieved the fisheries objectives set out in clause 1 (in the case of the JFS and SSFS) and the impact on stocks (in the case of fisheries management plans).

108 Subsections (1) to (3) require the fisheries policy authorities to prepare reports on the JFS and fisheries management plans and to lay them before Parliament and the devolved legislatures, Subsection (4) outlines the reporting periods for these reports, which are three years following publication of the first JFS and every three years thereafter. This means that the reports will be published between the six yearly reviews required under clause 3, which is also consistent with the voluntary reporting arrangements for marine plans made under the Marine and Coastal Access Act 2009. Copies of the report must be laid before Parliament and the devolved legislatures.

109 Subsections (4) to (8) place requirements on the Secretary of State to publish equivalent reports for the SSFS. When preparing an SSFS report the Secretary of State must consult the Devolved Administrations.

110 Subsection (9) provides a definition of a “period” for the purposes of this clause.

## **Access to British fisheries and regulation of foreign fishing boats**

### **Clause 12: Access to British fisheries by foreign fishing boats**

111 This clause sets out when foreign fishing boats may enter British fishery limits (which equates to the UK’s EEZ). The clause replaces section 2 of the Fishery Limits Act 1976 (the 1976 Act). Currently section 2 of the 1976 Act, as amended by the devolution Acts (e.g. the Scotland Act 1998), enables the Secretary of State and the Devolved Administrations to designate, by order, the foreign countries whose vessels may enter British fishery limits. The Bill sets out this process, replacing this order-making procedure.

112 Subsection (1) provides that a foreign fishing boat may only enter British fishery limits if it has a sea fishing licence or for a purpose recognised by international law or by any international agreement or arrangement.

113 Subsection (2) requires that foreign fishing boats must leave British fishery limits as soon as their purposes under subsection (1) have been fulfilled.

114 Subsection (3) makes it an offence for the master, owner and the charterer of a foreign fishing boat to breach these requirements. Subsection (4) notes that further provisions on offences may be found in the Bill and in the Sea Fisheries Act 1968.

### **Clause 13: Regulation of foreign fishing vessels**

115 This clause introduces Schedule 2 which contains amendments to subordinate legislation, ensuring that foreign fishing vessels are subject to the same regulations as British fishing boats when fishing in UK waters.

## **Licensing of fishing boats**

### **Clause 14: British fishing boats required to be licensed**

116 This clause deals with the circumstances in which a licence is required for British fishing boats. The prohibition and subsequent exemptions under this clause will apply UK wide and ensure that the basic licensing requirement is consistent throughout UK waters. The effect of this change will be to replicate the effective status quo; that a licence issued by the Devolved Administrations or the MMO will be effective throughout UK waters.

117 Subsection (1) requires that fishing anywhere by a British fishing boat is prohibited unless that

boat has been authorised under a licence.

118 Subsection (2) sets out the exceptions to the requirement to have a licence. These exceptions are the same as those set out in existing licensing orders. Generally, these exceptions are in place as the relevant fishing activity is regulated under another regime or because it would not be appropriate to license the activity. The fishing activities exempted are fishing:

- for salmon or migratory trout;
- for common eels (*Anguilla anguilla*) by a boat whose length is 10 metres or less;
- by a boat whose length is 10 metres or less and which does not have an engine to power the boat;
- by a boat used wholly for the purpose of conveying persons wishing to fish for pleasure;
- in the waters of the Isle of Man and the Channel Islands respectively.

119 Subsection (3) provides a power for the Secretary of State, by regulations, to amend the exceptions to the licensing requirement in subsection (2). This will provide the flexibility to require in the future that further fishing activities are licensed if, for example, the activity is judged to risk the health of fish stocks. It replicates the ability to vary the exceptions by order under section 4 of the Sea Fish (Conservation) Act 1967.

120 Subsection (4) requires that the Scottish Ministers, the Welsh Ministers and the Northern Ireland department give their consent to any changes to the exceptions from the requirement under subsection (1). Given that fisheries is generally a devolved matter, the requirement for the Devolved Administrations' consent to regulations under subsection (3) respects the devolution settlements but at the same time ensures that the requirements are consistent across the UK.

121 Subsection (5) provides that regulations under subsection (3) are subject to the affirmative resolution procedure.

122 Subsection (6) makes it an offence to fish in contravention of subsection (1). The master, owner and charterer of a fishing boat would be guilty of the offence. Subsection (7) refers to further provisions on penalties, offences by bodies corporate, in clauses 20 to 22.

123 Subsection (8) defines the terms "length" and "licence" for the purposes of this clause.

### Clause 15: Power to grant licences in respect of British fishing boats.

124 This clause provides a power for the Devolved Administrations and the MMO to grant licences to British fishing boats.

125 Subsection (1) sets out which fishing boats are licensed by which administration:

- Scottish fishing boats are licensed by the Scottish Ministers;
- Welsh fishing boats are licensed by the Welsh Ministers;
- Northern Ireland fishing boats are licensed by the Northern Ireland department;
- other British fishing boats (English fishing boats and Crown Dependency fishing boats which need a UK licence) are licensed by the MMO.

126 Subsection (2) allows licences granted under this clause to be limited by reference to fishing in a particular area; to the periods, times or particular voyages during which fishing is authorised; to the descriptions and quantities of fish which may be caught; and to the method of sea fishing.

127 Subsection (3) provides that licences granted under this clause must name the fishing boat in respect of which it is granted, and may only be granted to the boat's owner or charterer.

### Clause 16: Foreign fishing boats required to be licensed if within British fishery limits

128 This clause prohibits fishing by foreign fishing boats unless they have a licence issued by a Fisheries Administration. This is a new requirement which reflects the fact that, in future, access for foreign vessels to fish in UK waters will be a matter for negotiation, implemented partly through UK licensing.

129 Subsection (1) prohibits fishing within British fishery limits (which is the UK EEZ) by foreign vessels unless they have a licence. Subsection (2) exempts foreign fishing vessels fishing in the waters of the Isle of Man from requiring a licence under subsection (1).

130 Subsection (3) gives the Secretary of State a power, by regulation, to amend subsection (2) (e.g. by adding further exemptions). Subsection (4) requires that the Scottish Ministers, the Welsh Ministers and the Northern Ireland department consent to any regulations made under subsection (3).

131 Subsection (5) provides that regulations under subsection (3) are subject to the affirmative resolution procedure.

132 Subsection (6) makes it an offence for a boat to fish in contravention of the requirement in subsection (1) and makes this an offence of the master, owner and charterer of the boat.

133 Subsection (7) refers to further offence provisions on penalties, offences by bodies corporate, etc, in the Bill

134 Subsection (7) defines "licence" for the purpose of this clause.

### Clause 17: Power to grant licences in respect of foreign fishing boats

135 This clause provides powers for the Devolved Administrations and MMO to grant licences to foreign fishing boats.

136 Subsection (1) provides that licences may be issued to foreign fishing boats by the Scottish Ministers, the Welsh Ministers, the Northern Ireland department and the MMO.

137 Subsection (2) provides that licences issued under subsection (1) may only authorise fishing with respect to the areas of UK waters for which the respective administrations have competence: this is the Scottish Ministers in relation to the Scottish Zone, the Welsh Ministers in relation to the Welsh zone and the Northern Ireland department in relation to the Northern Ireland zone. In relation to the MMO the effect of this provision is that they may only license foreign boats in England or the waters around England.

138 Subsection (3) allows licences granted under this clause to be limited by reference to certain matters, such as the area in which fishing is authorised, etc.

139 Subsection (4) provides that licences granted under this clause must name the fishing boat in respect of which it is granted, and may only be granted to the boat's owner or charterer.

### Clause 18: National landing requirement

140 Within 18 months of Royal Assent, subsection (1) of this clause requires the Secretary of State to establish, by regulations, a "national landing requirement for all fishing boats licenced to fish in UK waters".

141 Subsections (2) and (3) requires the Secretary of State to consult other relevant UK Ministers, the Devolved Administrations and bodies that represent the interests of the UK fishing industry. The consultation must seek views on setting an average landing requirement across all relevant

species that is not less than 65%.

142 Subsection (4) provides that an appropriate authority may determine exceptions, exemptions relating to the landing requirement and exempt any licensed fishing boat from the landing requirement after it has come into force.

143 Subsection (5) requires the regulations to be subject to the affirmative resolution procedure.

144 Subsection (6) defines “appropriate authority”, “landing requirement” and “relevant species” for the purposes of this clause.

### Clause 19: further provision about licences

145 This clause defines “sea fishing licence” for the purposes of the Bill. It also introduces Schedule 3, which makes further provision about sea fishing licences.

## Access and licensing: offences and consequential amendments

### Clause 20: Penalties for offences

146 This clause sets out the penalties for licensing offences. This replicates existing offences under section 4 of the Sea Fish (Conservation) Act 1967.

147 Subsection (1) provides the penalties for offences under the access and licensing provisions in the Bill.

148 Subsection (2) allows the court to disqualify persons convicted of access and licensing offences from holding a sea fishing licence for a specified period and to order the forfeiture of fish, and of nets and fishing gear used when the offence was committed.

149 Subsection (3) provides that the fines that must be paid by those found guilty of committing certain licensing offences may not exceed the value of the fish that was fished during the activity for which the person had been found guilty.

150 Subsection (4) provides that the court may not order both the forfeiture of the fish fished in the course of the offence under subsection (2) and order that a fine be paid under subsection (3) for the same offence.

151 Subsection (5) allows for a fine under subsection (3) to be in addition to any other fine for which a person is liable as a result of the same offence.

### Clause 21: Offences by bodies corporate etc.

152 This clause sets out the circumstances in which the officer of a body corporate as well as the body corporate may be found guilty of committing a relevant offence.

153 Subsection (1) provides that an officer of a body corporate, as well as a body corporate, may be guilty of an offence where it is proved that an officer connived or consented to the offence, or that the offence was attributable to the neglect of an officer.

154 Subsection (2) gives the meaning of “officer” in subsection (1).

155 Subsection (3) provides for members of a body corporate to be treated as if they were directors, who are officers under subsection (2).

156 Subsection (4) is a similar provision for subsection (1) but applies to a partner or person purporting to be a partner in a Scottish partnership.

157 Subsection (5) defines the relevant offences.

### Clause 22: Jurisdiction of court to try offences

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*



158 This clause provides that the relevant offences may be treated as having been committed in any place in the United Kingdom.

### Clause 23: Minor and consequential amendments

159 This clause introduces Schedule 4, which contains minor and consequential amendments and transitional provision in relation to the licensing provisions.

## Fishing opportunities

### Clause 24: Power of Secretary of State to determine fishing opportunities

160 This clause sets out the Secretary of State's function of setting the maximum quantity of sea fish that may be caught by British fishing boats and days that British fishing boats may spend at sea during a specified period (e.g. a calendar year or any other such period specified for a specific catch quota or effort quota). "Fishing opportunities" refers to the maximum amount of fish that may be caught and the maximum number of days that may be spent at sea. This clause replaces the current provision in EU law that allow the European Council to determine fishing opportunities for EU waters (of which UK waters are a constituent part). The provisions set out the Secretary of State function of determining the UK's fishing opportunities, in accordance with the UK's international obligations. These might arise under an agreement with the EU or with another coastal State. They might also arise because of the UK's obligations under UNCLOS or as a member of an RFMO.

161 Subsection (1) provides that the Secretary of State may determine for a specified period the maximum quantity of sea fish that may be caught by British fishing boats and the maximum number of days that British fishing boats may spend at sea.

162 Subsection (2) requires that a determination under subsection (1) may only be made for the purpose of complying with an international obligation of the UK to determine the fishing opportunities of the UK. The purpose of this subsection is to ensure that the power to determine fishing opportunities is referable to limited matters within the Secretary of State's reserved competence.

163 Subsection (3) allows for the maxima determined under subsection (1) to be determined for, or for fishing boats fishing for: different descriptions of sea fish; for different areas of sea; or for different descriptions of fishing boat.

164 Subsection (4) provides that fishing opportunities under this clause may not be determined by reference to a boat's home port or connection to a particular part of the UK. The purpose of this is to ensure that the power could only be used to set fishing opportunities for the whole UK.

165 Subsection (5) gives the meaning of "catch quota" and "effort quota".

166 Subsection (6) allows for determinations under subsection 1 to be zero; to replace a determination that had already been made; or to withdraw a determination that had already been made. This provision would allow for changes to be made to determinations under subsection (1) over the course of a year to respond to environmental changes, depletions of fish stocks or for other purposes.

167 Subsection (7) explains that a determination may not be made or withdrawn after the end of the period to which it relates.

168 Subsection (8) creates a power for the Secretary of State, by regulations, to determine what is to be regarded as the number of days in a specified period that a boat spends at sea. Regulations under this power will reflect the varying technical conditions that may affect when a boat should be treated as fishing.

169 Subsection (9) provides that the regulations made under subsection (8) may make provision by reference to provision made under paragraph 1(2)(c) of Schedule 2. That paragraph provides that licences issued to fishing boats may include conditions restricting the time the fishing boat may spend at sea.

170 Subsection (10) provides that regulations made under subsection (6) would be subject to the negative resolution procedure.

171 Subsection (11) provides that any reference in retained direct EU legislation to “fishing opportunities” in relation to British fishing boats are to be read as references to catch quotas and effort quotas.

#### Clause 25: Duties relating to a determination of fishing opportunities

172 This clause sets out the duties of the Secretary of State when making a determination on fishing opportunities. Subsection (1) requires the Secretary of State to consult with the Devolved Administrations and the MMO before making or withdrawing a determination.

173 Subsection (2) requires that, after making or withdrawing a determination, the Secretary of State must publish a notice of the determination, lay a copy of the notice in Parliament, and send a copy to the Devolved Administrations.

#### Clause 26: Distribution of fishing opportunities

174 This clause provides the criteria that must be used when national fisheries authorities distribute catch quotas and effort quotas to fishing boats. This clause replaces Article 17 of the Basic Regulation in retained EU law, which is revoked by Schedule 10.

175 Subsection (1) requires that the criteria used must be transparent and objective and include criteria relating to environmental, social and economic factors.

176 Subsection (2) provides that the criteria may in particular relate to other factors such as the environmental impact of fishing. Subsection (3) also provides that those distributing quota should seek to incentivise the use of selective gear and fishing techniques that have a reduced environmental impact.

177 Subsection (4) defines “national fisheries authorities” for the purpose of this clause.

#### Clause 27: Reservation of English fishing opportunities for new entrants and boats under 10 metres

178 Before making a determination under clause 23 subsection (1) requires the Secretary of State to establish a baseline allocation of English fishing opportunities (known as “minimum quota”) for new entrants to the fishing sector and boats that are under 10 metres in length.

179 Subsections (2) and (3) provide that the minimum quota must not be less than the average of fishing opportunities allocated to the groups in subsection (1) in the previous three years unless it would be inappropriate to do so in order to meet the sustainability objective in clause 1.

180 When making a clause 23 determination, subsections (4) and (5) require the Secretary of State to consider the case for increasing the minimum quota above that in the previous year and lay before Parliament the outcome of his considerations and, if relevant, the reasons why the minimum quota has not been increased.

#### Clause 28: Duties to ensure fishing opportunities are not exceeded

181 This clause relates to the duty to ensure that a catch quota and effort quota determined by the Secretary of State is not exceeded.

182 Subsection (1) places a duty on the national fisheries authorities to exercise their functions in such a way that in any period and so far as possible, no fish are caught, or days at sea spent, by British fishing boats in excess of catch or effort quota for that period.

183 Subsection (2) provides that when determining when a catch quota is exceeded, the only sea fish that need to be counted are those caught under Article 15 of the Basic Regulation and any other retained direct EU legislation.

184 Subsection (2) is to deal with the possibility that a fishing boat may have received fishing opportunities from another country. It provides that fishing opportunities of a territory outside the UK must be ignored when determining whether a catch quota or effort quota is exceeded.

185 Subsection (3) defines the “relevant national authorities” as the Fisheries Administrations and the MMO for the purposes of this clause.

## Clause 29: Sale of English fishing opportunities

186 This clause allows the Secretary of State to provide, in regulations, for the sale of rights to use one or more English catch quotas or English effort quotas. The intention is that regulations would provide for the tender or auction of a proportion of the additional fishing opportunities that are gained following the UK’s withdrawal from the EU. The sale of quota would only be used to allocate a portion of UK quota which may be allocated by the MMO or the Secretary of State to English fishing boats. The regulations could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria. The regulations could therefore require fishing opportunities to be allocated on criteria other than price.

187 Subsection (1) is a power which provides that the Secretary of State may by regulations make provision for the sale of the right to use one or more English catch quota or English effort quota.

188 Subsection (2) allows the regulations made under subsection (1) to provide for sale by reference to such fishing boats, by such persons and subject to such conditions as may be prescribed in the regulations.

189 Subsection (3) lists the matters which the regulations may make provision about.

190 Subsection (4) requires that the MMO must exercise its function to secure, as far as possible, the sale of quota does not result in breaches of licence requirements.

191 Subsection (5) requires the Secretary of State to consult appropriate persons before making regulations under this clause.

192 Subsection (6) provides that regulations made under this clause are subject to the affirmative resolution procedure.

193 Subsection (7) defines “English catch quota” and “English effort quota” for the purposes of this clause.

194 Subsection (8) introduces Schedule 5, which confers equivalent powers on the Welsh Ministers to make regulations to sell Welsh catch quota and Welsh effort quota to the Welsh fishing industry.

## Discard prevention charging schemes

### Clause 30: Discard prevention charging schemes

195 This clause allows the Secretary of State to provide in regulations for a scheme that would require a charge to be paid in respect of unauthorised catches of sea fish (a “charging scheme”). The purpose of the charging scheme is to charge for unauthorised catches at a level which deters

overfishing and thereby incentivises fishers to use more sustainable fishing practices and avoid unwanted catches. Previously, fishers have regularly discarded fish when they have an unauthorised catch. The landing obligation requires that all catches of species which are subject to catch limits are landed (subject to limited exceptions). They cannot be discarded.

196 Subsection (1) creates a power for the Secretary of State to make regulations to establish a charging scheme.

197 Subsection (2) requires that the regulations must provide for how a charge would be calculated and when payments of a charge are due.

198 Subsection (3) allows for a charge to be calculated by reference to matters specified in the charging scheme and list examples of those matters.

199 The scheme is voluntary and subsections (4) and (5) limit the scope of any charging scheme to those registered under it. The charging scheme may only apply charges to those registered, and only persons eligible according to criteria that may be prescribed in the regulations could register. Subsection (6) allows for further provision to be made about registration or de-registration under the scheme.

200 Subsection (7) provides that regulations under this clause are subject to the affirmative resolution procedure.

#### Clause 31: Meaning of “chargeable person” and “unauthorised catch of sea fish”

201 This clause provides the meaning of “chargeable person” and “unauthorised catch of sea fish”.

202 Subsection (1) provides that the chargeable persons under the charging scheme are holders of English sea fishing licences or POs that have at least one member that is an English sea fishing licence holder. POs are included as chargeable persons as they frequently manage quota on behalf of their members and distribute quota between their members.

203 Subsection (2) gives the meaning of unauthorised catch of sea fish.

204 Subsection (3) provides that a charging scheme may make provision about whether the catching of fish under the scheme is authorised.

205 Subsection (4) defines the “charging scheme provisions” for the purposes of the Bill.

#### Clause 32: Catches subject to a charge ignored for certain regulatory purposes

206 This clause provides that where a charge is payable under the scheme, the charging scheme may provide that the fishing activity that led to the charge may be ignored in determining whether there has been a breach of a licence requirement.

207 Subsection (1) sets out that the charging scheme may provide that where a charge is payable and conditions under the scheme have been met, the catch must be ignored for determining whether a relevant regulatory breach has occurred.

208 Subsection (2) gives the meaning of “relevant regulatory breach” for the purposes of this clause.

209 Subsection (3) allows for the conditions referred to under subsection (1) to include conditions contained in an English sea fishing licence.

#### Clause 33: Charge collectors

210 This clause makes provision about the collectors of the charges which are payable under charging schemes.

211 Subsection (1) provides that the charging scheme may include provision about appointments by

the Secretary of State of charge collectors to administer the scheme, about their terms of office, their functions and the termination of their appointment.

- 212 Subsection (2) sets out the functions which may be conferred on the charge collector under subsection (1).
- 213 Subsection (3) sets out the provisions which may be made in connection with the termination of appointments of charge collectors.
- 214 Subsection (4) allows for the scheme to make provision with regard to appeals from decisions made by charge collectors under the scheme.
- 215 Subsection (5) allows for payments to be made to charge collectors to cover expenditure incurred by charge collectors in the exercise of their functions. Subsection (6) allows for payments under subsection (5) to be subject to such conditions as the Secretary of State considers to be appropriate.

### Clause 34: Discard prevention charging schemes: supplementary provision

- 216 This clause makes further provision with regards to discard prevention charging schemes.
- 217 Subsection (1) provides that a charging scheme may provide that the master of a fishing boat is jointly and severally liable for the payment of the charge where an English sea fishing licence holder is a chargeable person under the scheme.
- 218 Subsection (2) provides for charges under a charging scheme to be recoverable as a debt.
- 219 Subsection (3) provides for a charging scheme to include provision about how the charge collectors must manage receipts of charges. The provision provides flexibility in a charging scheme so that that the charge may be paid to the Secretary of State, used to cover the expenditure incurred in carrying out their function, or to permit the charge collectors to use the receipts for a charitable or conservation purpose specified in the scheme. Subsection (5) provides the meaning of “conservation purpose” under this clause.
- 220 Subsection (4) allows for the charging scheme to confer functions on the Secretary of State and for those functions to be exercised by a person appointed by the Secretary of State to carry out those functions act on her behalf.

## Grants and charges

### Clause 35: Financial assistance: powers of the Secretary of State

- 221 This clause creates new powers for the Secretary of State to make grants or loans to the fishing and aquaculture industries. During the UK’s membership of the EU, funding has been provided under the EMFF, in relation to which further background is provided in the policy background in this document. The purpose of this clause is to allow for grant and loan schemes to be established for England after the UK’s withdrawal from the EU which can replicate the breadth of what can currently be funded under the EMFF.
- 222 Subsection (1) lists the purposes for which the Secretary of State may give financial assistance.
- 223 Subsection (2) requires that a scheme must be established by regulations.
- 224 Subsection (3) requires that the scheme may only provide for financial assistance in relation to England, or to an area within the UK marine area (but not within the Scottish, Welsh or Northern Ireland zones) in relation to English fishing boats.
- 225 Subsection (4) provides for the scheme to confer functions on a person and require persons exercising those functions to keep accounts and records and to make them available for

inspection.

- 226 Subsection (5) allows for the scheme to include provision that financial assistance may be given subject to conditions and the circumstances in which the payment must be repaid.
- 227 Subsection (6) requires that regulations made under this clause are subject to the affirmative resolution procedure.
- 228 Subsection (7) gives the meaning of “family member”, “financial assistance” and “the UK marine area” for the purposes of this clause.
- 229 Subsection (8) introduces Schedule 6, which confers corresponding financial assistance powers on the Devolved Administrations, as well as consequential and transitional provision relating to these provisions.

### Clause 36: Power of Marine Management Organisation to impose charges

- 230 This clause provides a power for the Secretary of State to make regulations for the MMO to impose charges for carrying out certain marine functions.
- 231 Subsection (1) is a power for the Secretary of State to make regulations regarding the MMO’s power to impose charges.
- 232 Subsection (2) lists the relevant marine functions for which the MMO may impose charges.
- 233 Subsection (3) specifies the types of charges which may be included in the regulations.
- 234 Subsection (4) lists the matters which may be provided for in the regulations.
- 235 Subsection (5) allows for the regulations to confer a discretion on the MMO.
- 236 Subsection (6) clarifies that regulations made under this clause would not affect any other power of the MMO to impose charges. The MMO has existing charging powers under sections 27 and 67 of MCAA.
- 237 Subsection (7) requires that the Secretary of State consults appropriate persons before making regulations under this clause.
- 238 Subsection (8) provides that regulations made under this clause are subject to the negative resolution procedure.
- 239 Subsection (9) gives the meaning of “first-sale fish” and “fishing quota” for the purposes of this clause.
- 240 Subsection (10) refers to Schedule 7, which contains provisions conferring corresponding powers on the Devolved Administrations.

### Clause 37: Sea Fish Industry Authority: fees for services provided for industry in EU

- 241 This clause amends section 3(5) of the Fisheries Act 1981 to extend a requirement that the Sea Fish Industry Authority (“Seafish”) must recover the full cost of any services it provides to persons in other countries. This is a technical correction which arises as a consequence of withdrawal from the EU.
- 242 Seafish is required to recover the full costs of services it provides to those in other countries, but may not charge those from EU Member States more than those in the UK. This clause will therefore enable Seafish to recover all its costs from persons in the EU, regardless of what it may charge those in the UK.

## Power to make further provision

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

## Clause 38: Power to make provision about fisheries, aquaculture etc.

243 This clause provides a power for the Secretary of State, by regulations, to make provision on technical matters currently regulated by the EU under the CFP. The purpose of this power is to allow the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation, including approximately 100 regulations of the CFP incorporated into UK law under the EU (Withdrawal) Act 2018.

244 Subsection (1) provides that the Secretary of State may, by regulations, make provision for the purpose of implementing an international agreement or arrangement relating to fisheries, fishing or aquaculture; for a conservation purpose; or for a fish industry purpose.

245 The meaning of “conservation purpose” and “fish industry purpose” are given in subsections (2) and (3) respectively.

246 Subsection (4) lists the matters which the regulations made under subsection (1) must be about. It also provides that the list of matters does not apply in relation to regional fisheries management regulations. These are defined in subsection (5). The matters in the list are:

- the quantity of sea fish that may be caught;
- the amount of time that fishing boats may spend at sea;
- the landing of sea fish;
- bycatch;
- catching, landing or selling sea fish that are below a certain size;
- setting and enforcing targets relating to stocks of sea fish;
- the design of sea fishing equipment;
- the use of sea fishing equipment;
- the retrieval of lost or discarded sea fishing equipment;
- methods of sea fishing;
- the processing of sea fish on fishing boats;
- the use to which the Secretary of State may put information obtained in the exercise of his functions relating to fisheries or aquaculture;
- the functions, objectives or regulation of POs or inter-branch organisations;
- the marketing of fishery products (including labelling);
- keeping, disclosing or publishing accounts, records or other documents or information by persons involved in –
  - commercial fish activities or commercial aquaculture activities,
  - monitoring, or enforcing, compliance with the regulation of commercial fish activities or commercial aquaculture activities;
- the use in aquaculture, or transport, of aquatic organisms that are members of an alien

species or a locally absent species;

- monitoring, or enforcing, compliance with the regulation of any of matters mentioned in the preceding paragraphs of this subsection.

247 Subsection (5) gives the meaning of “regional fisheries management regulations”.

248 Subsection (6) provides that regulations under this clause may make different provision in relation to different descriptions of sea fish or other animal, different descriptions of fishing boat or to different areas of the sea or inland waters.

### Clause 39: Section 38: Interpretation

249 This clause gives the meaning of certain terms used in clause 38.

### Clause 40: Power to make provision about aquatic animal diseases

250 This clause provides a power for the Secretary of State to make regulations about aquatic animal diseases. The purpose of this provision is to allow for amendments to be made to retained EU law and other UK law by secondary legislation.

251 Subsection (1) 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.

252 Subsection (2) specifies the matters in relation to which provision may be made under this clause. These are the importation, exportation, movement, storage or handling of fish or other aquatic animals; products derived from fish or other aquatic animals; or any other thing that the Secretary of State considers may carry or affect the prevalence of a disease of fish or other aquatic animal.

### Clause 41: Scope of regulations under section 38 or 40

253 This clause defines and limits the scope of the regulation-making powers in clauses 38 and 40.

254 Subsection (1) allows for regulations under clauses 38 and 40 to confer a function, including a function that involves a discretion and to impose fees.

255 Subsection (2) allows for regulations under clauses 38 and 40 to create criminal offences but not offences that are punishable with imprisonment.

256 Subsection (3) defines the scope of the clauses 38 and 40 by reference to devolved competence. Regulations made under clauses 38 and 40 could not include provisions that would be within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly unless the provision is merely incidental or consequential provision that would be outside that legislative competence.

257 Subsection (4) explains that the restriction in subsection (3) does not apply to the extent that the provision relates to the regulation of Scottish fishing boats within British fishery limits but outside the Scottish zone, Welsh boats outside the Welsh zone, Northern Ireland fishing boats within British fishery limits but outside the Northern Ireland zone, or British fishing boats that are not Scottish fishing boats, Welsh fishing boats or Northern Ireland fishing boats. This reflects existing concurrent powers of the Secretary of State.

258 Subsection (5) restricts the use of the powers under clauses 38 and 40 so that they may not modify the functions of the Fisheries Administrations that relate to the licensing of fishing boats provided under this Bill.

259 Subsection (6) clarifies what is meant by “modifying” in this clause.

260 Subsection (7) provides that the powers under clauses 38 and 40 may be used to modify any



enactment apart from clauses 38 to 44, Schedule 8 and clause 51.

261 Subsection (8) gives the meaning of “modify” and “enactment” in subsection (7).

#### Clause 42: Scope of regulations under section 38 or 40 where consent obtained

262 This clause provides that regulations under clauses 38 and 40 may make provision in areas of devolved competence where the consent of the Scottish Ministers, the Welsh Ministers or the Northern Ireland department has been obtained.

263 Subsection (1) provides that the regulations may extend to matters in the competence of the Scottish Parliament if the consent of the Scottish Ministers has been obtained.

264 Subsection (2) provides that the regulations may extend to matters in the legislative competence of the Senedd if the consent of the Welsh Ministers has been obtained.

265 Subsection (3) provides that the regulations may extend to matters in the competence of the Northern Ireland Assembly if the consent of the Northern Ireland department has been obtained.

266 Subsection (4) provides that the regulations may extend to matters relating to the powers to license fishing boats in this Bill if the consent of the Scottish Ministers, the Welsh Ministers and the Northern Ireland department has been obtained.

#### Clause 43: Procedural requirements for regulations under section 38 and 40

267 This clause deals with procedural requirements that must be followed when exercising powers under clauses 38 and 40.

268 Subsection (1) sets out who the Secretary of State must consult before making regulations under clauses 38 and 40.

269 Subsection (2) sets out the circumstances in which the regulations made under clauses 38 and 40 would be subject to the affirmative resolution procedure.

270 Subsection (3) provides that where regulations do not relate to the matters in subsection (2), they are subject to the negative procedure.

#### Clause 44: Powers of Scottish Ministers, Welsh Ministers and Northern Ireland department

271 This clause introduces Schedule 8, which confers powers corresponding to powers under clauses 38 and 40 on the Devolved Administrations.

### Miscellaneous

#### Clause 45: Legislative competence of Senedd Cymru

272 This clause amends the Government of Wales Act 2006 (the 2006 Act) to extend the legislative competence of Senedd Cymru to enable it to make primary legislation on matters relating to fishing, fisheries or fish health in the area of the Welsh zone beyond the seaward limit of the territorial sea (beyond 12 nautical miles from the shore). Section 158 of the 2006 Act defines the “Welsh Zone” as being the sea adjacent to Wales which is within British Fishery Limits or otherwise specified in an order made under that Act.

#### Clause 46: Amendments of the Marine and Coastal Access Act 2009

273 This clause introduces Schedule 9, which amends the MCAA to allow the MMO to carry out certain functions beyond the UK marine area and extends the byelaw making powers of the MMO and the order making powers of the Welsh Ministers and the Scottish Ministers in relation

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

to exploitation of sea fisheries resources for marine conservation purposes. The purpose of these provisions is to replace certain EU measures for the protection of the marine environment in Member States' offshore zones.

#### Clause 47: Retained direct EU legislation: minor and consequential amendments

274 This clause introduces Schedule 10, which makes minor and consequential amendments to retained direct EU legislation.

#### Clause 48: Regulatory enforcement and data collection scheme

275 This clause requires the Secretary of State, by affirmative resolution regulation, to require all over 10 metre fishing vessels of whatever nationality fishing within the UK EEZ, and for all over 10 metre UK vessels fishing outside the UK EEZ, to be fitted with remote electronic monitoring systems and cameras for the purposes of monitoring fishing activities and the compliance with marine management regulations.

276 The Secretary of State must publish a timetable for the phased introduction of the requirements of the regulations which must be implemented within three years from the date of Royal Assent. The Secretary of State must also publish plans within two years of Royal Assent to extend the above requirements to all motorised fishing vessels, including under 10 metre vessels, which fish in the UK EEZ..

### Final provisions

#### Clause 49: Amendments that could have been made under existing powers

277 The Bill amends certain provisions of subordinate legislation (e.g., in Schedule 3). This clause provides that such amendments are to be treated as having been made under the existing power to make subordinate legislation. This is to ensure that any such provisions can be further amended by subordinate legislation in future.

#### Clause 50: Regulations

278 Subsection (1) of this clause provides that regulations made under this Bill may make consequential, supplementary, incidental, transitional or saving provisions; and that different provision may be made for different purposes or areas.

279 Subsection (2) provides that regulations under this Bill are statutory instruments.

280 Subsection (3) provides what is meant by "the negative resolution procedure" in relation to regulations made under this Bill.

281 Subsection (4) provides what is meant by "the affirmative resolution procedure" in relation to regulations made under this Bill.

282 Subsection (5) provides that regulations made under this Bill that are subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure.

283 Subsection (6) provides that this clause does not apply to regulations made under clause 53, which deals with the commencement of this Bill. This means that, as is normally the case, there is no parliamentary procedure to be followed for regulations that commence provisions in the Bill.

## Clause 51: Interpretation

284 This clause sets out definitions of commonly used terms in this Bill.

## Clause 52: Extent

285 This clause sets out the territorial extent of the Bill (whether it is part of the law of England and Wales; Scotland and Northern Ireland). Once the Bill becomes an Act of Parliament, its provisions will extend to England and Wales, Scotland and Northern Ireland, with separate provision for the extent of Schedule 8. Part 1 of Schedule 8 extends to Scotland only; Part 2 to England and Wales only; and Part 3 to Northern Ireland only. Amendments, repeals or revocations made by the Bill once it becomes an Act will have the same extent as the provisions amended, repealed or revoked but do not extend to the Crown Dependencies.

## Clause 53: Commencement

286 This clause is a standard provision which explains when the provisions of the Bill will come into force (i.e. begin to have an effect).

287 The provisions listed in subsection (1) come into force on Royal Assent; the provisions listed in subsection (3) come into force at the end of the implementation period; and the provisions listed in subsection (4) come into force at the later of the end of the implementation period and two months after Royal Assent. Clause 45 (which extends the legislative competence of the Senedd Cymru) comes into force two months after Royal Assent (subsection (2)).

288 Subsection (5) provides a power for the Secretary of State to make transitional or saving provision in connection with the commencement of this Bill. This will make sure that things done under existing legislation can be given continuing effect. This power may make different provisions for different purposes and must be made by statutory instrument.

## Clause 54: Short title

289 This clause provides that the short title of the Bill when it becomes an Act will be the Fisheries Act 2020.

## Schedule 1: Fisheries statements and management plans: preparation and publication

290 This Schedule sets out the procedures that would apply to the preparation, adoption and publication of the JFS and any SSFS.

### Part 1: Joint fisheries statement

291 In relation to the JFS, paragraph 2 would require the fisheries policy authorities to jointly prepare a consultation draft of the statement, publish it and take such steps as they consider appropriate to ensure that it is brought to the attention of “interested persons”, which is defined in sub-paragraph (3) and includes members of the public.

292 Sub-paragraph (2) would require the fisheries policy authorities to have regard to any responses to the consultation.

293 Paragraph (3) would require each fisheries policy authority to specify a period of scrutiny of the draft JFS by their legislature, and to lay a copy of the consultation draft before their legislature on or before the first day of the scrutiny period. If one or more of the legislatures pass a resolution or makes a recommendation on the draft JFS, the fisheries policy authority or authorities in question would then have to lay a statement setting out its response.

294 Paragraph 4 states that once the procedure detailed above has been completed and the fisheries policy authorities have decided on the final text of the JFS, they must publish the document as

soon as reasonably practicable.

## Part 2: Secretary of State fisheries statement

295 Paragraphs 5 to 7 provide that the consultation requirements, the requirement to lay the consultation draft before the appropriate legislature, and the publication requirement would apply in the same way to the SSFS as they do to the JFS (the SSFS is laid before UK Parliament). Paragraph 8 requires the Secretary of State to publish the SSFS as soon as reasonably practicable after it has been adopted.

## Part 3: Fisheries management plans

296 This Part sets out the consultation and publication requirements for fisheries management plans, which are similar to those required for the fisheries statements. Fisheries management plans do not need to be laid before the relevant legislatures, however.

## Schedule 2: Regulation of foreign fishing boats

297 This Schedule makes amendments to secondary legislation (including to Welsh language versions of Welsh statutory instruments) that will ensure that foreign vessels licensed to fish in UK waters will be subject to the same requirements and restrictions as UK fishing vessels operating in those areas. This includes secondary legislation made to address local issues which, because of EU law, could previously only be applied to UK vessels.

## Schedule 3: Sea fishing licences: Further provision

### Power to attach conditions to sea fishing licence

298 Sub-paragraph (1) of paragraph 1 confers a power on a sea fish licensing authority to attach such conditions to a licence as appear to it to be necessary or expedient for the regulation of sea fishing. The conditions may include conditions which do not relate directly to sea fishing.

299 Sub-paragraph (2) lists particular conditions which may be attached to a licence, and includes (but is not limited to) conditions as to landing fish, restricting the time fishing boats may spend at sea and conditions aimed at preserving the marine and aquatic environment. Sub-paragraph (3) states that conditions in relation to time spent at sea may include the circumstances in which time is, or is not, to be counted for this purpose.

300 Sub-paragraph (4) would make it an offence to break a condition of a licence, and in these circumstances the master, the owner and the charterer of the fishing boat are each guilty of an offence. Sub-paragraph (5) refers to the offence provisions in clauses 20 to 22.

### Power to vary, suspend or revoke sea fishing licences

301 Paragraph 2(2) gives a sea fish licensing authority the power to vary a licence it has granted or to add, remove or vary a licence condition. It may also suspend or revoke a sea fishing licence if it appears to be necessary or expedient for the regulation of sea fishing, or if it appears to be appropriate where there is a contravention of the requirement to license a British fishing boat or a foreign fishing boat.

302 Sub-paragraph (3) states that if a sea fish licensing authority varies or revokes a licence or a licence condition, it may reimburse part or all of any charge made for the licence, if it considers it appropriate to do so.

### Power to obtain information

303 Paragraph 3(1) provides sea fish licensing authorities with powers to obtain information from the master, owner or charterer named in a licence. Sub-paragraphs (2) to (4) relate to offences around failure to provide the authority with requested information and for providing an

authority with false information.

### Duty to comply with request of another sea fish licensing authority

304 Paragraphs 4(1) and (2) give a sea fish licensing authority the power to request another sea fishing licensing authority to exercise its licensing functions in such a way that any licences or licence conditions it grants are made subject to the conditions imposed by the requesting sea fish licensing authority, where that authority has imposed limits or conditions in respect of a particular area. The purpose of this provision is that one sea fish licensing authority can ask another authority not to undermine its licensing decisions in respect of an area of water where boats licensed by different authorities may fish.

305 Sub-paragraph (3) states that the requested authority must comply with the request unless it considers it unreasonable to do so.

### Use of licensing functions to limit fishing activity

306 Paragraph 5 gives a sea fish licensing authority the power to exercise its licensing functions so as to limit the number of fishing boats, or any class of fishing boat, or fishing in any area for any type of fish.

### Power to arrange for licensing functions to be exercised by others

307 Paragraph 6 enables a sea fish licensing authority to delegate its licensing functions, although the authority remains responsible for the exercise of any delegated function. Sub-paragraph (3) states that a public authority to which licensing functions are delegated may charge the sea fish licensing authority such fees as it considers reasonable.

### Regulations about the licensing of fishing boats

308 Paragraph 7 provides that a relevant national authority (the Devolved Administrations in respect of the boats or zones of their administration, or the Secretary of State) may make regulations as to how a sea fish licensing authority's licensing functions are to be exercised and as to the time when a licence, or various aspects of it, have effect.

309 Sub-paragraph (2) lists some of the matters that may be included in the regulations. Subparagraph (3) states that any regulations may make provision authorising the making of charges in relation to a sea fishing licence. Sub-paragraph (4) gives examples of the kind of provision which may be made in respect of charges, such as the amount to be charged, different charges for different classes of licence and that no charge may be payable in certain circumstances.

310 Sub-paragraph (5) imposes a duty on the relevant national authority to make regulations as to the principles that are to be applied to licence conditions about time spent at sea as described in sub-section (7). However, sub-section (6) states that the regulations may not make provision about such a principle if the regulations include other principles relating to a description of a restrictions on fishing activities (e.g. a restriction on the size of a fishing boat authorised to fish in an area)

311 Sub-section (8) requires regulations including principles about time spent at sea to be subject to the affirmative resolution procedure, while sub-section (9) provides that all other regulations made under this paragraph may be made under the negative resolution procedure. Sub-paragraph 10 defines "relevant national authority" for the purposes of this Schedule

### Power of Secretary of State under paragraph 7 where consent obtained

312 Paragraph 8 provides a power for the Secretary of State to make regulations in areas of devolved competence, with the consent of the relevant Devolved Administration.

## Interpretation

313 Paragraph 9 defines “a sea fish licensing authority” and “licensing function” for the purposes of this Schedule.

## Schedule 4: Access and licensing: minor and consequential amendments

### Part 1: Access to British fisheries by foreign fishing boats

314 This part make minor changes consequential to provisions in clause 12 on access to UK waters and licensing.

315 In particular, section 2 of the Fishery Limits Act 1976, which sets out the current law on access by foreign boats, is repealed. Paragraph 4 revokes the subordinate legislation made under section 2 of the above Act, which designates the countries whose vessels have access to British fishery limits.

### Part 2: Licensing of fishing boats

316 This part makes changes consequential to licensing provision in the Bill. In particular, paragraph 6(2) revokes section 4 of the Sea Fish (Conservation) Act 1967, which contains the licensing provisions replaced by the Bill. The Schedule makes a number of consequential amendments to fisheries legislation.

### Part 3: Transitional provision

317 Paragraph 8 provides that there is no break in the continuity of the law where provisions which are repealed by Part 2 of this Schedule are re-enacted.

318 Sub-paragraph (4) provides that anything done under legislation that would be amended by the Bill, if that provision is in force immediately before the commencement of the corresponding provision in the Bill, continues to have effect as if it were done under the corresponding provision.

319 Sub-paragraph (5) provides that any reference in any other legislation to a provision which has been amended by the Bill should be construed as a reference to the corresponding provision in the Bill.

## Schedule 5: Sale of Welsh fishing opportunities

320 This Schedule provides equivalent powers to the Welsh Ministers that are granted on the Secretary of State under clause 29. The Welsh Ministers may make regulations that would provide for the sale or tender of Welsh fishing opportunities to the Welsh fishing industry.

## Schedule 6: Financial Assistance: powers of devolved authorities

321 Clause 35 provides the Secretary of State with a power, through regulations, to give financial assistance, or to arrange for such assistance to be given, to any person for certain purposes.

322 Paragraphs 1 to 3 of Schedule 6 provide equivalent powers for the Devolved Administrations.

323 Paragraph 4 repeals powers for the Fisheries Administrations to provide financial assistance in the Fisheries Act 1981. This paragraph also makes amendments to that Act and other legislation consequential to clause 35 and this Schedule.

324 Paragraph 5 makes transitional provision so that existing financial assistance schemes can be treated as though they were made under the financial assistance provisions in the Bill. This means that the relevant Fisheries Administrations can continue to provide financial assistance agreed under the terms of those existing schemes.

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

## **Schedule 7: Imposition of charges: powers of devolved authorities**

325 This Schedule provides the Devolved Administrations with the same regulation making power conferred on the MMO by clause 36. This means that the Devolved Administrations will be able to make regulations to impose charges in respect of the exercise of relevant marine functions.

## **Schedule 8: Powers to make further provisions: devolved authorities**

326 This Schedule provides the Devolved Administrations with powers equivalent to those of the Secretary of State under clauses 38 and 40. These powers will enable the Devolved Administrations to make changes to amend UK fisheries law (including primary legislation and retained EU law).

## **Schedule 9: Amendments of the Marine and Coastal Access Act 2009**

327 Part 1 provides powers and duties for the MMO to carry out or provide research, advice, assistance and training outside the UK marine area. or to persons outside the UK. This is to enable the MMO to support the Government's Blue Belt Programme and the future "Blue Planet Fund" and to provide advice and assistance on sustainable fisheries, marine planning, licensing and conservation to the UK's overseas territories and to other persons outside the UK.

328 Part 2 confers additional powers on the MMO, the Welsh Ministers and the Scottish Ministers to make byelaws or orders relating to marine conservation. Currently, the MMO and Welsh Ministers are only able to make byelaws in connection with Marine Conservation Zones (MCZs). and byelaw and order making powers are only exercisable in the inshore area (0-12 nautical miles).

329 Paragraphs 6 to 9 make changes consequential on the new provisions. Paragraph 10 amends section 129 of MCAA to provide that byelaws for the protection of MCZs may be made subject to specified conditions or for a specific period of time.

330 Paragraph 11 inserts a new section 129A into MCAA. This section confers on the MMO the power to make byelaws relating to the exploitation of sea fisheries resources for the purpose of conserving marine flora or fauna, or marine habitats. MMO byelaws under this provision would extend to "England", which includes the 0 to 12nm inshore region.

331 "Sea fisheries resources" is defined in section 153(10) of MCAA as any plant or animal that habitually lives in the sea (with some exceptions) and "exploitation" is defined in section 153(12) of MCAA to refer, in terms, to fishing activities, selling, buying or introducing to the sea or cultivating sea fisheries resources. The effect of this is that the marine conservation byelaws must be for the purpose of marine conservation in connection with these activities.

332 In addition to new section 129A, paragraph 6 inserts new section 129B which confers on the MMO a power to make byelaws relating to the English offshore region, i.e. the 12 to 200 nm area. Again, such a byelaw would have to be made for the purposes of marine conservation in connection with the exploitation of sea fisheries resources.

333 New section 129C contains further provision on byelaws made under sections 129A and 129B. Paragraphs (2) to (4) of section 129C contain particular examples of matters which byelaws may make provision about, for example prohibiting or restricting exploitation in specific areas or during specific periods, or the charging of fees for permits.

334 Paragraph 12 amends section 130 of MCAA, which deals with procedural matters for MCZ byelaws (such as their publication), so that these provisions also apply to the new byelaws made

under section 129A and 129B. Also, subparagraph (4) inserts a provision requiring the MMO to send a draft byelaw relating to the offshore region to the Welsh or Scottish Ministers if the byelaw might or would affect the exploitation of sea fisheries resources in the Welsh or Scottish offshore region.

- 335 Paragraph 13 amends section 131 of MCAA, which makes provision for emergency byelaws to protect MCZs. The amendment makes the emergency byelaw provisions apply to byelaws made under new section 129B, to protect the English offshore regions, so that these byelaws could be made without the confirmation of the Secretary of State, in the circumstances that currently apply to emergency MCZ byelaws.
- 336 Paragraph 14 amends section 132 of MCAA, which makes provision for interim byelaws to protect MCZs.
- 337 Paragraphs 15 and 16 make consequential changes, including the insertion of a paragraph into section 133 of MCAA. Section 133 makes further provision in relation to interim byelaws and byelaws for the protection of MCZs. The additional paragraph would require the MMO to send a copy of a draft byelaw made under section 129B or section 132 to the Welsh or Scottish Ministers if it will or may affect the exploitation of sea fisheries in the Welsh or Scottish offshore region.
- 338 Paragraphs 17 to 20 confer on Welsh Ministers the same powers to make provision for Wales, the Welsh inshore region and the Welsh offshore region, by order, as is conferred on the MMO in relation to byelaws. The new sections are 134A to 134C and these mirror new sections 129A to 129C.
- 339 Paragraph 21 inserts new sections 137A to 137D into the MCAA. New section 137A would confer a power on Scottish Ministers to make orders relating to the exploitation of sea fisheries resources in the Scottish offshore region for marine conservation purposes (Scottish Ministers already have a power to make marine conservation orders in the Scottish inshore region under the Marine (Scotland) Act 2010). This mirrors the powers in the offshore region that would be conferred on the MMO and Welsh Ministers. New section 137B would impose a duty on Scottish Ministers to consult the Secretary of State and any other person whom they think fit to consult before making an order under section 137A. New section 137C would provide Scottish Ministers with the power to make interim orders for the purposes of protecting any feature in an area of the Scottish offshore region – these mirror the powers that the MMO and the Welsh Ministers already have under MCAA, except that the Scottish Ministers would have to make such orders where the need for protection arose in relation to the exploitation of sea fisheries. New section 137D would impose a duty on Scottish Ministers to send a copy of a draft order to the Secretary of State and any person they have consulted under section 137B.
- 340 The remainder of this Schedule makes further amendments to MCAA which are consequential on the above provisions. These include amendments to provisions on offences and penalties, so that they apply to the contravention of the new byelaws and orders. Provisions on the enforcement of nature conservation legislation are amended to include the new byelaws and orders, so that powers of marine enforcement officers extend to enforcing them.

## **Schedule 10: Retained direct EU legislation: minor and consequential amendments**

- 341 This Schedule makes minor and consequential amendments to retained direct EU legislation relating to provisions in this Bill.





## Commencement

342 The dates for each of the provisions in the Bill are set out in clause 53. Provisions will come into force at Royal Assent, within two months of Royal Assent, or on IP Completion Day. Some regulation-making powers will come into force the earlier of either IP Completion Date or two months following Royal Assent.

343 “IP Completion Date” is defined in the European Union (Withdrawal Agreement) Act 2020 as 31 December 2020 at 11pm, which is the end of the Implementation Period and when we will no longer be bound by the CFP.

## Financial implications of the Bill

344 The Bill will have few immediate financial implications but some items of new expenditure are to be paid out of money provided by Parliament following regulations made under the provisions of this Bill:

- Administrative costs of setting up a scheme for the licensing of foreign fishing boats (these will arise immediately);
- Administrative costs of establishing any future schemes to sell or tender quota under clause 29 and Schedule 5;
- Payments to charge collectors to cover expenditure incurred in the carrying out of their functions related to any future Discard Prevention Charging Scheme under clauses 30 to 34 and costs covering the administration of the scheme;
- Giving financial assistance via future funding schemes under clause 35 and Schedule 6. Funding is currently available through the EMFF.

## Compatibility with the European Convention on Human Rights

345 The Government considers that the Fisheries Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly George Eustice, Secretary of State for Environment, Food and Rural Affairs, has made a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.

## Equalities statement

346 During the passage of the European Union (Withdrawal) Act 2018 through the House of Commons, the Government committed to providing a statement on the impact of EU-exit primary legislation on either the Equality Act 2006 or the Equality Act 2010.

347 The Fisheries Bill does not amend, repeal or revoke any provision of the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts (the equalities legislation).

348 In relation to the policy which is given effect by the Bill, the Secretary of State for Environment, Food and Rural Affairs has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

## Related documents

349 The following documents are relevant to the Bill and can be read at the stated locations:

- [Fisheries white paper: sustainable fisheries for future generations](#)
- [Beyond the Common Fisheries Policy: Scrutiny of the Fisheries Bill, Environment, Food and Rural Affairs Committee of the House of Commons](#)

## Annex A: Territorial extent and application in the United Kingdom

The following provisions extend and apply UK wide:

- Clauses 1 to 43, 45 and 47 to 54; Schedules 1 to 4; Part 1 of Schedule 9 and Schedule 10.

The following provision extends UK wide, but applies in Scotland, Wales; and Northern Ireland:

- Clause 44. (Schedule 8 extends separately to Scotland, England and Wales, and Northern Ireland).

The following provisions extend UK wide but apply in England, Scotland, and Wales:

- Clause 46 and Part 2 of Schedule 9.

The following provision extends UK wide but applies in Wales:

- Schedule 5 (sale of fishing opportunities).

The following provisions extend UK wide but apply in England, Scotland, Wales, and Northern Ireland:

- Schedule 6 (financial assistance).
- Schedule 7 (charges).

Repeals and amendments made by the Fisheries Bill have the same territorial extent and application as the legislation that they are repealing or amending. However, unless expressly stated, repeals and amendments do not automatically extend to the Channel Islands or the Isle of Man. The information

provided is the view of the UK Government.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought
Clauses 1-3 (Fisheries objectives and joint fisheries statements and fisheries management plans)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 4-5 (Secretary of State fisheries statement)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 6-9 (fisheries management plans)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 10-11 (Effect of statements and plans and reporting)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 12-13 (Access to British fisheries by foreign boats)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 14-17- (Licensing of fishing boats)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 18 (National landing requirement)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)

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<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought
Clauses 19-23 (Access and licensing: offences and consequential amendments)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 24-25 (Secretary of State to determine fishing opportunities)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 26 (Distribution of fishing opportunities)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 27 (Reservation of English fishing opportunities for new entrants and boats under 10 metres)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 28 (Duties to ensure fishing opportunities not exceeded)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 29 (Sale of English fishing opportunities)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)
Clauses 30-34 (Discard prevention charging schemes)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 35 (Financial Assistance)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 36 (Power for MMO to impose charges)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought
Clause 37: Sea Fish Industry Authority	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 38-43- (Power to make provision about fisheries, aquaculture, aquatic animal diseases and scope)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 44 (Powers of Scottish Ministers, Welsh Ministers and Northern Ireland Department to make provision about fisheries, etc.)	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 45: (Legislative competence of Senedd Cymru)	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
Clause 46 (Amendments to the Marine & Coastal Access Act 2009)	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S, W)
Clause 47 (Retained direct EU legislation: minor consequential amendments):	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clause 48 (Regulatory enforcement and data collection scheme)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Clauses 49--54 (Final provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought
Schedule 1 (Fisheries statements and management plans)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 2 (Regulation of foreign fishing boats)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 3: (Sea fishing licences: further provision)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 4 (Access and licensing: consequential provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 5 (Sale of Welsh fishing opportunities)	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
Schedule 6 (Financial assistance: devolved authorities)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 7 (Imposition of charges: powers of devolved authorities)	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 8 (Powers to make further provision: devolved authorities)	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Schedule 9 (Amendments to the Marine & Coastal Access Act 2009)	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S, W)
Schedule 10: Retained direct EU legislation:	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought
minor and consequential amendments)								



## Glossary

Definitions are sourced from both [www.parliament.uk](http://www.parliament.uk) and the Guide to making legislation on [www.gov.uk](http://www.gov.uk).

**Affirmative resolution procedure:** a type of parliamentary procedure that applies to statutory instruments (SIs) and describes the form of scrutiny that the SI receives from Parliament. An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament before it can become law.

**British Fishery Limits:** The waters within the UK's exclusive economic zone (EEZ) which extends out to 200 nautical miles or at the median line between other coastal States

**Chapter:** A grouping of clauses under a subheading within a Part of a bill.

**Clause:** The basic unit of a bill, divided into subsections, then paragraphs, then sub-paragraphs. Once the Bill becomes an Act, a clause becomes a section.

**Commencement:** The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

**Devolved Administrations:** the Scottish Ministers, Welsh Ministers and the Northern Ireland Department.

**Devolved authorities:** the legal term for the Devolved Administrations.

**EMFF:** European Maritime and Fisheries Fund.

**Fisheries Administration:** the UK fishing authorities made up of the Secretary of State, Scottish Ministers, the Welsh Ministers and the Northern Ireland Department.

**IFCAs:** Inshore Fisheries Conservation Authorities.

**LFC:** London Fisheries Convention.

**Long title:** The passage at the start of a bill that begins "a Bill to..." and then lists its purposes. The content of the bill must be covered by the long title.

**MCAA:** Marine and Coastal Access Act 2009.

**MMO:** Marine Management Organisation.

**Money resolution:** A Money resolution must be agreed by the House of Commons if a new Government Bill proposes spending public money on something that hasn't previously been authorised by an Act of Parliament. Money resolutions, like Ways and Means resolutions, are normally put to the House for agreement immediately after the Bill has passed its Second reading in the Commons.

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*

Negative resolution procedure: An SI laid under the negative procedure becomes law on the day the Minister signs it (when it is made) and remains law unless a motion – or ‘prayer’ – to reject it is agreed by either House within 40 sitting days.

Northern Ireland Department: This is the relevant department of the Northern Ireland Executive dealing with fisheries. In the case of the Bill the relevant department is the Department of Agriculture, Environment and Rural Affairs (DAERA)

Part: A grouping of clauses under a heading in the body of a bill. Also a subdivision of a schedule.

Retained EU legislation: As the UK leaves the EU, the EU (Withdrawal) Act 2018 will convert the body of existing EU law into domestic law and preserve the body of laws we have made in the UK to implement EU obligations. "Retained EU legislation" refers to these bodies of legislation.

Retained direct EU legislation: is defined in section 20 of the European Union (Withdrawal) Act 2018. It is any direct EU legislation which forms part of domestic law by virtue of section 3 of that Act, and includes directly applicable EU regulations, decisions or tertiary legislation. It does not include the body of domestic laws made in the UK to implement EU obligations.

Regulation: secondary legislation made through SIs.

RFMOs: Regional Fisheries Management Organisations.

Schedule: Bills may have a number of Schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the bill are to work in practice. Schedules can be amended by Parliamentarians.

Section: When the bill becomes an Act, “clauses” become “sections” but the names of the other subdivisions stay the same.

Senedd Cymru: The Welsh Parliament, formally the National Assembly for Wales

Short title: The title by which a bill is known during its passage through Parliament; for example “Fisheries Bill”, and when it passes the “Fisheries Act 2020”.

Statutory instrument: Statutory instruments are the most common form of secondary (or delegated) legislation.

Territorial application: Territorial application refers to the territory where a Bill (or provisions of a bill) has a practical effect.

Territorial extent: The extent of a Bill refers to the legal jurisdiction of which a bill, or provisions of a bill, will become a part. There are three legal jurisdictions in the UK: (1) England and Wales, (2) Scotland and (3) Northern Ireland. The extent of a Bill or provision can be different from its application.

UNCLOS: United Nations Convention on the Law of the Sea, 1982.

UNFSA: United Nations Fish Stocks Agreement, 1995.

*These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153)*



# FISHERIES BILL [HL]

## EXPLANATORY NOTES

These Explanatory Notes relate to the Fisheries Bill [HL] as brought from the House of Lords on 2 July 2020 (Bill 153).

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