

Scottish Affairs Committee

Oral evidence: [Fisheries Bill](#), HC 1787

Wednesday 9 January 2019

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[Watch the meeting](#)

Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Hugh Gaffney; Kirstene Hair; Ged Killen; John Lamont; Tommy Sheppard; Ross Thomson.

Questions 1 - 76

Witnesses

I: Bertie Armstrong, Chief Executive, Scottish Fishermen's Federation, Ryan Scatterty, Scottish Seafood Association, Alex Kinninmonth, Head of Marine Policy, RSPB Scotland/Scottish Environment LINK, and Barrie Deas, Chief Executive, National Federation of Fishermen's Organisations.

II: Fergus Ewing MSP, Cabinet Secretary for the Rural Economy, Allan Gibb, Head of Sea Fisheries Policy and Richard McLeod, Team Leader EU Exit.

Written evidence from witnesses:

- [National Federation of Fisherman's organisation](#)
- [Scottish Environment LINK](#)

Examination of witnesses

Witnesses: Bertie Armstrong, Ryan Scatterty, Alex Kinninmonth, and Barrie Deas.

Q1 Chair: Welcome to you all and thank you for assisting and helping us out with our one-off, all-day inquiry into the Fisheries Bill. I think I have seen most of you around this table before but please say who you are, who you represent and anything by way of a short introductory statement, with the emphasis being on “short”. We will start, as traditional, from left to right with you, Mr Kinninmonth.

Alex Kinninmonth: Good morning, everybody. Thanks for having me along this morning. My name is Alex Kinninmonth. I am Head of Marine Policy at RSPB Scotland and I am here on behalf of Scottish Environment LINK, which is the forum for Scotland’s voluntary environmental organisations, comprising about 35 members, all with the common goal of creating a more environmentally sustainable Scotland.

Ryan Scatterty: Good morning. My name is Ryan Scatterty. I am the Managing Director of Thistle Seafoods. We are the largest independent processor in Scotland. We employ over 500 people. I am here as part of the Scottish Seafood Association to represent the processing sector. We have in excess of 60 processors represented in our association.

Barrie Deas: Good morning. I am Barrie Deas, Chief Executive of the National Federation of Fishermen’s Organisations, which is the representative body for fishermen in England, Wales and Northern Ireland. We have in our membership vessels that operate in Scottish waters and land into Scottish ports in the same way that Scottish vessels land into other parts of the UK. Our members are directly affected by the policies that are shaped by the devolution settlement, so there is that kind of angle to it. I will put on record that we strongly support the main thrust of the Fisheries Bill insofar as these are powers that are necessary to manage our fisheries after we have left the EU and the CFP.

Bertie Armstrong: Good morning. Thank you very much again for the opportunity to be here. I am Bertie Armstrong, Chief Executive of the Scottish Fishermen’s Federation, which is the trade association that looks after the catching sector in Scotland, some 400 or 500 individual fishing businesses, catching by volume and value about 65% of the UK’s fish landings and catches. I echo Barrie’s statement. This Bill is essential enabling legislation to allow us to embrace the big fat opportunity that Brexit presents to the fishing industry of the UK. It is the place for principles and enabling legislation. It is not an encyclopaedia of UK fishing. We should be wary of overthinking.

Q2 Chair: To get things started, what are the opportunities within the Fisheries Bill and what does it do that cannot be done under the common fisheries policy?



Bertie Armstrong: There will be a complete change of governance of the seas around the UK on Brexit; the arrival at a position of sovereignty over who catches what in the seas and how much is caught. That is wholly, absolutely and completely different from the common fisheries policy where all of the EU's waters are regarded as common access and the split of opportunity is rigidly set and has been for decades now in a position of extreme disadvantage to us. It was a last minute affair when we joined the European economic arrangements as they were in 1975 and we handed over a great big farm to amalgamate with the vegetable patches that were brought by the other European nations. The largesse of the entire area was spread out in the proportion, now well known, of 60% to our EU friends and 40% for us, which is not like other coastal states that we will become. Norway has in the order of 85% and Iceland in excess of 95% of fish retained.

There is a complete and utter change in governance and opportunity for the UK fishing industry and this is the essential enabling legislation that will take us away from the CFP arrangements of relative stability, the 60% leaving and others, and common access to our waters.

Q3 **Chair:** Mr Kinninmonth, what about you? What does this Bill offer that the CFP could not provide?

Alex Kinninmonth: In theory at least, fisheries management across the piece and outside the CFP could be more flexible and responsive to biological circumstances and change, and could present opportunities where action for the environment could be taken quicker. I think we can all share that view, notwithstanding that there would still be a great amount of co-operation needed with our neighbours, certainly on the management of shared stocks and the shared environment of the north Atlantic.

That is not to say that we should forget all of the progress that has been made under the CFP, which has been considerable over the last 10 years or so in respect of targets for restoration of stocks and integrating with wider environmental policy. We should not forget the progress made there and the fact that the UK and Scotland led the charge in a lot of the 2013 reforms to the CFP. Those reforms were trying to lift fisheries out of their silo operating here and trying to integrate them more with the wider goals that we have for the marine environment, to improve the health of the marine environment overall.

That is not to say that there are not big issues with implementation that we are all aware of—for example the big targets in there for 2020 with respect to the UN sustainable development goals, the global biodiversity convention, achieving good environmental status for our waters under the marine strategy framework directive or the UK Marine Strategy Regulations. We are at risk of not meeting those targets, simply, and we need to up our game quite considerably to do so.



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One area worth highlighting is that where common fisheries policy mechanisms have stumbled somewhat is in the area of managing marine protected areas in the offshore zone. These are sites that are designated to protect vulnerable habitats and species and the new powers within this Bill do a job of aligning existing powers that Scottish Ministers have for the inshore area with the offshore area. While EU member states can currently set conservation measures within 12 nautical miles, outside requires a joint recommendation to be prepared and adopted under the CFP. Currently in the offshore zone we have around 18 marine protected areas that do not have effective fisheries management in place because those mechanisms have ground to a halt, effectively, despite considerable effort and consultation over the last three or four years with industry, NGOs and everything. We sit in a bit of a limbo and the new powers in the Bill could at least streamline that process in the future.

Q4 Chair: I know that in your written evidence you have called on the Government to put a legal duty on all public authorities to meet the fisheries objectives outlined in the front of the Bill. What difference would that make?

Alex Kinninmonth: At the moment they are presented as objectives with no duty on authorities to meet those objectives other than through the joint fisheries statement. That is a bit of a change from the status quo under the CFP. It is quite a loose duty on those objectives and that is a concern to us. Having a clear duty on authorities to meet those objectives would provide a clear set of direction, a clear reference point for decision-makers to head towards. Having those has seen progress under the CFP and so replicating that to the best of our ability is something we should look at.

Q5 Chair: In your view, are they detailed enough to place a legal duty on public authorities?

Alex Kinninmonth: I think they are, yes, but there is also enough flexibility for decision making to happen underneath that.

Q6 Chair: Thank you. We will go back to the original question and bring you in, Mr Scatterty. What opportunities are there in the Fisheries Bill compared to—

Ryan Scatterty: I would class this as a useful first step. Scotland's largest food export currently is salmon, which is from the aquaculture industry that we are growing ourselves. With the move to taking back control of our own fisheries and who is catching it, when I say this is a useful first step, what we also need to look at as part of a wider step in the Fisheries Bill is an obligation for the landings of this raw material to be made back into Scotland. Currently quite a large proportion of our fleet is landing into Norway, Denmark and various other countries throughout our neighbouring coastal states.

From the processing side we are going to need two things going forward. The first is access to raw material, and if this is handled correctly we



should see an increase in access to raw material. The second part of it—and I know it is not part of this Bill—is access to labour. That would be my concern with the potential exit from the European Union and I would ask that our representatives in Westminster give serious consideration to access to labour. I am based in the north-east of Scotland and we have been extremely fortunate with the oil industry but it has meant that we have very low levels of unemployment. I think it would be fair to say that seafood processing is not seen as a sexy job and people would rather be working in an office or potentially working offshore. We are going to need access to labour. Prior to the expansion of the European Union to include the former Soviet states, we had our own sector Bill where we could use Ukrainian labour.

All I would ask is that the Members in Westminster and Holyrood pay due care to this, because we could have all the fish in the world but if we don't have anybody to process it we can't do anything with it.

Q7 Chair: Do you have any concerns when we talk about the possible prospect of a no deal, particularly about some of the tariff arrangements for the food products that come from Scotland?

Ryan Scatterty: The demand globally for seafood raw material has never been higher and it is only likely to increase. With the growing economies of China, India, Indonesia and so on, even the US, we are seeing demand for seafood ever increasing. A hard no deal with us crashing out potentially will cause major problems for a number of my members. Frozen raw material is not a problem, we can ship that globally around the world and we already do. I am exporting into Australia, so you don't get much further away from Scotland. But a large number of the fresh producers are supplying into the European Union, so we are going to have to have some transitional agreement that would be required. If we were looking at a five to 10-year timeframe, I don't think we should be kowtowing to the European Union, to be perfectly honest, because the global markets are out there. The demand that is coming from China and everywhere else means that our raw material is going to be in great demand.

Q8 Chair: We have just concluded an inquiry into trade and Brexit and the opportunities and challenges there are for Scotland. One of the things that was secured in real evidence—which was challenged but I would like your view on this—was the view that a number of the processors who are currently based in Scotland would consider moving to the European Union so they would have friction-free access, tariff-free access to the European market. Is there any substance at all in that view?

Ryan Scatterty: I am not aware of anybody actively looking to relocate. I think we are all keeping our options open because we need to see what is going to happen. As I said, at the moment labour is the biggest problem we have as the processing sector and if we don't have labour we have to look to where the labour is going to be.



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Chair: We may come on to some of these issues throughout this session.

- Q9 **David Duguid:** Welcome, everyone, and happy New Year to you all, by the way. There have been a lot of suggestions, certainly in the Committee stage of the Fisheries Bill, to impose an obligation to land fish in Scotland—or in the UK. I was on the Bill Committee and one of the things I challenged on was, rather than imposing—sorry, let me ask you the question. Are there examples, certainly from the processing side of things, that we could take from, say, Iceland and Norway, places where Scottish fishermen choose to land their fish? Are there any lessons we can learn from those locations that we can apply in the UK, in Scotland, that would attract fishermen to land in Scotland rather than imposing it?

Ryan Scatterty: If you were to have a look at the likes of Norway and Iceland, Norway's quotas are tied into the individual coastal towns and villages around the state.

- Q10 **David Duguid:** But that doesn't apply to Scottish vessels though?

Ryan Scatterty: That doesn't apply to Scottish vessels, but I am talking about the Norwegian sector. If you want some lessons to be taken from Norway, they oblige their boats to land back into Norway, which means that the processing then stays there.

- Q11 **David Duguid:** Presumably price is a factor.

Ryan Scatterty: Correct.

- Q12 **David Duguid:** Are there any other factors that we can learn from? It is a discomfort I have—rather than a government imposition, if only there was a more organic way of attracting fishermen to land in their home country. Are there any lessons we can learn?

Ryan Scatterty: To be perfectly honest, I don't think there is. I think there does need to be government legislation. That is the only crude instrument we have that would enforce it. I am not saying it would need to be an overnight, "You must land everything". It would need to be phased. The infrastructure is not there in Scotland at the moment to handle all of the raw material. I also come back to the point that at the moment the fishermen we have are not landing everything that they could. Haddock is the largest whitefish species that we catch in Scotland. From the latest data I have seen, last year the boats that landed caught only 82% of the available quota and the year before it was about 90%, so they are not even landing everything there is at the moment. Talking quite crudely, I think they are trying to keep the prices up.

Chair: I will come to you in a minute, Mr Deas, because I am interested in your view on the original question, but I know Mr Lamont wants to come in.

- Q13 **John Lamont:** I just wanted to follow up with Mr Scatterty. You were talking about the dangers and the risks associated with crashing out with no deal and, as I understood what you were saying, you spoke about the



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current business that you are doing with Australia and China and the opportunities.

Ryan Scatterty: It would not be a problem for me but for other members of our association it certainly would be a problem because they are supplying fresh raw material into the European Union.

Q14 **John Lamont:** But you are currently doing trade with Australia and you see that as expanding.

Ryan Scatterty: Yes.

Q15 **John Lamont:** They are obviously not part of the EU. Is the basis of that trade under WTO rules. or how is that trade conducted?

Ryan Scatterty: Yes, it is. It is under existing trade agreements that the European Union has with Australia and everybody else, but the majority of it at the moment is under WTO rules.

Q16 **Chair:** Mr Deas, the original question: what are we getting out of this new Bill that we did not secure under the common fisheries policy?

Barrie Deas: Setting aside any transition that might apply, the UK would become an independent coastal state and so the Fisheries Bill gives us the power to manage access and quotas and to have regulatory autonomy. Those are huge opportunities. The CFP has led us down a number of blind alleys, so the opportunity to manage our fisheries in ways that suit our fleets is extremely valuable and an extremely important goal.

In addition to that, building on what Bertie said, controlling access to who fishes in our waters and linked to that rebalancing the quota shares would be extremely important to us to reflect the resources that are in UK waters and should by right be accessible for UK fishermen. The most extreme example of the current distortions comes from the English fisheries, from the Channel cod, where the UK's share is 8%, 9% and the French share is 84%. That is the kind of distortion that arises with the equal access principle and the principle of relative stability. Rebalancing those quotas would deliver fishing opportunities to the UK fleet, greater landings into our markets and the value that would be used to rebuild our fishing communities, our coastal communities. We look at this as a huge opportunity.

Q17 **Tommy Sheppard:** I have a couple of questions on what Mr Deas and Mr Armstrong have been saying so far and I wonder if you could help me with this. I think you described Brexit as a wonderful opportunity. Can you quantify your ambition in that regard? Do you think Brexit means that there will be a growth in the Scottish fishing industry? Will that be in the order of 10%? Will it double? Will it be to a factor of 10? That is my first question. Do you have any sort of view as to exactly how much opportunity you see? Secondly and related to that, I appreciate that you do not like the common fisheries policy but do you accept that there



should be any international agreements on the amount of fish that we can take out of the water within our shores? If so, what sort of limitation would that have on the ambition that you have?

Bertie Armstrong: Thank you for the question, a very fine question if I may say. The UK fisheries first sale at landing, the measure of what is caught, is presently not too far shy of £1 billion, £940,000 in 2017's figures. That represents, in very general figures, 40% of the seafood leaving our sovereign area or what will be our sovereign area. Therefore, there is an obvious opportunity to at least double that. That would put us on the world stage as the seafood-producing nation that Ryan described. That is the order of opportunity. There was a study last June by the Scottish Government and there were some figures in that. It was carried out by APBmer on behalf of the Scottish Government and it estimated that a realistic figure would be an additional £500 million to the Scots industry and 5,000 jobs. That is the order of potential benefits.

There are many challenges here but the critical path and the overriding issue is the potential for opportunity. We would like to see that potential embraced by all the Governments of the land, to place the UK in the proper place for an island state in the middle of some of the best fishing grounds in the world with sovereignty over those waters in a position that reflects that. It is simply daft not to.

On the second part of the question, of course there should be international regulation. There already is a fairly rigid and working infrastructure of the nations in the north-east Atlantic, the coastal states, to get together on an annual basis in formalised talks to decide on how much fishing opportunity is taken. The limits are set by science. The relevant scientific body is the International Council for the Exploration of the Seas, a neutral scientific body that says, "That much of that species, that much of that species, that much of that species can be caught". That is the starting point and should not be exceeded. The coastal states then gather and decide on the management of that level of opportunity. There is no question of abandoning law and going back to the days of everybody fishes everywhere as hard as they can. That is out of the question and we would not even dream of supporting that. It has never been offered as a probability.

Q18 **Chair:** Are you now satisfied with the assurances you have heard from the Government about control of our fisheries as an independent coastal state will not be compromised by any fear about a future trade agreement with the European Union? We have had remarks from President Macron from France, for example, who is insisting that this will be part of it. What is your view and feelings about where we are with that now?

Bertie Armstrong: We are shoulder to shoulder with careful nervousness about this. There has not been a time in the last five decades when fishing has had a higher profile. That is a fact, there isn't—because the general public regard this as the right thing to do. To cut a



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long story short, that is what our polling shows. It is the old financial adage that past performance is no guarantee of future outcome, because it was—to pick a cliché—sold down the river.

Chair: It was expendable, that was a term that was used in the 1970s.

Bertie Armstrong: That happened 45 years ago and there is no reason why it should necessarily happen again, but we know that is an example and we are nervous. We have managed to have specific statements from the Prime Minister and Michael Gove—and others like the Secretary of State for Scotland but from those two principals in the decision-making process—that we will be a sovereign nation, that we will take back control and we will have a fairer distribution of opportunity. None of us is complacent in any shape or form and we are watching this like a hawk, quite frankly, and we would wish to apply the maximum pressure on all the Governments of the land to play fair by fishing.

Barrie Deas: It would be difficult to obtain more and higher level commitments to the UK as an independent coastal state with all that follows from, as Bertie said, the Prime Minister, the Cabinet, the Secretary of State, the Fisheries Minister, and all the way down. We are not unaware of what the EU is saying, which is that it would make a trade deal contingent on the status quo on access arrangements and the existing quota shares. That is a battle for the future. We are understandably nervous that we would have a repeat of what happened in 1973 but, as Bertie said, the political profile of fishing is extremely high and there would be a very heavy political cost to what would be seen by the fishing industry as a betrayal.

Q19 **Deidre Brock:** The Secretary of State for Environment, Food and Rural Affairs visited Denmark, I think it was, last year and spoke to the leaders in the Danish industry and guaranteed them continued access to UK waters after Brexit. The UK embassy in Spain was also assuring Spanish trawlers late last year that access to UK waters was guaranteed for them. What were your thoughts when you heard those comments?

Barrie Deas: I don't think there is a contradiction there. International co-operation on managing joint stocks is a legal obligation under UN law of the sea, so that will continue. But allowing access to fish in UK waters under our conditions is very different from the equal access principles and the status quo on quotas is very much linked to access.

I preface this by saying that not everything that happens in Norway is relevant to our fisheries, but there is a model there of an independent coastal state that acts as an independent party in international negotiations. The quota shares are determined not by historical access but by a scientific assessment of what resources are in each other's waters, the principle of attachment. It is important that the EU accepts that in relation to Norway, and it currently does accept that in relation to Norway. That is a useful model in both co-operation with the countries



that we share stocks with and how access and quota shares would work out in the future.

Q20 Deidre Brock: But surely that is not entirely the taking back control that was envisaged in the run-up to Brexit. I don't think this was made entirely clear to voters or the fishing industry generally, was it?

Barrie Deas: I think most reasonable people within the fishing industry never had the view that all foreign vessels would be excluded from our waters. It is about changing the basis on which access would be permitted and using that as leverage to secure fairer shares, more balanced shares in quotas.

Bertie Armstrong: I spoke to Michael Gove immediately after that set of news reports and it was a distortion of what he said. First of all, he did not meet the Danish fishermen. He had a round table at which the fishermen were present and he made an assurance exactly along the lines that Barrie has described. That is very distant from promising the Danish fishermen that everything will be the same. They are very nervous. They catch half their fish in our waters and things will change for them. They just will, that is the way that international governance works. We don't think there are any great cracks in the facade at this point in history but we are watching.

Q21 David Duguid: We have moved on from the question I wanted to ask, but I want to follow up on what Mr Sheppard said—a very good question, as you pointed out, Mr Armstrong—about the ongoing international relationships and how we manage sustainability in particular. Could you confirm as a matter of record that within the CFP we are part of a larger group and that the ongoing mechanism for managing sustainability will continue not just as part of the EU but part of our wider more frequent landings area? It is not a function of being in the CFP?

Bertie Armstrong: Absolutely. The sustainability objective is embraced by all the coastal states. We visited Norway and Iceland immediately after the decision was taken in the referendum. We found there that front and centre in those countries' policies on fishing is the matter of sustainability and that is what we would wish to sustain. I would agree with Alex's point that outside the CFP we will be more reactive. The problem with the CFP is co-decision—750 MEPs, half of whom don't have a coastline, and 27 fisheries ministers, ditto, that don't all have a coastline, and they have to agree on everything, so it is moribund. You can't make regulation in a very sensible way out of that process. We can do it much better ourselves and it will be front and centre. It absolutely will be because there is plain self-interest for the catching industry of the land in not abusing your own resource.

Alex Kinninmonth: Just to follow on from that question, I have already mentioned some of the global goals that we have that are enshrined and the UK and Scottish Governments are bound by. The UN sustainable development goals have a clear objective to fish towards the maximum



sustainable yield objective. That is also enshrined in the UN Convention on the Law of the Sea. The overall size of the pie, as Bertie said, should be set by independent science at that level to achieve that MSY objective and that is the internationally accepted approach. We have that enshrined in the CFP and we should absolutely match that ambition outside the CFP.

Q22 John Lamont: Under the terms of the Bill, the UK Government and the devolved Administrations are required to publish a joint fisheries statement outlining how they will achieve the fisheries objectives. In the event of disagreement between the Scottish Government and the UK Government on that, how do you think that type of dispute should be resolved?

Alex Kinninmonth: I think the first thing is we should hope to avoid disputes. Let's not prejudge that dispute is inevitable, but there is always some scope for dispute and there are lots of recent examples of that, so we need to be honest. It would be a huge problem when that dispute leads to inaction or poor environmental outcomes for us. Looking at the Bill and the way it is framed, one of the safeguards in the Bill is that that joint fisheries statement has to be produced by a date, before January 2021, so Governments are at least accountable to that target. If they don't, it is outside the law as it stands.

There is a wider issue here about dispute and the functioning across the four Governments in the UK and fisheries is just one component of that. There probably does need to be a new approach to these quadrilateral agreements. Quite a few of them are required, including fisheries. Last year the RSPB and the World Wildlife Fund commissioned the Institute for Government to look at this issue across fisheries, agriculture and the environment and recommended that the whole issue around the Joint Ministerial Council needs to be completely refreshed, needs to be relooked at entirely. We need new terms of reference, guiding principles for those relations, and transparency, accountability all needs to be part of that. What they also recommended is that for some issues—and fisheries might fall into this bracket—you need to take them out of that politically charged forum. Technical disagreements might be better dealt with at a subgroup of the Joint Ministerial Council for example.

As I say, this is a bigger issue and fisheries is a clear example of where we need to address that joint working. But it is one of a number and looking at the Joint Ministerial Council and how it operates is one way of looking at it.

Bertie Armstrong: That is another very good question. To be clear, the areas for potential dispute are perhaps less than originally imagined as long as there is political goodwill from all those participating in good fisheries management and not straying into other political areas.

There are two levels of fisheries management. One is devolved and that is the practical day-to-day management of fisheries licensing and control.



That is fine and won't change and shouldn't change and all is done. International negotiations, the ones we have been discussing at coastal state level, by necessity must be led by priorities set for the whole UK for no other reason than the heft given by the size of our area in the north-east Atlantic makes us very serious and we should not start separating that out and causing problems. In those two areas, as long as there is political goodwill we would not see the necessity for much dispute.

Barrie Deas: Our experience is that the devolution settlement does indeed make fisheries policy and fisheries management a lot more complex. In terms of the fisheries concordats, a lot was held together by creative ambiguities in order to get a consensus. When those creative ambiguities meet the real world, especially in the absence of political goodwill, it causes difficulties. Those are the contexts in which we think there should be some kind of dispute mechanism and we would be very interested in the parliamentary view of what shape that should take.

Q23 John Lamont: Following on on the need for goodwill between our different Governments, the SFF has described this Fisheries Bill as being a necessary piece of legislation but yet the Scottish Government have indicated that they are going to try to withhold legislative consent. What would be the practical impact, from the fishing industry's perspective, if the Scottish Government try to block this Bill from applying in Scotland?

Bertie Armstrong: We think the overriding issue here is this opportunity and are footstampingly frustrated about the lack of embrace of the opportunity. This will need Government assistance from all the Governments of the land, and particularly of our northern land, to make this work, to grab this opportunity by the throat, meet the needs of Ryan and the rest of the processing industry, expand into new markets and be creative. When somebody is catching a langoustine and shipping it chilled to Madrid he has a 600-mile truck journey and a ferry in the middle of it. The elevation of the UK to the status of a real world glare on the global stage might mean that one day—hopefully not too far away—you would have a frozen and chilled hub in Prestwick where he would have a 200-mile or less journey to get his frozen product to the best market that is available for it elsewhere.

Let's not look downwards and backwards into what separates us and for goodness sake let's grasp the opportunity that confronts us. Scotland, by necessity, is going to be the biggest winner. I don't mean that in any pejorative or combative way. It is just a fact. When the industry contracted over the last 50 years and rationalised, it rationalised north for obvious reasons of geographical proximity to the grounds, history and a willingness to continue to invest. That will continue in Scotland. Rather than trying to protect Scotland's interests, we need to recognise Scotland will be the major winner—let's get on with it.

Q24 John Lamont: For clarity, you want the Scottish Parliament to give the consent to this Bill?



Bertie Armstrong: Yes, and what we do not wish to recreate is the CFP, a two-part distant process where you have to have people in different places agreeing to the same thing. It all boils down in the end to political goodwill, making sure that fishing does not become some sort of bargaining device but is taken on its own merits as a big fat Scottish opportunity, a big fat UK opportunity.

Ryan Scatterty: The Scottish Government have come out with a number of pledges to make the food and drink sector a global champion for Scotland. We have a number of things in Scotland that we should be very proud of, from our whisky industry and salmon industry to shortbread—the list is endless. We have world-class producers and an awful lot of ambition has been set out. I would urge the Scottish Government to back it up with action and to support this Fisheries Bill in the first instance. The Fisheries Bill here should be the first step on the road to getting us back to the true place where we should be for our seafood sector, in both the catching sector and the processing sector.

Barrie Deas: I think the bottom line is that as the UK leaves the EU and the CFP, UK Ministers need to have the powers to engage in international negotiations, set quotas and control access. That is the core of the Bill and for that reason, unless we are to leave a vacuum, it is extremely important that all parties support it.

Alex Kinninmonth: There is a certain amount of legislation that is required to be functioning when we need to be functioning, whenever that might be. We don't have a position of whether that should be a Westminster Bill or a Scottish Parliament Bill. What we do have at the moment, which is concerning, is there is a bit of a policy vacuum of what is the direction from the Scottish Government. I understand that there has been some good collaboration on this Westminster Bill from Scottish Government officials, and that is all to be welcomed, but we have no real sense of direction. Where are the Scottish Government headed on future Scottish fisheries policy? They have promised a discussion paper and that would be really welcome. There needs to be some dialogue on it and a long-term plan that may result in primary legislation in Scotland, but we need to get our skates on.

Q25 **Deidre Brock:** I want to ask about the withdrawal agreement as it stands at the moment. I participated in a debate on fishing late last year in Westminster Hall and your name was mentioned, Mr Armstrong, by Mrs Sheryll Murray who led that debate. It was suggested by another Member in that debate that you had come out in support of a withdrawal agreement but only inasmuch as it gets us to the next phase. Mrs Murray very firmly disagreed with that and she said, having spoken with you herself, "I know he has not said that he respects the withdrawal agreement completely". What are the elements of the withdrawal agreement that you have problems with, where you think things could be improved? Give us your thoughts on that.



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Bertie Armstrong: I have conversations with every MP that will listen across the constituencies and in that conversation with Sheryll, which was in the early stages, what had been discussed was our distaste with the inclusion of fisheries in the implementation period. That was something we felt very strongly was not actually required. There are other industries that certainly do require an implementation period but for fishing that is not required because there already is a functioning framework that we can just slot into as a coastal state and carry on. There will be a need for a bridge of some sort, nine months from Brexit day up until when the first set of negotiations when we are actually a coastal state start. That was the substance of the disagreement. I was not saying anything other than that.

None of these arrangements is going to be perfect. I would characterise it that the whole withdrawal arrangement has not crossed any red lines. It has not given anything away. It has not made any promises that we simply cannot live with, but that is not to say that in the future negotiations there isn't danger.

Q26 **Deidre Brock:** The whole issue of fishing has been parked for the moment, hasn't it?

Bertie Armstrong: The whole issue has been parked, but you could imagine a circumstance where we could have had pejorative action taken against us or promises could have been made, as Denmark would dearly adore because of their input to fishing in UK waters, and that has not happened.

Chair: We have about half an hour left before we have the Cabinet Secretary, so let me try to move things along. I know Mr Sheppard wants to come in with a supplementary and then we will try to move through the rest of the questions rapidly. If people are asking questions, maybe they could identify which of the panellists they would like to respond.

Q27 **Tommy Sheppard:** I will address this to Mr Armstrong again because it is to do with the question of goodwill and relationships between Governments and your saying that the Scottish Government should back the Fisheries Bill. Who can possibly disagree? What I wanted to ask Mr Armstrong is from the perspective of the Scottish fleet, I presume that there are two aspects of the CFP that you are concerned with. One is that the structural limitations, the principles on which it is set, mitigate against the interests of your members.

Bertie Armstrong: Absolutely right, yes.

Q28 **Tommy Sheppard:** But then also within those limitations presumably there is a question about how effective the advocacy by the UK Government has been in terms of Scottish rights. Do you have any concerns about that or do you think it has been as good it possibly could be?



Bertie Armstrong: Nothing is ever as good as it possibly could be. Another fine question. We always find ourselves at the December Council, the last of which in the old form we have now got through, for disagreements, but we do not see a serial ignoring of Scottish rights, simply because of the volume and impact of Scottish fishing. There is the best part of 250,000 tonnes of mackerel caught almost entirely by the Scots fleet. That is a geographical fact. The Scots voice leads. None of that has been sold away or bargained. Everything in the garden is not ever completely rosy but we do not see ourselves serially disadvantaged. That is emphasised by the actual outturn of 65% by volume and value.

Q29 **Ross Thomson:** Mr Armstrong, as you said at the beginning of the evidence session, under the CFP as it stands EU vessels currently have equal access to UK waters. You said that proportion is 60:40 and that is why EU vessels have benefited so much more from access to UK waters compared to our own fishermen. By coming out of the CFP and ending that automatic access there will be a new UK scheme for licensing and because of devolution there will also be a licensing scheme managed by the Scottish Government. How has the Scottish fishing sector responded to the proposed licensing scheme for foreign vessels in the Bill, which would require them to have a licence to fish in each devolved nation?

Bertie Armstrong: As Barrie mentioned earlier, the Scottish industry and the whole UK industry recognises the fact that this is not the creation of a wall in the sea, a Mexican wall around the UK where you don't let anybody inside. There will be access but it will under new arrangements, which is frankly the UK putting the management and access to its own natural capital, its own seafood resource in the sea, first. There will be a number of good things that come from that. We are relatively relaxed about the process in the Bill for licensing, but we are certainly aware of the fact that it needs to be managed somewhere and being managed in Scotland is fine as long as the whole system across the entire UK works properly.

Q30 **Ross Thomson:** This is a broader question. Do you believe that the UK currently has the enforcement capacity to control access to the UK exclusive economic zone to ensure that foreign vessels only fish in the zones that they have a licence for?

Bertie Armstrong: In a word, no. There is some expansion of capacity required there for sure. I would note with some gratefulness that fisheries compliance has taken many steps towards becoming electronic on everything over 15 metres and plans to put it into smaller vessels as well. That would mean that an EU vessel, a Danish, French or Dutch vessel, would be trackable in UK waters and if it were proven to be outside the rules then that would be de facto illegal, unreported, unregulated fishing. The EU has led the world in a charge against IUU fishing, so it will be a rum old do if EU nations started IUU fishing in the UK's waters. There is some pressure there. But the real answer to your question is that there is some expansion required there for absolutely sure.



Barrie Deas: I think it is important to recognise that member states already have responsibility for enforcement in their waters, so we are not starting from scratch although, as Bertie says, there might be some need for an upgrade. We are not starting with a blank piece of paper.

- Q31 **David Duguid:** We touched earlier on the subject of the potential or the fear, and some people would report that it has already happened. As you said, Mr Armstrong, no red lines have been crossed in the withdrawal agreement. We are here talking specifically about the Fisheries Bill but, of course, we can't really talk about fishing without talking about the future arrangements. Given that the Fisheries Bill explicitly seeks to end automatic access for EU vessels, is the text on fisheries in the political declaration on the future relationship with the EU compatible with the Bill or vice versa? Is it compatible with the UK Government's continued stated position that trade and access will not be conflated and is it also compatible with your vision for the future of the fishing sector?

Bertie Armstrong: The words in the withdrawal agreement are constructively ambiguous to the extent that that was part of a negotiation and we walked away. You can interpret it that there is or is not a trade link. We have received personal assurances that there will be no trade link. It is sensible to look at other places or other areas. For example, the linking of trade to access to your own natural capital is absurd. We do not say to the French, the Portuguese and the Italian wine industries, "You want to sell it in Sainsbury's? Okay, you are going to let me have some of your grapes for nothing. I want access to your natural capital". That is absurd and, as we pointed out in the discussion with Ryan, at the other end of our exports is an EU business waiting for that raw material, so it cuts both ways.

I am a little more relaxed, having seen the words in the withdrawal agreement and the Fisheries Bill, that trade and access will not be mixed. There is no mechanism for doing it and no other area does it because there is all that Danish bacon, German cars, French agricultural products, Spanish agricultural products coming into the UK. As soon as you start engaging in a trade war for one specific purpose—there is a live example running on the world stage right now about that but there is more to that than meets the eye. I am reasonably relaxed.

- Q32 **David Duguid:** We talked earlier about promises being broken. A lot of language has been used, it is quite vague and something may have been read as a promise that was not really a promise. But is it not the case that at the start of negotiations on the EU side, EU fishing nations were told that there would not be a withdrawal agreement without that guaranteed access? With our position now, or potentially our position now, we could have a withdrawal agreement that does not guarantee EU continued automatic access. What would you say about how those EU nations, fishing nations in particular, have responded to the withdrawal agreement and the political declaration? What should that tell us about the political declaration?



Bertie Armstrong: We have watched with some care what our colleagues in the European fishing industries have been doing over this and they have always approached this right from the start. They formed a well-financed coalition of the European fishing nations that have relevance to this matter. Their starting position was, "We aim to achieve the status quo, to continue fishing in UK waters with that much opportunity". That is what you will hear from their output, what you will hear supported. If anybody is in a bit of a political corner, like Mr Macron perhaps could be just at the minute and was more severely a few weeks ago, you would expect him to make statements that are political in nature rather than realistic of an outcome. We will move to a place where the law is different. Under UNCLOS we have sovereignty over our own natural resource. To trade it away now, I repeat, would be an act of folly. Mr Sheppard mentioned it, and the benefits are obvious. Why would you do that?

Q33 **Ged Killen:** Is there a tension between the Government's commitment that UK fisheries get a greater share of fishing opportunities than inside the common fisheries policy and the Bill's objective to base fisheries management policy on the best scientific advice available, given the reports from the Pew Trusts in 2018 that under the CFP 44% of quotas were set higher than published at base?

Bertie Armstrong: That is a common cry and you can look at tonnages and say, "You haven't stuck to the advice". In fact, there is more to that than meets the eye and Alex and I continually have this conversation. The scientific advice is followed. It is given in ranges rather than specific tonnages and you exceed it by—

Chair: We will turn to Mr Kinninmonth particularly on that one.

Alex Kinninmonth: On that and the question that Ged has asked, there might be unintended consequences with that provision of new clause in the Bill. My simple reading of that particular clause is that it is very loose in its language and quite open to a good deal of discretion. Most importantly, something that could be enshrined in the Bill is some obligation that during those negotiations the importance of setting clear sustainability criteria with those other countries is one of the principal considerations. Going back to that issue of independent scientific advice and adhering to that must be the core that runs through those negotiations. I don't see any great tension between that clause and scientific advice, as long as the scientific advice is followed by all. It is as simple as that.

Ryan Scatterty: I talk from my side on a global scale; pretty much every other fishing nation in the world takes it as part of a recommendation when they set the quota for how much they are going to catch. Quite simply, the scientific evidence that makes up the advice is limited. It is based on samples. My recommendation in going forward with the Fisheries Bill is that we need far better data capture. By that I mean that all the boats that will be catching in our waters should be fully



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monitored, how long they are trawling for, how much they are catching, the zones that they are catching in. We should have cameras on every boat to stop the bad old habits of slipping nets and so on, and everything to be landed. From that we get far better data.

The scientific boats purely just take samples from different spots of where they go round and that builds up a picture of where they are looking at. It has been proven in numerous fishing areas throughout the world that they regularly get it wrong. I think it would be wrong to set it purely on what the recommendation from the scientists is. We are leaving ourselves very open there because scientists do get it wrong.

Chair: We have a couple of questions and we have only five minutes because we have to get set up for the Cabinet Secretary coming in.

Q34 Deidre Brock: It is the Government's intention to maintain the fixed quota allocation units to distribute allocating quota in the Bill. Mr Kinninmonth, would you describe this as a missed opportunity for the under-10 metre fleet and for new entrants because of the insistence on maintaining that allocation method?

Alex Kinninmonth: There certainly could be. What is interesting, going back to an earlier question, is that the Bill fixes Article 17, which deals with allocation in the common fisheries policy. It fixes it to a working UK law and it is my understanding that the devolved Administrations have chosen not to be part of that clause. The intentions of the devolved Administrations on future allocations is one of those things that is unclear. There is an opportunity here to fix Article 17 a bit further to make it do what it was intended to do in the first place. Right across Europe and the UK, and Scotland is no different, it is setting allocations primarily on track record and historic record and has not really facilitated that shift towards environmental or socially responsible fishing. There is an opportunity there and it could be a fix to the Bill as it stands as it applies to England to redress that and force that issue along because it has really not been applied properly under the CFP. But again the Scottish Government's intentions on that are currently unclear to me.

Q35 Deidre Brock: I think there is going to be consultation with stakeholders, quite properly.

Ryan Scatterty: Quite simply, I do think it is wrong on what is being proposed at the moment. It is a useful first step on everything and we can't just flip automatically overnight. There has been a shift from a number of the fleet to get ever bigger boats, which means ever bigger landings. From the processing side, what we would like to see is more regular landings spread throughout the year. It is far easier to run a factory for 52 weeks of the year than it would be to run it for 16 weeks of the year, for example, on some of the more migratory species. I do think there is an opportunity there that we could—

Q36 Kirstene Hair: At the moment about 25,000 people are employed in the industry UK-wide, and Bertie Armstrong at the beginning said how much



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that will hopefully increase as the landings increase. There is support from the UK Government in the most recent Budget for infrastructure in order to help coastal communities rebuild. What further support do you feel is required to ensure that we can fully capitalise upon the additional landings when that time comes?

Ryan Scatterty: Quite simply at the moment, from what I have read, the Scottish Government have not looked to put anything forward for grant aid. The European model of funding for grants is going to be removed when we leave the European Union. At the moment there is nothing being proposed on what grants we are going to get to be able to invest in premises and machinery, the automation that is going to be required for our industry and everything else. I would urge both the Westminster and Holyrood Governments to step up to the plate and to offer some grant funding to help the expansion of the industry. Our European neighbours are getting grants of anything from 50% to 100% to build new facilities, so we are going to have a very unfair playing field if we do not have a similar commitment from our own Governments.

Q37 **Kirstene Hair:** In what timescale do you require that commitment? Obviously time is running on.

Ryan Scatterty: I think we need a commitment as soon as possible. I am not talking about numbers but we need a commitment as soon as possible.

Q38 **Hugh Gaffney:** How important has the European Maritime and Fisheries Fund been in supporting coastal communities in Scotland? Are you concerned that the Bill extends new grant-making powers to the Welsh Government and Northern Ireland Executive but not to the Scottish Government?

Bertie Armstrong: It was a matter of applying and inputting into the Bill and it is a mystery to me as to why the Scottish Government's capacity to do so is not in the Bill. Presumably you will ask the Cabinet Secretary that in a few minutes' time. I don't know why. It is necessary. Government support to embrace the whole thing is required and that very much depends on grant funding but is not welfare grant funding. This is grant funding to seed a big industry.

Q39 **Hugh Gaffney:** If a new funding scheme was agreed with by Scotland what should its priorities be?

Bertie Armstrong: By necessity, processing and infrastructure.

Ryan Scatterty: I am sure Bertie and Barrie have a bit more detail, but the catching sector is investing heavily already in new boats and everything else and we are going to have a truly world-class fleet. The processing sector at the moment is lagging behind. A large chunk is that the European funding mechanism we had stopped a number of companies such as ourselves from even being able to access the grants because it was extremely restrictive. A huge amount of the money that



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was available for the grant to be spent in Scotland has remained unspent because there is not the size of companies to be able to take it up. We need to have a sensible framework so that companies such as my own and a number of my competitors can get access to the grant funding. The opportunity is going to be presented to us and we need to have full access to it.

Alex Kinninmonth: We must not forget that the scheme as it stands is the European Maritime and Fisheries Fund. It was expanded to not just deliver CFP objectives but wider maritime policy as well, so that is where marine data, knowledge, implementing marine spatial planning is really important. It is not just a replacement for the fisheries aspects. It is the wider maritime policy that we need to look at as well. That is a real risk if we don't replicate that.

Chair: Excellent. We have wrapped up right on time, so we are grateful to you all for being very concise and helping us out this morning. We will probably produce a record of this as a note that will be made available to you, but if there is anything else that you feel you could usefully help us with please give us any further submissions. We look forward in great detail to the progress of the Fisheries Bill through the House of Commons. I think the next appearance will be at Report stage, which is not yet scheduled. I am sure you will be very interested in that. If we do revisit this, we will make sure we get back in touch with you but thank you ever so much for your attendance this morning.



Examination of witnesses

Witnesses: Fergus Ewing MSP, Allan Gibb, and Richard McLeod.

[This evidence was taken by video conference]

Q40 **Chair:** Hello, Cabinet Secretary. You are there. Can you hear me?

Fergus Ewing: I am here.

Chair: Good, and you can hear me okay?

Fergus Ewing: I can hear you. Can you hear me?

Chair: We can indeed and we can see you too, which is even more exciting for us.

Fergus Ewing: Bad luck.

Q41 **Chair:** If we are in a position where we can both see and hear each other, there is no reason why we can't get started. We welcome you once again, Cabinet Secretary. I think you are our most regular appearer in front of the Scottish Affairs Committee from our friends in the Scottish Government, so thank you very much for helping us once again on this Fisheries Bill. For the record, please say who are you—we know who you represent—and anything by way of a short introductory statement, Cabinet Secretary.

Fergus Ewing: Thank you very much, Convener. I am joined this morning by Richard McLeod and Allan Gibb. I am delighted to have the opportunity to discuss with you and your colleagues the UK Fisheries Bill.

The starting point, of course, is that I think we should remember that fisheries management is mainly devolved and it has been for 20 years and our view is that it must remain so. I think that is a view that is shared by Mr Gove and Mr Eustice too.

We were shown the Bill very late in the day. I think we saw the final Bill the day before it was laid. I want to say, first of all, that our officials in the UK and Scotland have worked well together and on my instruction have sought to do so in a constructive and workmanlike fashion. The good work done by Mr Gibb and his colleagues has led to some improvements in the Bill, a fact that I believe has been acknowledged by George Eustice, from whom I believe you will hear later.

There are, however, still significant concerns this morning about predation of devolved powers in relation to clauses 18 to 20, and that may be something that your members would wish to explore in detail. Some of these matters, as is always the way in legislation, are somewhat technical in nature and I will ask officials to contribute, if that is in order, where appropriate to provide the technical detail in respect of some of these important matters, as is always the case when drafting legislation.



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For example, the Secretary of State under these sections may set quotas and effort limits for Scottish stocks with only a consultation requirement. We have asked does the UK Secretary of State really intend to start setting quotas for all craft. I imagine that if asked he would say, "Well, of course not" and if that is the answer I would ask, "Why are you taking the powers in this Bill to do so?"

But in conclusion, I hope that we can use the further stages of this Bill to find a way to resolve these issues and I am very happy, with my colleagues, to seek to answer your questions at this morning.

- Q42 **Chair:** Thank you very much for that. We will indeed get to questions on clauses 18 to 20, but I will start with clauses 28 and 29 of the Bill, the powers and provisions that extend to Wales and Northern Ireland but not to the Scottish Government. Can you explain why this is the case and perhaps help us out if this is something to do with a disagreement over providing the legislative consent motions to the UK Government on Brexit Bills?

Fergus Ewing: I will bring in officials to answer the technical aspects of that in a moment, but the high level matter I want to stress is that fisheries is devolved and our fundamental approach, as we indicated in writing to Michael Gove on 4 December, is that our concerns relate to the legislative consent of the Scottish Parliament being required. There is a genuine difference of view. We respect the view of the UK Government but we respectfully disagree with it. The principle of the matter being pursued by Michael Russell in the JMC is in respect of the Sewel convention and the unresolved nature of that dispute. It is not for me to go into today. You will be well aware of that. But the fundamental issue is one of consent, that we do not believe that fisheries, which is a devolved matter, should be an area where the UK Government take powers over devolved matters and that should not be the case.

I don't know if my officials want to seek to respond to the direct issue about the separate treatment for Wales and Northern Ireland.

Richard McLeod: We have been in regular discussion with UK Government officials on various possible amendments to the Bill where appropriate and we have agreement in principle that these powers can be extended to Scotland if there is agreement between the Administrations and reassurances to address the Scottish Government's particular concerns with the Sewel convention can be reached. We see the ball as being in the UK Government's court in that respect. If these further reassurances that we are seeking on the Sewel convention are provided, we would be perfectly happy to work with our UK Government counterparts to discuss extending existing powers in the Bill to Scotland or amending aspects of the Bill. As I say, the onus is really on the UK Government to respond to the Scottish Government's very clearly stated concerns about the Sewel convention.

- Q43 **Chair:** The Minister said that these powers were offered to the Scottish



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Government in the drafting of this Bill but were refused. What is your view on that and could you tell us the sequence of events that led to this being turned down?

Richard McLeod: In some cases, particularly relating to grant-making powers and funding powers, the Scottish Government already have existing powers through other pieces of primary legislation. Some of the powers that the UK Government or the Secretary of State are taking through the Bill are powers that the Scottish Government already have separately. I suppose it is a case of the rest of the UK catching up with existing powers that the Scottish Government have. Of course there are certainly benefits in ensuring a consistent approach across the UK wherever possible, so if there are particular aspects where this Bill would put different Administrations out of kilter with each other, it would be beneficial to ensure a consistency if possible.

As I say, the overarching issue or the overriding issue here is the Sewel convention. We can only take forward some of these further amendments and alterations to the Bill if that very significant issue is addressed.

Q44 **Chair:** I am sure we are going to get into some of the issues about legislative consent and the Sewel convention in the course of this exchange. Cabinet Secretary, when you look at this Bill what do you see as the opportunities that present themselves to the Scottish fishing industry and what are the challenges? What do you say to the many charges that the Scottish Government just wants to take Scotland back into the common fisheries policy as part of its general view about the European Union? How do you respond to these types of claims?

Fergus Ewing: We already, as Richard has said, have clear legislative power in respect of fisheries. If it would help, we can communicate formally about the various international treaties and Acts under which we have these powers. I do not think you would want to me to go through a litany of them here today. We already have the powers.

We have experience of exercising devolved powers over fisheries for 20 years, and very well. We have consistently, as a Government, opposed the common fisheries policy, which we believe is inflexible and does not recognise the need for proper fisheries management at a local level. To be fair to us, about 18 months ago Michael Russell put forward Scotland's Place in Europe, which allowed an alternative compromise Brexit option, although that is not our preferred option. We did put forward very clear proposals that would have allowed us to exit the common fisheries policy, a point I made from time to time.

I do not want to go into the politics of Brexit, but what I would say in conclusion is that I seek to have a working-life relationship with my counterparts in the UK Government, particularly Mr Eustice with whom I have worked in two Councils, although he was not able to attend the last Council in December. I also am determined to continue to champion the interests of Scotland's fishing. That is all around our coast, the north-east



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predominantly, and pelagic and whitefish but also our shellfish sector, our inshore sector, the west coast. We need to remember that fishing is a range of diverse types of fishing around our coasts, with different interests and concerns about how Brexit may impact on them.

At the end of the day, the Fisheries Bill is just a framework and therefore it is a framework that enables powers to be exercised. We are confident that we already have the powers or that we can take action, if required, to obtain the powers through legislation in due course.

Chair: Thank you. I think we will come back to some back to some of the common framework-related issues that are central to this Bill. Can I bring in Mr Ross Thomson?

Q45 **Ross Thomson:** Good morning, Cabinet Secretary. In December, as you mentioned earlier, you wrote to the Secretary of State, saying officials from both Governments were working together on amendments to provide Scottish Ministers with equitable powers. Could you update the Committee on what progress has been made since then?

Fergus Ewing: As I say, some progress has been made, Mr Thomson. We were able to persuade the UK Government that the draftsmanship of clauses in relation to powers in respect of international quotas were a requirement and needed to be approved. That was agreed and I think George Eustice has acknowledged that. There has been good interchange between officials but it remains the case that my letter of 4 December to Mr Gove, which I have in front of me and that sets out our position on the Bill—as far as I am aware we have not had a formal response, if that is your question, to the letter—and sets out the various amendments that we seek. No doubt we will come on to discuss the substantive topics of some of these in due course, but at a high level we have not had a formal response to the letter of 4 December, but it is a work in progress.

Perhaps the Committee is able to play a role here, Mr Thomson, in encouraging appropriate, constructive co-operation. I am hoping that there can be further dialogue in relation to the important matters that we set out in these amendments and believe should still be considered further with a view to improving the UK Bill.

Q46 **Ross Thomson:** Thank you very much, Cabinet Secretary. The Bill if left in its current form would see Scottish fishers at a disadvantage compared to fishers in the rest of the UK. How would you respond to evidence that we have heard this morning that there is a current policy vacuum in Scotland for this catching sector, with no direction from the Scottish Government? What would your response be to that?

Fergus Ewing: I would refute that. Quite the opposite is the case. We have very clear policies regarding sustainable fisheries. We champion the Scottish fishing sector and we always have. We have very clear policies about how these fisheries should be approached. Fundamentally, of course, we need to respect the science, we need to set TACs, we need to fish sustainably and we need to think about future generations. We need



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to work with the fisheries sector on technical measures; we need to work with communities. We need to ensure that there is proper funding, whether through EMFF or its replacement.

We have a whole host of policies, many of which I have had the privilege of pushing through the Scottish Parliament, for example in pilot schemes for trying out new methods of fisheries, on the use of science and research. I would with respect, Mr Thomson, entirely reject the proposition that you put earlier.

My job is to make sure that the Scottish interests are promoted at all times and I seek to do so, I hope, in a constructive way. The letter of 4 December sets out very clearly some substantive issues, I hope in a not political way at all but in a moderate, reasoned way. I hope in the course of the ongoing discussions that first of all we will get a response to the letter of 4 December and, secondly, we will make substantive progress in the matters that we raised therein.

Q47 Ross Thomson: You are absolutely right that the interests of Scotland must be put first. Do you agree that, through Brexit, the Scottish fishing industry is the biggest winner?

Fergus Ewing: No, I do not agree with that. With respect, I do not think we are here to shoot the breeze about Brexit.

Ross Thomson: I am sure you do not want to talk about it.

Fergus Ewing: I will leave that to others but I will just make one point—

Ross Thomson: If I ask a question it should be answered.

Fergus Ewing: In relation to the proposed deal that the Prime Minister is seeking to persuade you and colleagues to support—I am not sure whether you are supporting it or not, Mr Thomson. In relation to that proposed agreement, there is a clear linkage between access to Scottish fisheries and UK fisheries water, and trade and tariffs. This was a deal on which the Scottish Government was not consulted. Therefore, if there is no deal acceptable to EU members, they have now managed to secure from the UK Government the extraordinary proposition that there would then be the immediate imposition of tariffs and non-tariff barriers and the exclusion not only of the fisheries sector but also the agriculture sector from the benefit of the customs union and the backstop agreement.

We were not consulted about that. With respect, I think that makes the forthcoming negotiations—assuming they go ahead and assuming Brexit goes ahead, which it may not, of course—much more challenging. It is most unfortunate that the Scottish Government were not consulted about that. Had we been, we would of course have resisted the inclusion of that particular unfortunate provision in the agreement.

Q48 Ross Thomson: With all due respect, Cabinet Secretary, I understand that you would not want to talk about the politics of Brexit, given the



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position of the Scottish Government and the party you represent are at odds with the interests of the fishermen in Scotland.

Fergus Ewing: That is not true.

- Q49 **Ross Thomson:** The politics of Brexit is important because it is quite clear that the position of the Government round about Brexit has led to this intransience, which means that we cannot get the agreements that are needed to pursue this Fisheries Bill and, to quote the Chief Executive of the Scottish Fishermen's Federation, Bertie Armstrong, "Take this opportunity of Brexit by the throat." If the Scottish Government were to get behind the opportunities, the sea of opportunities that are presented to the Scottish fishermen through Brexit, we would be seeing ourselves in a much better position. I would put it to you that it is the political intransience of the Scottish Government, rather than showing goodwill, which is why we are where we are.

Fergus Ewing: I am quite happy to talk about Brexit, but, with respect, Convener, I thought the purpose of today's meeting was to discuss the Fisheries Bill and I am here to do so.

Can I just say, in response to Mr Thomson's extraordinary propositions, that sadly what has happened was that before the referendum the Brexiteers, including Mr Thomson, overpromised and now they appear to be under-delivering or not delivering at all? If anyone thinks that the forthcoming negotiations with the EU are going to be made easier by the agreement that Mrs May proposes—which Mr Thomson may or may not support, perhaps he could let us know—they are being very naive, because the EU fisheries countries will fight tooth and nail to get the best possible deal. Now that objective has been made much easier by the linkage of access to UK fishery waters and trade and the threat of the imposition of tariffs not only on fisheries but on agriculture, which was specifically agreed by the UK Government with the EU, without the Scottish Government's consent.

- Q50 **Ross Thomson:** Sorry, Convener, just to correct that last unadulterated nonsense, which is that Brexit is not delivering for the fishery industry. I think it has been quite clear from anyone who is involved in the catching sector, in the processing sector, that Brexit does deliver for our fishermen, whether that is new global markets to sell their product, whether that is being able to have control over our own waters and fair access for our own indigenous fleet. I therefore put it to you that it is not Brexit and Brexiteers who are not delivering, Cabinet Secretary, it is the Scottish Government who are not delivering for our fishermen, through their own political intransience, inability to work with the UK Government on this particular issue and therefore, at this point of time, not putting in place the framework that enables us to have a fishing policy post-Brexit, post-CFP, which has currently led to a policy vacuum in Scotland, which is something that you are 100% responsible for.



Fergus Ewing: I entirely disagree with the series of propositions, which are entirely wrong. We have been managing fisheries for 20 years. We have very clear policies and they are debated regularly in Scotland. We meet stakeholders more regularly than anyone else, rightly so, and I entirely disagree with the set of propositions that Mr Thomson has put forward, although I am not sure whether they are shared by all Conservative MPs, because I believe there are many different views among the Scottish Conservative MPs about these matters.

Chair: Thank you, Cabinet Secretary, we will maybe get back to the Fisheries Bill with Mr Duguid.

Q51 **David Duguid:** I am not going to speak for all MPs on the panel but I am pretty sure we all agree we are all interested in the best interests of Scottish fishermen. I think we would probably all agree on that, Cabinet Secretary. However, you said a moment ago that in the withdrawal agreement there is a clear link between trade and access. You said there is a categorical, absolute clear link between trade and access.

However, in the session before this, which you probably did not hear, Bertie Armstrong, Chief Executive of the Scottish Fishermen's Federation, has previously gone on record as saying that the withdrawal agreement does not cross any red lines. One of those red lines for the SFF is there must not be a link between trade and access. Do you agree with Bertie Armstrong that the withdrawal agreement does not cross that red line?

Fergus Ewing: I take the view in relation to the context of the agreement that it is a matter of incontrovertible fact that the agreement that the Prime Minister entered into with the EU links access to the UK's borders with trade.

Q52 **David Duguid:** An incontrovertible fact?

Fergus Ewing: I will bring Richard in in a moment to read from the text. First of all, I am grateful for Mr Duguid saying that we all want to work on the best interests for fishing and move away from the pure politics of it, because that is not what today is about. I do, with respect, think that at best it is extremely unfortunate and at worst it makes it extremely difficult, much more difficult, the forthcoming negotiations, should they take place, about securing the best deal for Scottish fishermen, because the deal that the Prime Minister has entered into specifically says that if there is not an acceptable deal by 2020, acceptable to the other EU members—the EU fisheries members obviously are those who have an interest here—then, and in those circumstances, the benefits of the customs union of having no tariffs will be eliminated, eliminated only for the fisheries sector and the agricultural sector, which, I think we all accept, has nothing to do with the CFP whatsoever. For the sake of the record, could I bring in Mr McLeod?

David Duguid: I will give Mr McLeod the opportunity to respond in a second. I think you are absolutely correct the EU have stated—in response to our red line of not allowing the EU continued and guaranteed



access to our waters for fishing in the event of a non-agreement or any kind of fisheries agreement—that, “We could not accept that without applying tariffs to certain seafood product exports.” However, that is not the same as saying that we will allow them continued access in favour of a favourable trade deal. I do not want to speak for the fishing—

Q53 Chair: Before we do this, to clarify this once and for all, can I read what is in the political declaration and then get a response to that? I think everybody’s interpretation is being applied here and everybody is coming to their own conclusion. What the political declaration says is, “Within the context of the overall economic partnership, establishment of a new fisheries agreement on, inter alia, access to waters and quota shares, to be in place in time to be used for determining fishing opportunities for the first year after the transition period.”

I do not know about you, Cabinet Secretary, but that seems pretty clear to me that there looks like there is going to be some sort of trade-off for access to fishing waters with the trade arrangement and agreement. I do not know what your view on that is.

Fergus Ewing: I agree with that. It is a matter of fact, it is not really a matter for debate. Maybe I could bring in Mr Gibb to add his comments.

Allan Gibb: Thank you, Cabinet Secretary. Likewise, Convener, the reading of that text is very clear in terms of interpretation. The agreement says that the discussions around access will also include discussions around trade in that point. Of course, if those discussions fail, then trade will be linked and will be subject to tariffs and access to markets and also, unfortunately, the agricultural sector, which is the largest food sector, together.

People may say, “I know it says that but we will say no.” If they are going to say no, they are putting at odds the agricultural sector and the catching sector. It is very clear that the discussions will include access to waters in return for trade. How those discussions will conclude is not clear but it is very clear that the discussions will have that. I have been personally involved in negotiations on behalf of the Scottish Government at a high level in the EU. The colleagues that I operate with in the Commission and other member states—their expectation is unbounded that trade will form a link to ensure they get access, and access at historic and significant levels.

Richard McLeod: If I might just add to that as well, Convener, to build on the point that Allan has just made. Following the EU summit on 25 November, the European Council, which of course represents individual member states in the EU, released a statement in which it said they would, “Demonstrate particular vigilance ... to protect fishing enterprises” and to, “Build on, inter alia, existing reciprocal access and quota shares.” Therefore, not just maintain existing access and quota shares, but “build on”, which I think signals a very clear statement of intent on the part of the EU member states and, I think it is possibly safe to assume,



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individual EU member states with a particularly significant fishing interest to not just seek to maintain access and quotas but to possibly expand existing arrangements.

David Duguid: I want to close this out by saying, Cabinet Secretary, I think you used the words “incontrovertible fact”, when in fact we have received evidence from other witnesses who state that the terminology is vague, overly vague, and open to interpretation. I propose we do not continue with arguing what the text actually means, but we may want to seek industry representatives’ views—I know we are no longer in a position to seek evidence from them directly—on what they believe the text to mean.

Chair: Everybody has an interpretation of the text, but the text is what the text is and I do not think we can get away from that. John Lamont.

Q54 **John Lamont:** Good morning, Cabinet Secretary. Did you watch the last evidence session the Committee had this morning before you joined us?

Fergus Ewing: No, I was engaged in other work this morning.

Q55 **John Lamont:** We took evidence from the Scottish Fishermen’s Federation, Scottish Seafood Association, RSPB Scotland/Scottish Environment LINK and the National Federation of Fishermen’s Organisations. Among the evidence they said there is a policy vacuum from the Scottish Government. They said there is no real sense of direction from the Scottish Government in terms of fishing policies. Do you agree with them?

Fergus Ewing: No.

Q56 **John Lamont:** Can you explain why and perhaps in the context of when you intend to publish your own Fisheries Bill?

Fergus Ewing: We already have the powers that we require for most matters. That should not be a surprise to anyone, because we have devolved responsibility for fisheries and we are coming to our 20th anniversary of exercising these powers. We do not require to take on legislation in order to carry on the successful administration of fisheries policy in Scotland.

I would point out that our efforts have led to considerable success in Scotland in relation to the common fisheries policy. I myself have played a part in the negotiations for the past three years in attending the December council in Brussels and other matters, so I entirely refute that suggestion. I have not had the benefit, I am afraid, because of being engaged in other ministerial responsibilities this morning, of listening to the previous evidence, so I am afraid I have to rely on Mr Lamont’s version of the evidence given, but we do enjoy very good relations with the stakeholders and we meet regularly with them.

I would also point out that there are very real concerns about Brexit at a high level about the loss of access to markets. That was evident when I



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visited Eyemouth in December and found out their concerns in relation to the export of shellfish and concerns about non-tariff barriers. Any delay to export of shellfish, which is time critical and perishable, would of course be critical. There are different views about these matters around the country but I entirely refute the assertions that Mr Lamont has made and I am not quite sure how they relate to the Fisheries Bill, Convener, which I thought I was here to discuss this morning, not trading political insults.

- Q57 **John Lamont:** I think you will find it quite helpful to read Hansard and the account that was given in the evidence session this morning, which I am sure you will confirm confirms the points that I have just made from the evidence session previously.

To confirm, the Scottish Government has no plans to bring forward their own Fisheries Bill? A yes or a no would suffice.

Fergus Ewing: We already have—

John Lamont: No.

Fergus Ewing: It is not a yes or no answer because what you are ignoring is the fact that we already have all of the powers we require to manage our fisheries.

In relation to the specific question about whether, in the event that Brexit goes ahead, we will require more powers, if it is the case that we require to legislate, then of course we will do so. Again, I have made that abundantly clear. I should also say that we are due to publish a national discussion paper on the future of fisheries management in Scotland shortly. That has followed a long period of negotiation and engagement with stakeholders, including me and my colleague Roseanna Cunningham.

- Q58 **John Lamont:** My interpretation of what you have said is there are no plans to bring forward a Fisheries Bill to the Scottish Parliament.

Fergus Ewing: No, that is not right.

- Q59 **John Lamont:** There are plans or there are no plans? You are issuing a consultation but there is no Bill.

Fergus Ewing: Convener, since Mr Lamont does not seem to be getting it—

Chair: Say it once more, then he will understand.

Fergus Ewing: We already have the powers that we require, but if we need, post-Brexit, to legislate, then of course we would do so if that proves to be necessary. I can also, if the Committee wishes, go into that in more technical detail with my officials should that be required.

- Q60 **John Lamont:** I do not think that is particularly clear at all. Is the Scottish Government's policy still to try to stop Brexit and retain



Scotland's membership with the EU on current terms?

Fergus Ewing: We believe that Brexit is the wrong choice for Scotland. Indeed, it is a choice that Scotland did not make. We voted against Brexit. If it does go ahead, we have made it absolutely clear that we believe access to the single market and continued membership of the customs union is essential.

One final point, Convener, is this: the fisheries sector, particularly the processing sector but also the catching sector, does receive the benefit of many people from the EU who choose to work in Scotland, who sustain our fisheries sector, whose input, whose work, whose commitment we appreciate. One of the adverse consequences of Brexit is the loss of free movement of people, the threat to migrant workers, the threat to EU workers and the threat to the continued availability of workers in processing. I believe in the north-east, for example, a very large number of people who work in processing plants are of non-UK EU extraction. We think they are welcome in Scotland but I am not quite sure what the UK Government's policy is on that. Post-Brexit, the loss of free movement of people would be a very serious threat to the fisheries sector, in our view.

Q61 **John Lamont:** You wish Scotland's fishing industry still to be subject to the same terms of the common fisheries policy that they are currently by retaining current membership of the EU?

Fergus Ewing: I am sorry Mr Lamont did not respond to the issue about people, which is extremely important. Turning to the common fisheries policy, I have already made clear that we have always opposed that. We have also put forward, over a year ago, a clear alternative, which at the time, as I recall, was not taken seriously but since seems to have come back on to the table, at least of some Conservative MPs, although I appreciate that there are many different versions of a proposed Brexit policy from various different Conservative MPs depending upon who you speak to.

Chair: We have less than half an hour left and we have the Cabinet Secretary with us to answer questions on the Fisheries Bill and how it applies to Scotland. I know these are all very, very important questions and they are very ideological questions about Brexit, which we are obviously very interested in and entertained with, but can we possibly stick to the Fisheries Bill?

Q62 **John Lamont:** Convener, just to pursue that point, we are trying to understand why the Scottish Government are not bringing forward their own Fisheries Bill. This point was explored in a previous evidence session. We need to understand what the Scottish Government's policy is around fishing, why they are not bringing forward their own Fisheries Bill and this is why these policies need to be bottomed out.

Chair: Yes, that is legitimate and we have heard the Cabinet Secretary already on that particular issue. Do you have anything further to add on that or shall we move on?



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Fergus Ewing: I think, with respect, I have answered that question. Of course, Convener, if there are any technical questions we are very happy to follow it up very quickly with written confirmation.

Chair: That would be very helpful. I know you have your two officials taking notes and making sure that that will be available to us. We are grateful to that so that we can better understand what your approach will be for the future. Kirstene Hair.

Q63 **Kirstene Hair:** Good morning, Cabinet Secretary. I agree with Ross Thomson when he said that the fishing industry is absolutely one of the winners of Brexit, but the expansion of that industry, as we heard this morning, will need support. There was support within the UK Government Budget recently. I wondered when there may be some detail of what support the Scottish Government will be able to provide the industry so that they can capitalise on the additional landings.

Fergus Ewing: If the member is referring to the funding from EMFF—the European Maritime Fisheries Fund—I agree that that has been funding that has been extremely useful to Scotland and the Scottish fisheries sector. Of course, it has been funding that we have come to expect from the EU as part of the EU overall funding package. We have benefited in respect of processing companies, of ports and harbours, of vessels, scientific research and improvement, technical facilities of monitoring and improving the surveillance and overall sustainability of fisheries. That funding, I agree with the member, has been absolutely essential.

I have met regularly with Mr Gove and Mr Eustice at the UK Government/devolved Administration meetings over the past two years—including Ms Leadsom before Michael Gove—and I have been pressing, over those two years, or since the Brexit referendum, for confirmation that post-Brexit there would be a replacement, a son of EMFF. It was a relief that eventually, just before Christmas, there was a recognition from Mr Gove that this must be the case.

I am pleased about that, but unfortunately the announcement that was made is defective in some of the technical detail and in relation to the availability of finance. Unfortunately, our officials were not sighted on the announcement by Mr Gove before he made it, otherwise we could have made sure that the technical deficiencies were corrected.

Either, Convener, I can go into these now with my officials, or I can write to you on this matter. We are agreed, I think, Ms Hair and myself, that funding is essential going forward. The Scottish Government have always played their part, but we have been reliant on EU funding, which has been guaranteed as part of the overall package of EU membership. The future, post-Brexit, post-2022, is far from clear.

Q64 **Kirstene Hair:** Thank you for that answer but, with respect, when you take back control of power around policy and around fisheries, which you are quite happy to do, you obviously have to take back financial



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responsibility as well. When we had the panel in front of us earlier, they used phrases like you needed to get your skates on and there needed to be detail as soon as possible as to what type of support you would be able to offer them and what that might look like. That has not been forthcoming yet. That is obviously again from our stakeholders. I would reiterate the point that John Lamont mentioned earlier, that perhaps reading the Hansard copy of that previous session would be incredibly helpful for you.

Fergus Ewing: I can say in response to that that I am acutely aware of the importance of the need for funding. The point is that the funding has been guaranteed from Europe but it has not been guaranteed by the UK Government. That is just a matter of fact. If we lose the EU funding from Brexit, and we will, that is money that the Scottish Government have not possessed. It has come from the EU and that needs to be replaced.

One of the amendments, Convener, going back to the Fisheries Bill and referring to my letter of 4 December, was that I proposed that the amendment insert a new clause after clause 30 to require the Secretary of State to make available to Scottish Ministers sums that are at least equivalent to the sums made available to the Scottish Ministers under the EMFF in the year prior to exit day. We have support and I have raised this point firmly, respectfully and clearly at every meeting that I have had with the UK Government, that the EU has provided funding for fisheries, for farming, for rural development, and it is up to the UK Government to replace that. After all, those were the promises that were made during the referendum, that there would be at least matched funding if not more. Mr Eustice himself made that promise. With respect, I do think it is for the UK Government to fulfil that promise, and they could do so by accepting the amendment. Maybe Ms Hair could say whether she approves of our amendment.

Chair: There may be an opportunity for that but we will move on now to Mr Duguid.

Q65 **David Duguid:** Before we go on to the question I was going to ask, just a little bit on the funding. You mentioned that the EMFF or the EU funding was guaranteed, but is it not the case that that is only guaranteed up until the end of the current EU budget cycle?

Fergus Ewing: Yes, but they are in the process of agreeing the funding for the next cycle. It is a seven-year cycle. Yes, you are absolutely right, but there is no doubt there will be a next funding cycle. I have attended the December council meeting and I can assure you that all the fisheries countries are absolutely vigilant in insisting that there is a continuance of this funding, and there will be. I do not think there is any question about that.

The scenario is that with continued EU membership we would have, or we may, depending upon what happens in Brexit, still enjoy the benefit of that very clearly defined set of policies that have operated well, that have



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served by and large the fishing sector well, with, frankly, a lack of clarity. The UK started off by talking about a UK Shared Prosperity Fund, and the only thing we knew about that was the words “UK Shared Prosperity Fund” did not say how much it was, what it would be for, when it will kick in and over what period.

The EU’s funding is over a seven-year period. It is being discussed at the moment. Having taken in part in some of those discussions, I can assure Mr Duguid—and I know he personally wishes to be co-operative and I appreciate that in his approach to things—that there will be similar funding available to EU countries under their policies. The question really is what the UK’s policy is, not just up to 2022 but post-Brexit if that goes ahead.

Q66 David Duguid: Thanks for that response. As the Cabinet Secretary is probably aware, I have been a strong advocate of making sure that a similar form of funding is replaced, not least for my own constituents in Banff and Buchan. We can agree on that.

Going back to the Fisheries Bill itself. The only copy I have is on my phone here so forgive me for referring to that. When I first viewed the Bill I was a little concerned that in clause 28 it starts talking about funding mechanisms for the Welsh Assembly and the Northern Ireland Assembly, were there to be one, or the Northern Ireland Department for the moment. I was a bit concerned that there was nothing in there specifically about Scottish funding, as you can imagine, as I am sure you were as well.

The response I received from the Minister was that input to the Bill was sought from the devolved Administrations of what they would want to see in it and there was no mechanism for funding. In slight shades of what we are hearing has happened with the Agricultural Bill, there was not a specific request from the Scottish Government to have a clause in there to have a mechanism for funding and that there would be a separate Scottish Fisheries Bill. At the risk of repeating Mr Lamont’s question, would such a Fisheries Bill from the Scottish Government apply that funding? If so, when are we going to see evidence of that?

Fergus Ewing: First of all I refer back to my letter of 4 December. I do not know whether the Member has seen it but I am very happy to share it if the Committee does not already have it. There is nothing secret about it. I have read from it that we have proposed, in this Bill, a specific amendment that specifically deals with an obligation on the UK Government, post-Brexit, to provide funding at least equivalent to the sums made available under the EMFF. The point really is that this is money that the Scottish Government budget does not have unless it gets it from a third party. That third party up until now has been the EU in terms of funding. We are not happy with the CFP. We have discussed that. With funding, I think it has been a fair friend to the rural economy and fishing industry. Therefore, we have had that funding from a third party.



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Ms Hair says that somehow we have to replace that funding from the rest of our core funding, which is intended entirely for different purposes, what then is being suggested is cuts to public services in Scotland. Plainly that third-party funding needs to be replaced by the UK Government, some of whom advocated for Brexit. We in this Bill asked for a specific legal obligation on the UK Government to do what the EU formerly did. I think that is absolutely clear and absolutely the correct approach.

Q67 David Duguid: If you wanted, as I would suspect the industry would want, for that funding to be made available from the UK Government, as you describe as a third party, why did you not request that to be on the face of the Bill in the beginning rather than bringing it in as an amendment later?

Fergus Ewing: I have always made it absolutely clear, time and time again, at the numerous meetings that we have had, every two or three months with Mr Gove and Mr Eustice, that it is up to the UK Government to replace the EU funding in principle for the rural economy, and specifically for fisheries. I have argued that time and time again, face to face, eyeball to eyeball with Mr Gove and Mr Eustice. They are well aware of that. I could not have put it more clearly, politely and firmly but clearly, at numerous meetings and we have asked for it to be included in the Bill. So far, as I say, Mr Duguid, we have not had a formal response to our letter of 4 December, which is a non-political, closely argued, detailed, comprehensive letter setting out the specific amendments that we would like to see in the Fisheries Bill.

With respect, Convener, the purpose of this meeting and discussion, I had hoped, was to try to make progress, to see what progress we could make. The inclusion of our amendment in this Bill would, I think, amount to progress. Lastly, and contrary to what the DEFRA Minister of State says, we do in Scotland have powers to make grants and set charges, through previous legislation, which was not replicated in England. Again, Convener, I will ask my officials after this meeting to write to you to give you chapter and verse of the legislative provisions under which we have those precise powers.

Q68 David Duguid: Thank you for that and we will be talking to the Minister, George Eustice, later today as well, so we will no doubt ask him the same question. Going on, as you say, to making progress, the next question I would like to ask is will the requirements to produce a Joint Fisheries Statement provide enough flexibility, in your opinion, for the Scottish Government to pursue its own fishery policies post-Brexit?

Fergus Ewing: What we are concerned about is the overall impact of the Fisheries Bill. At present we are able to manage our fisheries, and our concerns relate specifically to the powers that would be taken in terms of sections 18 to 20. There are other concerns and they are set out in my letter. The specific concerns about quota setting are ones that we put very clearly. We have not yet resolved that. I do hope quite sincerely, Convener, we can resolve these, because we have made progress in



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other respects in the Bill. I want to emphasise that. The importance of these meetings is to try to use them to make progress, not to trade points or insults or anything like that. I have a good working relationship with Mr Eustice in particular, who I have dealt with for quite a long time. I am hoping we can make progress, but we do believe we have the powers that we need.

To repeat, post-Brexit, if it ever becomes clear what is happening in Brexit, then if we need legislation of course we will also legislate. Again, Convener, we will write to you and set out the technical detail of that so that there is no dubiety whatsoever about the Scottish Government's position.

Q69 David Duguid: Thank you. Again, you did not really answer the question but you did refer to clause 18 and the Secretary of State's power to determine fishing opportunities. To repeat my question again, does the requirement to produce a Joint Fisheries Statement provide enough flexibility for the Scottish Government and you as the Cabinet Secretary, and are you also satisfied with clause 19, which states that, "Before making or withdrawing a determination under section 18, the Secretary of State must consult—(a) the Scottish Ministers"? Are you satisfied with that clause?

Fergus Ewing: We recognise that we have made some progress in the Bill, but the powers that are set out in the Bill would allow the Secretary of State, for example, to set quotas for, say, Orkney crab, or de facto limits of the Shetland lobster fishery. This in my view would impact on devolved interests. Mr Eustice may well say this, if you ask him, Mr Duguid, and I am sure you will. If he says, "I have no intention of doing that", that is fine. But, you see, this is legislation. Verbal assurances are not really enough. If the UK Minister has no plans to use these powers—and I suspect he has not—why is he taking the powers in the first place?

Under the 1967 Sea Fisheries (Conservation) Act, I can already set de facto limits on effort quota under section 5. We do disagree, with respect to the technicalities, with the UK Government that the relevant clauses in the Bill relate to reserved matter. Their argument essentially is that the conduct of international relations is reserved, and that is true, but our response—and we have not had an answer to this, incidentally—is that the implementation of international obligations is something that is devolved. The reason for that is the wording in the Scotland Act 1998 explicitly excludes the implementation and observation of international agreements from that reservation. It specifically excludes it. That means that it is excluded from the reservation, so de facto it is devolved.

Why the UK Government do not recognise that—and we will provide all the detail. You probably know I am a lawyer so I am perhaps starting to speak like a lawyer and less a politician, which is probably a welcome change for many. It is absolutely crystal clear that our interpretation accords with the only correct interpretation of the law. That is where we



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stand. If we can resolve that issue, Mr Duguid, and I hope we can, then I think we can make further progress.

Chair: Thank you.

David Duguid: It is very important to clarify this.

Chair: Very quickly, because there are other people who want to come in.

Q70 **David Duguid:** That is helpful. You mentioned the verbal assurances. I have received lots of verbal assurances. I receive verbal assurances on a daily basis and they are very reassuring, which is their purpose, but you are right if it is not on the face of the Bill it is not binding. I bring you back to clause 19 where it says, "Before making or withdrawing a determination under section 18, the Secretary of State must consult—(a) the Scottish Ministers."

On the subject of Orkney crab, I specifically asked Mr Eustice about that. His words—again verbal reassurance—were of course that would come right down to the Cabinet Secretary in Scotland to decide. My question is—this might be something you want to consider with your officials and submit in writing, and it may already be in the 4 December letter—could you just confirm whether or not clause 19 is satisfactory, in your opinion?

Fergus Ewing: To answer shortly, the problem is that a legal obligation on a Minister to consult means that all the Minister has to do is send us a letter. Then he has discharged that obligation of consultation. What we require is consent. With respect, Mr Duguid, that is the nub of the disagreement. We have, in fairness to ourselves, set this out in detail in our letter of 4 December. I hope that the difference between consult and the obligation to obtain consent is a simple one and it is clearly understood.

Chair: Thank you for that. Hugh Gaffney.

Q71 **Hugh Gaffney:** Cabinet Secretary, good morning. This is may be an interesting one. How do you envisage any disagreements between Governments when preparing the Joint Fisheries Statement being managed?

Fergus Ewing: We do, as I have said, Mr Gaffney, work closely together. We try to resolve disagreements first through discussion. To be fair, I want to emphasise this. I work reasonably well with Mr Eustice in the December Council, certainly in 2016 and 2017. He was not at the last December Council. I think he was tied up in your Fisheries Bill, but we work well together. Our officials probably work more with their counterparts in the UK with any other officials because of the need to attend meetings in Norway, in the Faroes, in Brussels, so they have more interchange. It is human nature, is it not? When you spend more time with people you tend to try to build up a relationship. I think that is a good thing.



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However, it is not a glee club here and I want to make several points. Despite that cordial working relationship, it has been difficult for us to secure the outcomes that I believe were fair for Scotland. For example, we should have that effort quota set in place. For example, the UK did not pursue our interests in the Norway negotiations in respect of certain species, including blue whiting. For example, we have lost out quite substantially in respect of a species called Arctic cod.

I could mention this in more detail and I appreciate, Mr Gaffney, it is not your particular question. What I am saying is it not easy to get the UK Government to listen to the Scottish case and it is certainly very difficult to get them to deliver what we in some cases believe is the fair and the right outcome. Therefore, I am grateful to have the opportunity to put that point on the record.

Q72 Hugh Gaffney: On that basis, if you feel that that is the way it has gone, would you support calls from the National Federation of Fishermen's Organisations for there to be a dispute resolution mechanism set out in the Bill? Would this be helpful?

Fergus Ewing: I think there are various mechanisms to sort out disputes between the Scottish and the UK Governments. I have to say I am not sure that we have ever found that they work very well.

Q73 Hugh Gaffney: Therefore, if we added that into the Bill, would it help? If the mechanism was there to help, would—

Fergus Ewing: Our experience in resolving disputes with the UK Government, I would not say it has been a consistent tale of woe, but not far short.

Q74 Deidre Brock: Mr Duguid has already asked a question I was going to ask around quotas. I suppose all of this comes down to in the end, Cabinet Secretary, whether or not the UK Government can be trusted to deliver on behalf of Scottish fishers' interests and indeed to look after those interests. You started mentioning some of the historical examples where the UK Government has been found wanting in that regard, which might have given rise to those misgivings. Could you perhaps share some further details with us on that?

Fergus Ewing: Yes. I want to emphasise to Deirdre Brock and to other members that we do try to be co-operative at all times but there have been ways in which we believe that they have failed to protect Scotland's fishing interests. For example, despite a revised fisheries concord having been agreed between the four Ministers in August 2016, more than two years ago, the UK has delayed publication of the concord, to the detriment of Scotland.

For example, because of the way the UK Government distribute a preference quota, mainly benefiting fishermen in the north-east of England, Scotland lost out on a total of 1,129 tonnes of whiting quota, with a value of £1.2 million, over the last five years. For example, in the



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EU Norway negotiations the UK have regularly voted for a swap package, disadvantaging Scotland quite considerably. For example, in 2017 Scotland forfeited over 20,000 tonnes of blue whiting in relation to Arctic cod swaps worth around £4 million but gained no benefit. Not even a single kilogram of Arctic cod came back.

These were just examples, I think, of difficulties that we have had, but they do not detract from the fact that we do approach our relations with a workmanlike desire to try to co-operate and get the best results. My personal view is that the decisions are very often made by the UK Treasury or by No. 10 Downing Street and to some extent perhaps individual fisheries Ministers—I do not want to damn Mr Eustice's reputation by praising him. He may want to do something but perhaps his hands may be tied by higher powers.

Deidre Brock: Thank you.

Q75 Ged Killen: Good morning, Cabinet Secretary. My question on the Secretary of State's powers to set catch and effort quota has been covered but I want to follow up with some evidence that we had in the previous session from the Chief Executive of the Scottish Fishermen's Federation. He spoke about the risk of re-creating elements of the common fisheries policy in terms of the difficulty of having people in different places trying to agree to the same thing. Do you think there is a danger of that being replicated in terms of the consultation and consent that you are talking about when it comes to catch and effort quotas?

Fergus Ewing: No, I do not think so. I think there is probably a fair amount of common ground in respect of these matters. My view is very, very clear. Sustainable fisheries must be based on the science. TAC, total allowable catch, is the internationally accepted way of setting the maximum limit of catch of any one species. That is governed by the science. Then we need to have management of fisheries as locally as possible, with those who are carrying out the fishing having an absolute say in how that is done, and working with conservation interests and scientists. I do not think there is really any doubt about that, so I personally do not think that there is a risk that Brexit or anything arising therefrom should necessarily complicate that in any way. For my part, I would certainly—I do not know whether you have lost the light there.

Chair: We have.

Fergus Ewing: We have lost light at this end and I think we have lost sound as well. I do not know whether you can still hear us but I will plough on anyway.

Chair: We are back, and you can hear us all right?

Fergus Ewing: I am back.

Ged Killen: Sorry, just carry on.



Fergus Ewing: Could Mr Gibb maybe answer that, because he deals with this on a daily basis? Allan.

Allan Gibb: Thank you, Cabinet Secretary. Yes, on a daily basis devolution is well understood between the four Administrations. It is very different to what Mr Armstrong was alluding to in terms of 27 member states trying to come together with a compromise. We already have a structure in place on how the quota is allocated between Administrations, that currently all of us are committed to. It is very straightforward and I am surprised to hear Mr Armstrong's comments.

He is also on record as saying that he stands by the Scottish Government, that the service that he gets in terms of consultation, engagement, information is surpassed by nobody across the European Union as far as the UK. It is a very well understood system and a very commonly used system.

Perhaps more importantly, the fishing industry in England is night and day different to the fishing industry in Scotland in terms of the technical managers that are needed, the expertise, where it is located, and it is right and proper that they carry on as they are. The vast majority of industry that I deal with are very supportive of that.

Q76 **Chair:** Thank you. Lastly, because we are running out of time, could I briefly—and it will have to be very briefly, Cabinet Secretary—touch on the seafish levy? I know that this is very similar to the issues that we had around the red meat levy where the Government accepted the amendment to have this devolved. Why do you feel that this is necessary, how would this assist you and what representations are you making to have this devolved?

Fergus Ewing: We set our arguments out very clearly in our letter of 4 December, and a series of amendments were proposed by us, namely allowing the Scottish sector to benefit more directly and fully from the levy and to evolve and improve transparency on the use of the levy. I commend my letter of 4 December. We are waiting for a response. I hope, just as in agriculture and the red meat levy, that we can make progress on the seafish levy as well.

Chair: Thank you. We will be putting that to Minister Eustice this afternoon. We will see if we can get you a reply to your letter of 4 December, given the amount of references that you have made to it in the course of this exchange.

Cabinet Secretary, as always, we are very grateful for your time and your contribution here this morning to help us out with this short inquiry into the Fisheries Bill. You said that you will supply us with a number of other bits of documentation and information, so we look forward to receiving them from you. Thank you once again.