

## **Annex: Submission from ClientEarth (16 October 2020) and response from Defra (26 October 2020)**

*Q1: Regulations 5(7)(b), 5(9)(b), 6(3) remove the requirement on authorities to submit annually additional scientific information supporting the survivability exemptions for plaice, skates and rays to the Scientific, Technical and Economic Committee for Fisheries (STECF), who then assess the provided scientific information. This requirement is not replaced with any corresponding requirement on authorities to collate this data and to send it to any scientific body (or indeed any other authority) for review.*

*Regulations 6(7), 6(8) and 6(9)(b) transfers power for the STECF to authorise gear types not specified in the regulations to fisheries administrations. It is unclear whether these authorities would have the equivalent level of expertise as the STECF.*

**A1:** As a Commission only body, we will no longer be able to request advice, or receive advice from the Scientific, Technical and Economic Committee for Fisheries (STECF).

Instead, the Government is exploring, with the Devolved Administrations, a replacement fisheries advisory framework for the UK, that is fit for purpose, and can deliver world class scientific advice, to meet commitments on delivering sustainable fisheries.

Discussions about a UK framework for future scientific and economic fisheries advice are currently ongoing with the Devolved Administrations. The precise remit and role of any future advisory structure has not yet been decided.

Furthermore, Regulations (EU) 2019/2238 and (EU) 2019/2239 will only apply in retained EU law for one year and will expire on 31 December 2021. The Government will need to review relevant scientific data in conjunction with the Devolved Administrations to establish the most appropriate replacement provisions for the landing obligation exemptions which apply in these Regulations from January 2022 onwards. This work will link into a wider review the Government will be conducting into the landing obligation itself.

*Q2: Regulation 7(7) revokes provisions around the setting of Total Allowable Catches (TACs) as these will now be set by the Secretary of State. However, Regulation 7(7) also revokes provisions that state that TACs should be consistent with the principle of sustainable exploitation of stocks and provisions on landing bycatch. Comparable obligations do not exist in domestic legislation, including the Fisheries Bill.*

**A2:** Article 6 of regulation 2020/123 says that TACs determined should be consistent with the principles and rules of the Common Fisheries Policy (CFP), in particular the principle of sustainable exploitation of the stock; and result if an analytical assessment is available, in the exploitation of the stock in line with MSY from 2020 onwards, with as high a probability as possible; or if an analytical assessment is unavailable or incomplete, in the exploitation of the stock consistent with the precautionary approach to fisheries management.

Comparable obligations exist in the Fisheries Bill under clause 26 which places duties on the national fisheries authorities to exercise their functions relating to fisheries so that no fish are caught in excess of catch and effort quota in a period.

Clause 2 also provides that the policies for achieving or contributing to the achievement of the fisheries objectives set out in the JFS will particularly include policies relating to the distribution of catch and effort quotas. This will make sure that the fisheries objectives, including the precautionary objective are reflected when distributing quota and setting effort.

Fisheries management plans will also set out the plans to get all stocks to sustainable levels, and where there is no data to do so, set out plans to collect that data.

*Q3: Regulation 7(8)(c)(iii) removes and does not replace the requirement to report to the Commission all catches of European seabass per type of gear no later than 15 days after the end of each month. Although the UK will no longer report to the Commission, the requirement should have been transferred to a domestic body.*

A3: As we are no longer an EU Member State we will no longer be reporting catch data to the Commission.

Marine Management Organisation (MMO) statistics will continue to be produced and monthly reports will be made for information purposes to UK fisheries administrations with an interest – Defra, and the Welsh Government. The MMO statistics team currently copy Defra into the report they submit to the Commission.

*Q4: Regulation 8(2)(a)(i) removes the reference to carrying out research surveys at sea. It is not clear why this change has been made.*

A4: The Commission Implementing Decision sets out the list of mandatory research surveys for the purposes of the data collection framework regulation and the thresholds below which it is not mandatory to collect data. This list is an EU-wide list whereby the specific surveys are split across the various member States (often including individually split surveys and cost-sharing arrangements). The Decision, however, makes it clear that it is each member State's individual data collection work plan which sets out the surveys that a member State will be responsible for. As such, this instrument amends the Decision to remove the EU-wide list of mandatory research surveys and the thresholds and instead confirm that the relevant surveys are those specified in the UK's data collection work plan.

*Q5: Regulation 11(5) removes provisions on the European Maritime and Fisheries Fund and does not replace it. Although the Fisheries Bill gives authorities powers to give financial assistance, there are very few details on what this should look like, including around financial assistance for rewarding or deterring behaviour related to sustainability (compare this to Articles 41 and 42 of the Common Fisheries Policy, which state that only those operators who comply with the rules of the CFP and of EU environmental law would receive and keep EU financial assistance).*

A5: The Fisheries Bill provides the same breadth of matters than can be funded as under the European Maritime and Fisheries Fund (EMFF). Further details about specific activities to be funded in any future schemes will be contained within a subsequent statutory instrument. Any future funding scheme would be consistent with the fisheries objectives and policies set out in the Joint Fisheries Statement, including those relating to environmental matters and only provide funding to projects who meet the specific eligibility of the scheme, this includes compliance with all domestic legislation, and contribute towards wider government objectives.

As explained in the Explanatory Memorandum which accompanied the instrument, Article 138 of the withdrawal agreement provides for the EU legislation relating to the 2014-2020 EMFF to apply in the UK directly. By virtue of the wording of the European Union (Withdrawal) Act 2018, legislation which applies in this way is not replicated in retained EU law. As such, our amendments in this area are simply to remove previous deficiency corrections which were made before the withdrawal agreement was entered into in recognition of the fact that this legislation will no longer form part of retained EU law.

*Q6: Regulation 17(3)(b) and 17(4)(b) appear to allow the Secretary of State to amend or replace discard exemptions for the whole UK. It is unclear why these changes have been made.*

A6: When we originally made the deficiency corrections to Regulation (EU) 2019/472 as part of The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019, we did not have agreement from the Devolved Administrations for the Secretary of State to make regulations on their behalf, including with their consent. We now have agreement from the Devolved Administrations, that the Secretary of State may make regulations on their behalf, which may apply across the UK. This approach is consistent with other retained powers in fisheries EU Exit SIs and also in the Fisheries Bill, for example clauses 36 and 38, where the Secretary of State can make regulations in Devolved Administration competence with their consent.

This approach recognises that fisheries is mainly devolved, but that sometimes it can be more pragmatic for the administrations to work together.