

## Written evidence submitted by the Greener UK (FRE0113)

Greener UK is a coalition of 13 major environmental organisations, with a combined public membership of over 8 million. We came together to ensure that environmental protections are maintained and enhanced during the Brexit process, particularly through ambitious domestic legislation. Now that we have left the EU, we are urging the UK and devolved governments to build on our high environmental standards and protections, including when negotiating trade agreements and the future relationship. For our seas, this means achieving the government's vision for "clean, healthy, safe, productive and biologically diverse oceans and seas".

We are facing a climate and ecological emergency. A recent UN report on biodiversity highlighted that overfishing is the biggest cause of marine biodiversity loss in the last 40 years. The recent near collapse of North Sea cod reflects the enormous pressures on our marine life and 93% of fish stocks globally are fully exploited or overfished. It is therefore vital that the future EU/UK fisheries agreement protects our precious fish stocks and restores the marine environment.

Greener UK welcomes the Committee on the Future Relationship with the European Union's (the **Committee's**) inquiry into the progress of negotiations. Negotiations on the future relationship with the EU must prioritise sustainability. This is particularly important in the context of the EU/UK future fisheries agreement, given that the UK shares over 100 fish stocks with the EU.

We are concerned by the lack of progress being made in the negotiations. Not reaching an agreement on fisheries could pose significant environmental, political and socio-economic risks. The continuing disagreements around mackerel, known as the 'mackerel wars', highlight the dangers of coastal states not being able to reach agreements on fishing. Peaking between 2010 and 2014, the EU, Norway, Iceland and the Faroe Islands disagreed on the size of catches and quotas that each country was entitled to. As mackerel moved northwards, Iceland and the Faroe Islands believed that they deserved a larger share of catches and unilaterally increased their quotas by significant amounts. Despite the EU and Norway continuing to set their fishing limits in line with previous levels, mackerel became heavily overfished, with catches set at 35% above the levels recommended by scientists. As a result, mackerel stocks lost their Marine Stewardship Council sustainability certification. The 'mackerel wars' also posed significant political and economic risks, including blockades and EU sanctions against Iceland and the Faroe Islands. This highlights the necessity of securing a fisheries agreement with the EU before the end of the transition period.

We are also concerned that the UK's draft legal text on the EU/UK future fisheries agreement contains no specific commitment to the sustainable management of shared stocks. Sustainable management of shared stocks will greatly increase their resilience to the impacts of climate change, delivering significant environmental, social and economic benefits to fishing communities. In addition, both the EU-27 and the UK have legal obligations to prioritise sustainable fishing and ensure conservation of shared stocks under the United Nations Convention on the Law of the Sea (**UNCLOS**). Both parties must also

achieve sustainable fisheries and protect the marine environment via existing or retained Common Fisheries Policy (CFP) and Marine Strategy Framework Directive commitments.

The recently published UK Fisheries Bill raises concerns about the UK's approach to sustainable fishing after leaving the EU. The Fisheries Bill represents a regression in environmental standards from the CFP and gives UK authorities discretion to allow overfishing by:

1. removing the legal commitment set out in Article 2 of the CFP to set catch limits in line with maximum sustainable yield (MSY) by 2020 and replacing it with a simple aspirational objective to achieve healthy biomass for stocks. This objective is neither legally binding nor subject to any deadline and is dealt with by way of 'fisheries management plans' that can be disregarded in a wide range of circumstances, including negative economic effects on the fishing industry; and
2. allowing scientific advice to be overruled by socio-economic considerations.

This is of particular concern as more than 40% of all UK fish stocks were overfished in 2019 – up from 31% in 2018 – and the Fisheries Bill does not contain sufficient legal safeguards to reverse this trend. In addition, the Fisheries Bill makes no provision for sustainable management of the over 100 stocks shared with the EU. It is therefore imperative that the EU/UK fisheries agreement secures sustainable fishing at its heart.

Greener UK believes that the incorporation of the following key asks in the EU/UK fisheries agreement would ensure that the future relationship with the EU on fisheries delivers sustainable fishing and the protection of our precious shared marine resources. We have also included some drafting suggestions to the UK's draft legal text on fisheries in the Annex to this document to deliver these goals. We would encourage the Committee to consider these proposals as part of its inquiry.

### **Key asks for future EU/UK fisheries agreement**

#### **1. Firm commitments on how shared stocks will be managed.**

We believe that EU/UK fisheries management should be based on shared principles including MSY.

There should be requirements in the EU/UK fisheries agreement for both parties to negotiate according to clear sustainability criteria to protect our oceans and coastal communities. In particular, negotiations must aim at ensuring that:

- a) fishing mortality is at levels below those which will restore or maintain shared stocks above levels capable of producing MSY
- b) the impacts of fishing on the marine environment are avoided or, where avoidance is not possible, demonstrably minimised.

Although there is no specific provision in the Fisheries Bill on sustainable sharing of stocks with the EU, the UK's mandate does state a commitment to "sustainable management of

shared stocks in line with our international obligations”. However, the UK’s draft legal text is silent on this.

The EU mandate calls for “a framework for the management of shared fish stocks... and common technical and conservation measures”, as well as “responsible fisheries that ensure the long-term conservation and sustainable exploitation of marine biological resources, in line with the relevant principles under international and Union law, notably those underpinning the Common Fisheries Policy...”.

## **2. Commitment to reaching agreement on total allowable catches (TACs).**

While the CFP obliges EU Member States to reach agreement on the exploitation rates of given stocks during the December Council negotiations, bilateral agreements and coastal state negotiations are not institutionalised to the same degree. This gives third countries the power to walk away from negotiations if they do not agree on the TAC.

We support the establishment of a robust governance structure with provisions for joint multi-annual plans. The EU-UK agreement should commit the parties to reaching an agreement on TACs rather than allowing them to walk away and set quotas unilaterally, and should set out a resolution process where agreement cannot easily be reached.

Neither mandate provides for multi-annual plans or a specific commitment to find agreement on the annual TACs. However, both mandates include provisions for dispute settlement mechanisms, with the UK specifically providing for suspension of the fisheries agreement “if necessary”.

## **3. A commitment to electronic monitoring across fleets to provide full documentation of catches and bycatch, improved data for management and increased compliance.**

It is vitally important that both the UK and EU are able to achieve full and verifiable documentation of catches to give a true picture of what is being removed from our seas in order to provide accurate scientific data, and ensure effective management of shared stocks in shared waters (and traceability for retailers and consumers). Effective systems must be in place to share data between the EU and the UK. Adopting cameras on boats will also help monitor levels of seabird and cetacean bycatch, including protected species.

The Fisheries Bill is silent on the use of CCTV on boats and on monitoring more generally and neither mandate covers the issue of electronic monitoring.

## **4. Robust monitoring and enforcement mechanisms.**

Once the UK leaves the EU, there is no guarantee that existing intelligence-sharing arrangements will continue. The agreement should therefore set out how the EU and UK will continue to share intelligence. The agreement should also include a requirement for vessel monitoring systems to be carried by all EU/UK vessels, including those under 10m length overall. As well as supporting the landing obligation, effective monitoring and enforcement procedures would underpin sustainable fisheries management more generally.

The UK mandate and its draft legal text go some way towards these aims in requiring provisions for “sharing vessel monitoring data and information to deter and eliminate illegal, unreported and unregulated fishing” and for EU vessels to “comply with UK rules... including reporting obligations”. It also expects cooperation on issues including data sharing. The EU mandate calls rather more generally for “enforcement arrangements” and “collaboration in data collection”.

#### **5. Access contingent on compliance with high environmental standards.**

Access to both UK and EU waters should be contingent on compliance with high fisheries management standards. This is essential to ensure a level playing field and a high level of environmental protection, ensuring that neither party gains a competitive advantage by undercutting environmental standards.

Securing a level playing field on environmental standards in the future EU/UK fisheries agreement will be vital to ensure the sustainable management of fish stocks and to avoid a repeat of the ‘mackerel wars’ and overfishing.

#### **6. Commitment to use same scientific metrics.**

Both the EU and UK should agree to use the same scientific metrics (eg International Council for the Exploration of the Sea (**ICES**) advice or similar) when undertaking negotiations to ensure continuity of shared stock assessments and ease of both TAC negotiations and implementation.

The UK mandate refers specifically to use of “best available science” from ICES for management of shared stocks, although the UK’s draft legal text also allows the parties to consider other scientific metrics, as well as socio-economic considerations. The EU mandate provides that fisheries management should follow a “science-based approach aligned to the objective of achieving MSY”.

#### **7. Trade contingent on compliance with high environmental standards.**

The agreement should set out safeguards to be applied to any future trade deal on fisheries. This could include the possibility of using trade sanctions where a country fails to cooperate in the management of a shared stock under UNCLOS, the United Nations Fish Stocks Agreement (**UNFSA**) or any other international agreement (eg the imposition of restrictions on relevant seafood imports and restrictions on the use of EU/UK ports for vessels flagged to that country).

The UK mandate simply states that “Trade in fisheries products should be covered by the CFTA”. The EU, however, proposes making a link between the “terms on access to waters and quota shares” and the “economic part” of market access of goods, i.e. fisheries products, under the free trade area, thus indicating a potential risk to market access if access to waters is not satisfactory.

**8. An ecosystem-based approach that drives nature's recovery.**

As with the CFP, the agreement should be governed by the ecosystem-based approach, ensuring that the improvement of the health of the marine environment is at the heart of decision making and contributing to nature rich and climate-resilient oceans for future generations.

## ANNEX

### Greener UK drafting suggestions on UK's draft legal text

THE United Kingdom of Great Britain and Northern Ireland (“the United Kingdom”) and the European Union (“the Union”) (hereinafter referred to together as “Parties” and individually as “Party”):

CONSIDERING that on 24 January 2020 the United Kingdom and the Union entered into the Agreement on the withdrawal of the United Kingdom from the Union and the European Atomic Energy Community (hereinafter referred to as “Withdrawal Agreement”);

RECOGNISING that at 23:00 GMT on 31 January 2020 the United Kingdom withdrew from the Union;

DESIRING to ensure the continued sustainable and rational management of the fish stocks of the waters adjacent to their coasts;

TAKING into account the bilateral agreement on fisheries of 27 February 1980 between the European Economic Community and the Kingdom of Norway, and the agreement on fisheries between the European Economic Community and the Government of Denmark and the Home Government of the Faroe Islands of 15 March 1977;

RECOGNISING the need for close co-operation and co-ordination with the Kingdom of Norway, the Faroe Islands and other coastal states, including within the framework of the Parties’ respective bilateral relationships, particularly in relation to stocks (including stocks of associated species) occurring both within the waters of either or both the Parties to this Agreement and within the waters of the Kingdom of Norway or the Faroe Islands;

TAKING INTO ACCOUNT the Parties’ membership of regional fisheries management organisations;

AFFIRMING that the exercise within the Parties’ relevant waters of sovereign rights for the purpose of exploring, exploiting, conserving and managing the living resources should be conducted pursuant to and in accordance with the principles of international law, including the United Nations Convention on the Law of the Sea 1982;

WISHING TO CONCLUDE a new agreement establishing the terms and conditions under which the Parties’ fisheries relations shall be conducted in the future;

HEREBY AGREE AS FOLLOWS:

#### **[ARTICLE 1**

#### **Objectives**

The Parties shall aim to ensure:

(a) the sustainable management of shared stocks; and

(b) that the impacts of fishing of shared stocks on the marine environment are avoided or, where avoidance is not possible, demonstrably minimised.)

**Comment [SD]:** It would be beneficial to include an overarching objective as a new Article 1 that both parties will aim to ensure the sustainable management of shared stocks.

## ARTICLE 1

### Definitions

Throughout this Agreement:

“EEZ” means the exclusive economic zone established (and adjusted at later dates as appropriate) by a State in accordance with Part 5 of the United Nations Convention on the Law of the Sea 1982 (“UNCLOS”);

“fishing opportunities” means (a) the maximum quantities of shared stocks of particular descriptions that may be caught annually and (b) the maximum number of days that vessels may spend at sea annually fishing for particular descriptions of shared stocks;

“Fisheries Co-operation Forum” means the forum to be established under Article 5;

“ICES” means the International Council for the Exploration of the Sea;

“Member State” means a State which is a member of the Union;

“relevant waters” means: (a) in respect of the United Kingdom, the United Kingdom’s EEZ; (b) in respect of the Union, the EEZ of a Member State, or where a Member State has not established its EEZ, the waters in respect of which that Member State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, which, for the avoidance of doubt, excludes its territorial sea and internal waters;

“sea fish” means fish of any kind found in the sea; and for the avoidance of doubt, this includes shellfish, and shellfish includes molluscs and crustaceans of any kind found in the sea;

“shared stocks” means biological stocks of sea fish which are found in the relevant waters or territorial sea of the United Kingdom, and also in the relevant waters or territorial sea of a Member State;

“TAC” means the total allowable catch, that is, the maximum quantities of a stock (or stocks) of particular descriptions that may be caught annually;

“territorial sea” means the territorial sea established (and adjusted at later dates as appropriate) by a State in accordance with UNCLOS;

“this Agreement” means this instrument including its Annexes;

“vessel” means: (a) in respect of the United Kingdom, a fishing vessel flying the flag of the United Kingdom and licensed by the United Kingdom; (b) in respect of the Union, a fishing vessel flying the flag of a Member State and licensed by a Member State.

## ARTICLE 2

### Annual negotiations on fishing opportunities and access

1. The Parties shall negotiate annually ~~to seek~~ to determine the following matters for the next year: (a) fishing opportunities ~~at a level that ensures the sustainable management of shared stocks, taking into account (applying a precautionary and ecosystems based approach), in line with the (best scientific evidence available to the parties)~~ and the ICES-recommended TAC ~~related to maximum sustainable yield, and taking into account the interdependence of stocks and the work of appropriate international organisations~~ ~~socio-economic factors and other relevant considerations~~; (b) the amount of fishing opportunities mentioned in sub-paragraph (a) above that will be available to each Party, based on the principle of zonal attachment; and (c) any access for each Party's vessels to relevant waters of the other Party for fishing.
2. The annual negotiations referred to in paragraph 1 shall be co-ordinated with other annual negotiations between regional coastal states that affect either or both of the Parties. A written record documenting the arrangements made between the Parties as a result of negotiations under this Article shall be produced and signed by the heads of delegation of the Parties.
3. Where, during the course of a year, fishing opportunities need to be changed, or new fishing opportunities determined, to take account of updated scientific evidence, to correct errors or to deal with unforeseen circumstances, the Parties shall take this into account and shall seek to determine the new or changed fishing opportunities and an appropriate adjustment to their respective amounts (or in the case of new fishing opportunities, new amounts). In the case of changes to fishing opportunities, the Parties' respective amounts will normally be adjusted proportionately to the amount of the change.

## ARTICLE 3

### Authorisations, compliance and enforcement

1. Any vessel granted access to fish in the relevant waters of the other Party pursuant to annual negotiations under Article 2 must obtain an authorisation and (in the case of Union vessels) a licence from that other Party before commencing fishing operations, and when fishing within the relevant waters of the other Party, shall comply with all applicable rules and regulations (including any conditions in licences issued by the United Kingdom) governing fishing activities in that area.
2. Each Party shall in a timely manner provide to the other Party a list of its vessels eligible to fish in the relevant waters of the other Party.
3. Each Party shall take all necessary measures to ensure compliance by its vessels with the provisions of this Agreement and with the rules and other regulations which are applicable to those vessels in the other Party's relevant waters.

**Comment [SD]:** The EU/UK agreement should commit the parties to reaching an agreement on TACs rather than allowing them to walk away and set quotas unilaterally. This is vital to avoid a repeat of the 'mackerel wars', whereby catches were set at 35% above the levels recommended by scientists. Not only did mackerel stocks lose their Marine Stewardship Council sustainability certification, but significant political and economic risks were also posed, including blockades and EU sanctions against Iceland and the Faroe Islands.

**Comment [SD]:** Fishing opportunities should be determined taking a precautionary and ecosystems based approach. This will help ensure that the improvement of the health of the marine environment is at the heart of decision making and contributes to nature rich and climate-resilient oceans for future generations.

**Comment [SD]:** Both the EU and UK should agree to use the same scientific metrics (e.g. ICES advice) when undertaking negotiations to ensure continuity of shared stock assessments and ease of both TAC negotiations and implementation.

**Comment [SD]:** There should be requirements in the EU/UK fisheries agreement for both parties to negotiate according to clear sustainability criteria to protect our oceans and coastal communities. In particular, the determination of fishing opportunities should be based on scientific advice and should not take into account socio-economic factors, to help avoid overfishing and contribute to recovery of our most at-risk shared stocks. Socio-economic factors can (and should) influence the distribution of fishing opportunities to ensure that quota is allocated to low-impact vessels and to support coastal communities.



4. Each Party may take such measures in conformity with international law as may be necessary to ensure compliance with the provisions of this Agreement by vessels of the other Party.

#### ARTICLE 4

##### Fisheries management

1. Each Party shall manage its own fisheries independently and may take such measures in its relevant waters as it considers appropriate to ensure the rational and sustainable management of fisheries.
2. Each Party shall, to a reasonable extent and in good time, notify the other Party in advance of any significant new fisheries management measures or changes to existing measures that would affect the vessels of the other Party. This obligation shall not apply in emergency situations where the change or new measure is urgently required.

#### ARTICLE 5

##### Co-operation

1. The Parties shall set up a Fisheries Co-operation Forum for discussion and co-operation in relation to sustainable fisheries management, including monitoring, control and enforcement.
2. The Parties shall use their best endeavours to decide upon the terms of reference and methods of working for the Fisheries Co-operation Forum by 1 January 2021.
3. The Parties may decide to open the Fisheries Co-operation Forum (or any part of it) to other coastal states in order to co-operate on sustainable fisheries management.

#### ARTICLE 6

##### Data sharing

1. The Parties agree to share vessel monitoring systems data relating to their respective vessels and information to prevent, deter and eliminate illegal, unreported and unregulated (“IUU”) fishing.
2. If either Party grants access to any of its relevant waters to vessels of the other Party, the Parties agree, subject to applicable law, **(i) that any such vessels over 10 metres in length fishing within such waters must be fitted with remote electronic monitoring systems and cameras and (ii)** to facilitate the sharing of all data and information which it is necessary or desirable for the other Party to see, in addition to the data covered in paragraph 1, for the purposes of:
  - (a) monitoring, controlling and enforcing compliance with applicable rules and regulations (including licence conditions);
  - (b) monitoring the use of fishing opportunities;
  - (c) managing sea fisheries sustainably;

**Comment [SD]:** It is vitally important that both the UK and EU are able to achieve full and verifiable documentation of catches to give a true picture of what is being removed from our seas in order to provide accurate scientific data, and ensure effective management of shared stocks in shared waters (and traceability for retailers and consumers). We believe this can best be achieved by the adoption of Remote Electronic Monitoring with cameras (REM). Adopting cameras on boats will also help monitor levels of seabird and cetacean bycatch, including protected species.

- (d) developing marine and fisheries policies;
- (e) preventing, deterring and eliminating IUU fishing; and
- (f) any other purpose related to the implementation of this Agreement or any access arrangements made under it. As a minimum this shall include the data, and agreed provisions for facilitating data sharing, set out in Annex 1 to this Agreement.

3. Each Party shall protect all information which is confidential or protected by law from disclosure and which comes into its possession or control under or in connection with this Agreement, including in particular any personal data or commercially sensitive information, and except as required by law, shall not disclose it, misuse it or use it for purposes other than those connected with this Agreement.

## **ARTICLE 7**

### **Designation of ports**

1. The Parties shall each ensure that, by 1 January 2021, the ports listed in Annexes 2 and 3 (respectively) to this Agreement have been designated in accordance with: (a) Article 21 of the North-East Atlantic Fisheries Commission's Scheme of Control and Enforcement; and (b) any provision of UK or EU law relating to the prevention, deterrence or elimination of IUU fishing.
2. The Parties shall consult each other in advance if they wish to designate additional ports, have additional ports designated, or remove the designation of a port listed in Annex 2 or 3.

## **ARTICLE 8**

### **Consultation and dispute resolution**

The Parties agree to consult on questions relating to the implementation and proper functioning of this Agreement, or in the event of a dispute concerning the interpretation or application thereof.

## **ARTICLE 9**

### **Suspension**

1. The application of this Agreement may be suspended on the initiative of either of the Parties in the event of: (a) a dispute arising between the Parties over the interpretation or application of this Agreement or its implementation; or (b) failure by either of the Parties to comply with the provisions of this Agreement.
2. Suspension of the application of this Agreement shall be notified in writing by the Party concerned to the other Party and shall take effect three months after receipt of the notification. The Parties shall consult each other from the moment of notification of suspension with a view to finding an amicable settlement to their dispute within three months. Where such settlement is reached, implementation of this Agreement shall resume.

## **ARTICLE 10**

### **Amendments**

1. The Parties may consult, at the request of either Party, on possible amendments to this Agreement.
2. This Agreement may be amended by exchange of diplomatic notes if the Parties so agree.
3. Any amendment shall enter into force on the date specified by the Parties in their exchange of diplomatic notes.

## **ARTICLE 11**

### **Law of the sea**

Nothing contained in this Agreement shall affect or prejudice in any manner the views of either Party with respect to any questions relating to the law of the sea.

## **ARTICLE 12**

### **Entry into force, application and termination**

1. Each Party shall notify the other Party in writing through diplomatic channels of the completion of its domestic requirements for entry into force of this Agreement. This Agreement shall enter into force on a date to be mutually agreed and specified in these notifications.
2. The following provisions of this Agreement shall apply from the day the Agreement enters into force in accordance with paragraph 1: Article 1 (Definitions) Article 2 (Annual negotiations on fishing opportunities and access) Paragraphs 1 and 2 of Article 3 (Authorisations and compliance) Article 5 (Co-operation) Article 7 (Designation of ports) and Annexes 2 and 3 to this Agreement Article 8 (Consultation and dispute resolution) Article 9 (Suspension) Article 10 (Amendments) Article 11 (Law of the sea) This Article, except paragraph 5.
3. The remaining provisions of this Agreement (including Annex 1) shall apply from 1 January 2021. For the avoidance of doubt, those remaining provisions are: Paragraphs 3 and 4 of Article 3 (Enforcement) Article 4 (Fisheries management) Article 6 (Data sharing) and Annex 1 to this Agreement Paragraph 5 of this Article.
4. This Agreement shall remain in force until it is terminated by either Party giving to the other Party two years' written notice of termination.
5. This Agreement shall entirely supersede and replace any existing agreements concerning fishing by vessels of one Party within the relevant waters of the other Party.

***September 2020***