

ClientEarth – Written evidence (EEH0026)

ClientEarth is an environmental law charity. We are lawyers, scientists and policy specialists taking action in more than 60 countries across four continents. We use our expertise to fight climate change and protect nature by strengthening laws and ensuring they are properly enforced.

We are submitting a response to the EU Environment Sub-Committee's inquiry on the UK/EU Trade and Cooperation Agreement to highlight the opportunities and risks it presents for sustainable fisheries management.

1. Please indicate which of the following industries or policy areas you are responding in relation to: energy, environment, health, food trade, agriculture, fishing, climate change, chemicals.

1.1. Fishing

2. What is your assessment of the relevant provisions in the UK-EU Trade and Cooperation Agreement, and their impact on your business or policy area?

2.1. We are facing a climate and ecological emergency. A 2019 UN report¹ on biodiversity concluded that fishing is the human activity that had the greatest impact on marine life in the past 50 years. The recent near collapse of North Sea cod² reflects the enormous pressures on our marine life. In the UK, an audit³ published in January 2020 revealed that, of the 104 stocks evaluated, 20% were in a critical condition and data limitations were too great for another 44% to assess their real status, *"leaving them at greater risks of unsuitable management decisions"*.

2.2. Sustainable management of shared fish 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 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 Sea⁴ (**UNCLOS**) and existing or retained Common Fisheries Policy⁵ (**CFP**) and Marine Strategy Framework Directive⁶ (**MSFD**) commitments.

2.3. It is therefore vital that the newly established Trade and Cooperation Agreement⁷ (**TCA**) between the EU and the UK is implemented in a way that protects our precious fish stocks and restores the marine environment.

2.4. There are three key areas in the fisheries chapter of the TCA that we would like to draw the committee's attention to:

¹ <https://ipbes.net/global-assessment>

² <https://www.theguardian.com/business/2019/aug/18/where-did-all-the-cod-go-fish-chips-north-sea-sustainable-stocks>

³ https://europe.oceana.org/sites/default/files/oceana_uk_fisheries_audit.pdf

⁴ https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547133726973&uri=CELEX:32013R1380>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0056>

⁷ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01)&from=EN)

- 2.4.1. The objectives and principles set out in Article FISH.2;
- 2.4.2. The process for setting fishing limits, or total allowable catches (**TACs**), set out in Articles FISH.6 and FISH.7; and
- 2.4.3. The new Specialised Committee on Fisheries established by Article FISH.16.

2.5. We will deal with the opportunities and challenges of each of these below.

3. What do those provisions achieve?

- 3.1. Article FISH.2 of the TCA contains a strong set of objectives and principles. In particular, Article FISH.2(1) states that “the Parties shall cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits [...]”. It is vital that the parties cooperate to ensure the sustainable management of shared stocks, particularly as the UK shares over 100 stocks with the EU. Securing sustainable fish stocks will enhance the health of the marine environment, as well as supporting coastal communities and ensuring the viability of the fishing industry for generations to come. However, it will be important to ensure that short-term economic factors are not prioritised over the need for fisheries to be managed in an environmentally sustainable way, threatening both long-term sustainability and coastal communities that rely on it.
- 3.2. Article FISH.2(2) states that “the Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield.” This is a welcome provision, but we note the lack of deadline and lack of legally binding commitment to achieve this objective. This could have dire consequences – according to a new UK fisheries audit released last month by Oceana, only 36% of the 104 audited stocks were known to be healthy in terms of stock size, while 20% were in a critical condition and 44% of an unknown status due to data limitations.⁸ In terms of the exploitation rate, only 38% were sustainably exploited, while 29% were still being overfished. Urgent action must be taken to recover depleted fish stocks and setting legally binding fishing limits at or below maximum sustainable yield as soon as possible, as well as ensuring these limits are respected through effective control and monitoring,⁹ will result in more resilient and productive marine ecosystems.
- 3.3. Article FISH.2(3) sets out principles intended to guide the agreement. In particular, we welcome the inclusion of the precautionary principle,¹⁰ as well as commitments to protect the wider marine environment¹¹ and base decisions on the

⁸ https://europe.oceana.org/sites/default/files/oceana_uk_fisheries_audit.pdf

⁹ ClientEarth (2020). (Lack of) catch documentation under the landing obligation and how exemptions may defeat rather than prove the rule. December 2020. <https://www.clientearth.org/latest/documents/lack-of-catch-documentation-under-the-landing-obligation-and-how-exemptions-may-defeat-rather-than-prove-the-rule/>

¹⁰ ClientEarth (2020). Caution - A TAC-Setter's Guide to the 'Precautionary Approach'. December 2020. <https://www.clientearth.org/latest/documents/caution-a-tac-setter-s-guide-to-the-precautionary-approach/>

¹¹ ClientEarth (2020). How (not) to implement the ecosystem-based approach when setting Total Allowable Catches (TACs). December 2020. <https://www.clientearth.org/latest/documents/how-not-to-implement-the-ecosystem-based-approach-when-setting-total-allowable-catches-tacs/>

best available scientific advice.¹² The UK and EU will need to ensure that their decisions are aligned with these important principles, particularly given the impact of fishing activities on the health of the wider marine ecosystem.

3.4. Articles FISH.6 and FISH.7 outline the process for setting TACs. TACs set at sustainable levels will ensure long-term socio-economic benefits for both the UK and EU. In particular, setting TACs at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield, as per Article FISH.2(2), will help deliver this objective. However, both parties must follow the scientific advice on setting TACs provided by the International Council for the Exploration of the Sea (commonly known as ICES).¹³ We particularly welcome Article FISH.7(2) that provides that each party must set a provisional TAC for most fish stocks in line with scientific advice if agreement cannot be reached. We have set out the challenges of the TAC-setting process in the TCA in our response to question 4 below.

3.5. The new Specialised Committee on Fisheries established by Article FISH.16 is a welcome co-operation forum that will monitor and review implementation of the agreement, including on environmental matters. It will be vital that this committee has adequate public participation and that it is developed so as to benefit from the expertise of stakeholders across the spectrum. Transparency in the decision-making processes of the committee will also be important, particularly as both the EU and the UK are parties to the Aarhus Convention.¹⁴ There has historically been a lack of transparency in the TAC-setting process, with negotiations taking place behind closed doors, documentation of the relevant discussions being insufficient and not published in a timely manner, and the fishing industry having preferential access to the decision-making process compared to civil society organisations. Timely publication of documentation associated with the committee, such as minutes, agenda items and decisions, together with equal engagement of both civil society and fishing industry stakeholders, will help ensure that the committee operates in an efficient and fair way and delivers the objectives of the TCA.

4. What, if any, challenges arise because of those provisions? How could these challenges be resolved?

4.1. As noted above, it will be important to ensure that the objectives and principles are effectively implemented to ensure the sustainable management of shared stocks. It will also be important to ensure that the Specialised Committee on Fisheries has adequate public participation and is transparent in its decision-making.

¹² ClientEarth (2020). What is the 'best available scientific advice' for setting Total Allowable Catches (TACs)? December 2020. <https://www.clientearth.org/latest/documents/what-is-the-best-available-scientific-advice-for-setting-total-allowable-catches-tacs/>

¹³ ClientEarth (2020). What is the 'best available scientific advice' for setting Total Allowable Catches (TACs)? December 2020. <https://www.clientearth.org/latest/documents/what-is-the-best-available-scientific-advice-for-setting-total-allowable-catches-tacs/>

¹⁴ <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

- 4.2. There are particular challenges in relation to the TAC-setting process. Firstly, Article FISH.6(2)(a) provides that TACs should be set on the basis of the best available scientific advice, “as well as other relevant factors, including socio-economic aspects”. Secondly, Article FISH.7(4) provides for “special stocks”. Provisional TACs for those stocks will not be based on the best available scientific advice, but rather will be set by the Specialised Committee on Fisheries. Setting TACs in line with scientific advice, rather than short-term political priorities or socio-economic factors, will be paramount to ensure the sustainable management of shared stocks.
- 4.3. As well as the benefits for the marine environment and coastal communities, both parties are under a number of legal obligations to ensure the sustainable management of shared stocks. As well as fulfilling commitments under the CFP, the UK Fisheries Act¹⁵ and the UK 25 Year Environment Plan,¹⁶ sustainable fishing will help deliver Good Environmental Status pursuant to the terms of the MSFD, as well as international commitments under UNCLOS and Sustainable Development Goal 14¹⁷ to prevent overfishing by 2020. We note that the UK is currently failing to meet 11 of the 15 indicators of ocean health in UK waters and, by the Government’s own admission, the 2020 target for Good Environmental Status “will not be achieved for many years unless there are further improvements to fisheries management measures”.¹⁸ As well as helping to fulfil these requirements, setting TACs in line with sustainable levels will help deliver the sustainability and precautionary objectives in the UK Fisheries Act.

5. What should the UK seek to accomplish with the EU in relation to your industry or policy area within the parameters of the Agreement in the short- and mid-term?

- 5.1. We welcome the TCA between the EU and the UK, which sets out a framework and requirements for both parties to work together for the sustainable management of shared stocks.
- 5.2. However, effective implementation of the TCA will be essential to ensure that our shared fish stocks and marine environment are restored above healthy and productive levels, benefitting the marine ecosystem as well as coastal communities. The UK will need to:
- 5.2.1. ensure that TACs are set in line with the best available scientific advice;
 - 5.2.2. ensure that the important sustainability objectives of the TCA are achieved and that the principles are adhered to; and

¹⁵ <https://www.legislation.gov.uk/ukpga/2020/22/contents/enacted>

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

¹⁷ <https://www.un.org/sustainabledevelopment/oceans/>

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921262/marine-strategy-part1-october19.pdf

5.2.3. ensure that the Specialised Committee on Fisheries is transparent and encourages effective public participation.

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.