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To: Kent and Essex Inshore Fisheries and Conservation Authority –
30 November 2018

Subject: **Fisheries Bill update**

Classification: **Unrestricted**

Summary:

A general update on the drafting of the Fisheries Bill, highlighting the main points of note for IFCAs and the inshore fleet

Recommendations:

1. Members are asked to **DISCUSS** the paper and **ENGAGE** DEFRA on the specific issues of
 - a) Appropriate engagement and representation of English fishing needs
 - b) Extension of MMO byelaw making powers

Overview of the Bill

The Fisheries Bill will provide the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union (EU) and the Common Fisheries Policy (the CFP). The Bill creates common approaches to fisheries management between the UK government and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management in England.

The Bill (introduced on 25 October) proposes powers to allow the UK to determine which vessels may fish in our waters and to set fishing opportunities (quotas and days at sea/effort) for UK fishing boats. It also confirms the Government's strong commitment to sustainable fishing and to the marine environment by extending powers to protect the marine environment and helps deliver on the UK Government's commitments to sustainable fishing and marine conservation as set out in the 25-Year Environment Plan.

The management of fisheries is devolved and will remain so. Leaving the EU will mean that the Devolved Administrations (DAs) will see a significant increase in their decision-making powers in fisheries.

The Bill also gives the UK the power to implement new deals negotiated with the EU and with other coastal States and manage fisheries more effectively and sustainably in future.

The CFP, which is made up of around 100 EU regulations, will be retained in UK law under the EU (Withdrawal) Act to provide immediate stability for the fishing industry. However, new powers will enable us to respond to scientific advice and innovation quickly and amend the legislation.

On top of this, the Bill creates new schemes to help the English fishing fleet seize the opportunities of Brexit. These include extending grant making powers, establishing a new scheme to help the fishing industry comply with the landing obligation (also known as the discard ban) and creating powers to tender additional English quota.

The Bill contains the following provisions:

Fisheries objectives

The Bill replaces the sustainability objectives currently in Art. 2 of the Basic Regulation of the Common Fisheries Policy (Regulation (EU) 1380/2013), making them objectives for the Fisheries Administrations or the Secretary of State.

The bill lays out 6 fisheries objectives:

The "**sustainability objective**" is to ensure that fishing and aquaculture activities are—

- (a) environmentally sustainable in the long term, and
- (b) managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.

The "**precautionary objective**" is—

- (a) to apply the precautionary approach to fisheries management, and

(b) to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.

The “**ecosystem objective**” is—

(a) to implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and

(b) to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.

The “**scientific evidence objective**” is—

(a) to contribute to the collection of scientific data, and

(b) to base fisheries management policy on the best available scientific advice.

The “**discards objective**” is to gradually eliminate discards, on a case-by-case basis, by—

(a) avoiding and reducing, as far as possible, unwanted catches, and

(b) gradually ensuring that catches are landed.

The “**equal access objective**” is to ensure that the access of UK fishing boats to any area within British fishery limits is not affected by—

(a) the location of the fishing boat’s home port, or

(b) any other connection of the fishing boat, or any of its owners, to any place in the United Kingdom.

Fisheries statements

The Fisheries Administrations are required to publish a statement setting out the policies which would achieve or contribute to the achievement of those objectives a Joint Fisheries Statement (JFS). The purpose of the JFS statement is to recognise that, although fisheries is devolved, none of the Fisheries Administrations acting alone could achieve the fisheries objectives. The intended effect of the statement would be to set out and coordinate fisheries policies after the UK has left the EU. The fisheries policy authorities are the four UK Fisheries Administrations:

(a) *the Secretary of State,*

(b) *the Scottish Ministers,*

(c) *the Welsh Ministers, and*

(d) *the Northern Ireland department*

In addition, the Secretary of State is required to publish a statement setting out the policies that apply to England that achieve or contribute to the achievement of a number of objectives that apply only to the Secretary of State Secretary of

State Fisheries Statement (SSFS). Although some of the objectives currently in Article 2 of the Common Fisheries Policy Regulation are replicated in the fisheries objectives in the Bill, others relating to more detailed matters are not. The SSFS covers many of those detailed objectives and must include the Secretary of State's policies in relations to the matters listed:

- (a) making the best use of unwanted catches (where it is appropriate to do so) without creating a market for such of those catches as are below the minimum conservation reference size;*
- (b) providing conditions for an economically viable and competitive fishing capture and processing industry and land-based fishing related activity;*
- (c) opportunities consistent with the precautionary objective, with a view to having economically viable fleets without overexploiting marine biological resources;*
- (d) promoting the development of sustainable aquaculture activities to contribute to food supplies and security and employment;*
- (e) contributing to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic factors;*
- (f) contributing to an efficient and transparent internal market for, and ensuring a level playing field for the marketing of, fisheries and aquaculture products;*
- (g) taking into account the interests of both consumers and producers;*
- (h) promoting coastal fishing activities, taking into account socio-economic factors;*
- (i) contributing to the achievement by 2020 of a good environmental status (within the meaning of the Marine Strategy Framework Directive).*

The statements (JFS and SSFS) are documents in which the relevant fisheries policy authorities will set out the policies they have which will achieve, or contribute to the achievement of, the fisheries objectives that apply to them. Clause 6 of the Bill requires the relevant national authorities to pursue the policies outlined in the relevant fisheries statements that are applicable to them unless relevant considerations indicate otherwise. The purpose of this exception is to allow for flexibility in decision-making: it may occasionally be appropriate to diverge from the policies in the statements (for example, if there are changes in scientific advice, new international standards or catastrophic events which have an impact on fisheries management or the marine environment). The relevant national authorities are all the UK Fisheries Administrations and the MMO in relation to the JFS, and the Secretary of State and the MMO in relation to SSFS.

The Bill requires the Fisheries Statements (JFS and SSFS) to be published by 1 January 2021 and intention is that the statements will come into effect at the end of the Implementation Period. The Fisheries Statements (JFS and SSFS) would go through a public consultation process and a draft of the statement pass through the scrutiny of the appropriate legislature (Schedule 1). The statements must then be reviewed within 6 years of publication of the first statements and thereafter within 6 years following the end of the most recent review.

Access

When the UK leaves the EU, any access for EU and other foreign vessels to UK waters will be a matter for negotiation. The Bill revokes the EU legislation which currently provides for automatic rights for vessels registered in the EU to access UK waters. By revoking provisions in the Fishery Limits Act 1976, it removes the need to designate which countries' vessels are able to fish in UK waters and introduces a new requirement that foreign vessels fishing in UK waters must be authorised to be in UK waters under international agreements or arrangements or must have a licence issued by a Fisheries Administration. In effect the bill will end the current automatic rights for EU vessels to fish in UK waters and access to fish in the UK waters will be for the UK to negotiate and decide on the terms and foreign vessels will have to follow UK rules.

Fishing boat licensing

The Bill revokes, replaces and clarifies existing powers for the Fisheries Administrations to license fishing in UK waters. For the most part, this is a consolidation of existing powers, but the Bill makes several significant changes. It provides for equal access for UK vessels in UK waters by clarifying that licences issued by any Fisheries Administration are effective throughout UK waters. It also requires for the first time that foreign vessels are prohibited from fishing in UK waters unless they have a licence issued by a Fisheries Administration.

Fishing opportunities

The Bill revokes EU legislation which currently sets UK fishing opportunities and gives the Secretary of State powers to determine the UK's fishing opportunities (the maximum amount of fish that may be caught and the maximum number of days that may be spent at sea). Clause 18 of the Bill, replaces the current provision in EU law that allows the European Council to determine fishing opportunities for EU waters (of which UK waters are a constituent part). The provisions set out the Secretary of State reserved function of determining the UK's fishing opportunities, in accordance with the UK's international obligations. These might arise under an agreement with the EU or with another coastal state. They might also arise because of the UK's obligations under UNCLOS or as a member of an RFMO. Before determining the UK's fishing opportunities, the Secretary of State must consult the other Fisheries Administrations. He must also make certain notifications, including a notification to Parliament.

The Bill also introduces powers to enable annual fishing opportunities, which the Secretary of State can allocate to the English industry, to be sold to those in the English industry. Clause 22 of the Bill, allows the Secretary of State to provide, in regulations, for the sale of rights to use English fishing opportunities for a calendar year. The intention is that the scheme would be used to tender a proportion of the additional fishing opportunities that are gained following the

UK's withdrawal from the EU. The scheme would only be used in relation to the portion of UK quota which may be allocated by the MMO or the Secretary of State to English fishing boats. The scheme could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria. It is not intended that a scheme would be used to sell fishing opportunities exclusively on the basis of price.

Discard prevention charging scheme

The Bill contains a regulation-making power to set up a scheme for charging English fishing licence holders that land fish in excess of their authorised quota. This will support the implementation of the landing obligation (which from January 2019 will require all species under quota to be landed) by encouraging the uptake of more sustainable fishing practices.

Clause 23 of the Bill allows the Secretary of State to provide in regulations for a scheme that would require a charge to be paid in respect of unauthorised catches of sea fish. The purpose of the scheme is to charge for unauthorised catches at a level which deters overfishing and thereby incentivises fishers to use more sustainable fishing practices and avoid unwanted catches. Previously, fishers have regularly discarded fish when they have an unauthorised catch. The landing obligation requires that all catches of species which are subject to catch limits are landed (subject to limited exceptions). They cannot be discarded.

Marine environment

The Bill extends the Fisheries Administrations' marine conservation powers to regulate fishing for the purposes of protecting the marine environment. The Fisheries Administrations will be able to regulate fishing outside territorial waters and outside marine protected areas. It extends the Marine Management Organisation's (MMO) existing byelaw making powers and confers equivalent order making powers on the Welsh and Scottish Ministers.

Clause 38 of the Bill refers to Schedule 7 which confers powers on the MMO, the Welsh Ministers and the Scottish Ministers to make byelaws or orders relating to the impact of fishing on marine conservation. The purpose of these provisions is to replace EU measures for the protection of the marine environment in Member States' offshore zones. The Fisheries Administrations will be able to regulate fishing outside territorial waters and outside marine protected areas.

Schedule 7 makes amendments to the MCAA to effect this, by extending existing byelaw and order-making powers. Paragraph 6(1) would insert new section 129A into MCAA. This section would confer on the MMO the power to make byelaws relating to the exploitation of sea fisheries resources for the purpose of conserving marine flora or fauna, or marine habitats. MMO byelaws under this provision would extend to "England", which includes the 0 – 12nm inshore region.

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

Paragraph 8 would amend section 131 of MCAA, which makes provision for emergency byelaws to protect MCZs. The amendment would make the emergency byelaw provisions apply to byelaws made under new section 129B, to protect the English offshore regions, so that these byelaws could be made without the confirmation of the Secretary of State, in the circumstances that currently apply to emergency MCZ byelaws.

Cost recovery

The Bill extends the cost-recovery powers of the MMO in England and the Department of Agriculture, Environment and Rural Affairs Northern Ireland to enable both to charge for services they provide to the fishing industry. Clause 29 of the Bill provides a power for the Secretary of State to make regulations for the MMO to impose charges for carrying out certain functions:

- fishing quotas;
- ensuring that commercial fish activities are carried out lawfully;
- the registration of buyers and sellers of first-sale fish;
- catch certificates for the import and export of fish.

Grant schemes

The Bill provides powers to introduce schemes of financial assistance for the fish and fish farming industries, to improve the marine and aquatic environment, and to promote recreational fishing. Schemes could be introduced by the Secretary of State, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs Northern Ireland. The powers replace and broaden existing domestic funding powers and will allow new funding schemes to replace funding currently received under the European Maritime Fisheries Fund (EMFF).

Power to amend UK law (including retained EU law)

The Bill provides a power, by regulations, to make provision in relation to listed fisheries matters and for listed purposes as well as in relation to listed matters related to the control of aquatic animal diseases and for listed purposes. The power is exercisable by the Secretary of State, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs Northern Ireland. The Secretary of State could introduce UK-wide measures with the consent of the Devolved Administrations. The power could be used to amend UK law (including primary legislation and retained EU law).

New Roles of the Marine Management Organisation

In the Bill the MMO is included as a “relevant national authority” along with the Scottish and Welsh Ministers and the Northern Ireland department and as such must exercise its functions relating to fisheries, fishing or aquaculture in accordance with the policies contained in a JFS and SSFS that are applicable to the authority, unless relevant considerations indicate otherwise.

The under the Bill the MMO would now have the power to grant licences in respect of foreign fishing boats (clause 12).

The MMO has always worked closely with Defra however the Bill now legally outlines this relationship and outlines the duty on the MMO relating to a determination of fishing opportunities e.g Before making or withdrawing a determination under section 18, the Secretary of State must consult—

- (a) the Scottish Ministers,
- (b) the Welsh Ministers,
- (c) the Northern Ireland department, and
- (d) the Marine Management Organisation.

Key points for IFCA

Appropriate engagement and representation of English fishing needs

The devolved administrations will have the opportunity for political and community engagement through their parliaments and ministers to influence Joint Fisheries Statements and the determination of fishing opportunities (section 18). England does not have an equivalent Parliament or Fisheries Minister for the English fishing sector to engage with and the Bill suggests that the MMO would take this role. However, compared to the devolved administrations England does have regional management infrastructure system in the form of IFCA.

In an effort to address an underlying theme of more transparent and responsive UK fisheries management the Bill could provide an opportunity through IFCA to involve English local communities in developing fisheries statements and provide input into determining fishing opportunities. This approach would come with very minimal costs (as IFCA are already funded) but would help develop clear links between the fishing communities and the policies and opportunities they work within.

Extension of MMO byelaw making powers

Within Schedule 7 of the Fisheries Bill the MMO would be given the ability to make byelaws relating to the exploitation of sea fisheries resources for the purpose of conserving marine flora or fauna, or marine habitats within the IFCA districts by amending the Marine and Coastal Access Act 2009. There is little detail in the Bill or explanatory notes as to how this would work in conjunction

with IFCA's duty under the same act (section 153 below) as exploitation of fisheries by its very nature will impact marine flora or fauna, or marine habitats.

153 Management of inshore fisheries

(1) The authority for an IFC district must manage the exploitation of sea fisheries resources in that district.

(2) In performing its duty under subsection (1), the authority for an IFC district must—

(a) seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way,

(b) seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation,

(c) take any other steps which in the authority's opinion are necessary or expedient for the purpose of making a contribution to the achievement of sustainable development, and

(d) seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.

Working through the Association of IFCA's

The next AIFCA meeting is on the 4 December and DEFRA have been invited to attend and update as to the detail of the Fisheries Bill and outcomes of the Bill. Views taken from this Authority meeting can be taken to that meeting and presentations made.

Recommendations:

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Article 17

Criteria for the (allocation) distribution of fishing opportunities (by Member States) for use by fishing boats.

(When allocating the fishing opportunities available to them, as referred to in Article 16, Member States)

“When distributing fishing opportunities for use by fishing boats, the relevant national authorities shall use transparent and objective criteria including those of an environmental, social and economic nature. The criteria to be used may include, inter alia, the impact of fishing on the environment, the history of compliance, the contribution to the local economy and historic catch levels. Within the fishing opportunities available for distribution by them, (allocated to them, Member States) the relevant national authorities (the Secretary of State, and the Marine Management Organisation) shall endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage.