

## Future EU-UK fisheries agreement: Briefing for EU stakeholders

2 March 2020

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.<sup>1</sup> 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.<sup>2</sup> **It is therefore vital that the future EU/UK fisheries agreement protects our precious fish stocks and restores the marine environment.**

A new legal framework is now needed to manage the shared stocks between the EU and UK after the UK's departure from the EU and the Common Fisheries Policy (CFP). The UK Withdrawal Agreement sets the 1 July 2020 as deadline for completing a new EU-UK fisheries agreement. Despite the short timeframe for negotiation, it is vital that this agreement guarantees sustainable management of shared stocks and protects against dangerous overfishing.

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 UNCLOS. Both parties must also achieve sustainable fisheries and protect the marine environment via existing or retained CFP and Marine Strategy Framework Directive commitments.

### UK Fisheries Bill

The recently published UK Fisheries Bill raises concerns about the UK's approach to sustainable fishing after leaving the EU. The draft Fisheries Bill represents a regression in environmental standards from the

### Case study: 'Mackerel Wars'

The continuing disagreements around mackerel, known as the 'mackerel wars', highlight the dangers of unilateralism. 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 slice of the pie 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.

CFP and gives UK authorities discretion to allow overfishing by:

- removing the legal commitment set out in Article 2 of the CFP to set catch limits in line with MSY by 2020 and replacing it with a simple aspirational objective to achieve healthy biomass for stocks. This objective is not legally binding, is not 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
- allowing scientific advice to be over-ruled 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 legal safeguards to reverse this trend. In addition, the Bill makes no provision for sustainable management of the over 100 stocks shared with the EU.

It is therefore imperative that the new EU/UK fisheries agreement secures sustainable fishing at its heart.

## **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:

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

There should also be a requirement to manage shared stocks in accordance with international law obligations, in particular Articles 63 and 64 of UNCLOS, and also in accordance with Article 33 CFP (which is retained in UK law after withdrawal and states that stocks must be managed in a sustainable manner and in accordance with the MSY objective).

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 and that decisions will be based on best available advice provided by ICES

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 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 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). We believe this can best be achieved by the adoption of Remote Electronic Monitoring with cameras (REM). 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 cameras on boats and on the need for effective monitoring more generally and neither mandate covers the issue of Remote Electronic Monitoring with camera technology.

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

After the UK’s departure, there is no guarantee that existing intelligence-sharing arrangements will continue. However the UK mandate requires 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'.

The agreement should also include a requirement for vessel monitoring systems to be carried by all EU/UK vessels. As well as supporting the landing obligation, effective monitoring and enforcement procedures would underpin sustainable fisheries management more generally.

#### **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.

Neither of the EU-UK mandates refer to the need to meet high environmental or fisheries management standards, or to the principle of the level playing field for sustainable management standards. The EU mandate treats the EU-UK Fisheries Agreement in a separate section from the provisions for a level playing field and sustainability. However the protection of the marine environment is specifically included in the 'Environment and Health' section of the EU's LPF section.

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

Both the EU and UK should agree to use the same scientific metrics (e.g. 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 which is welcome. 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, UNFSA or any other international agreement (e.g. 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, ie 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.

For more information, please contact

Sarah Denman, UK environment lawyer, ClientEarth  
e: [sdenman@clientearth.org](mailto:sdenman@clientearth.org)  
t: +44 (0)303 050 5986

## **Endnotes**

<sup>1</sup>[IPBES global assessment](#), May 2019

<sup>2</sup> [BBC news, North Sea cod stocks fall to 'critical' level says Ices report](#), June 2019

Greener UK is a coalition of 13 major environmental organisations united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK’s environment.

## **GREENER UK**

