

# Report on the Legislative Consent Memorandum for the UK Fisheries Bill 2019-21

May 2020

## Overall recommendation

**Recommendation 1.** We recommend to the Senedd that it gives consent to the provisions in the UK Fisheries Bill 2019-21, subject to it being satisfied by the Minister's response to each of the recommendations in this report.

## Introduction

1. The Minister for Environment, Energy and Rural Affairs ('the Minister') laid a Legislative Consent Memorandum for the UK Fisheries Bill 2019-21 ('the LCM') on 12 February 2020.
2. The Business Committee referred the LCM to this Committee and to the Legislation, Justice and Constitution Committee ('the LJC Committee') to consider, with a reporting deadline of 24 April 2020. The deadline was subsequently extended to 21 May 2020.

## Our approach

3. We took evidence from a range of stakeholders on 11 March 2020 and received written evidence from Dr Bryce Beukers-Stewart (University of York). We were due to take evidence from the Minister on 25 March 2020. In light of the coronavirus Covid-19 pandemic, the meeting was cancelled. Given this, and the following suspension of non-time-critical committee business, we asked the Minister to respond in writing to our questions.
4. We would like to thank all those who contributed to our work.



## Our previous work on the Fisheries Bill

5. The Committee has already published a detailed report (hereafter referred to as ‘our first report’) on LCMs for the UK Fisheries Bill 2017-19 (‘the 2017-2019 Bill’) and has received a response from the Welsh Government to that report.
6. The 2017-19 Bill did not complete its passage through Parliament before the end of the last parliamentary session.
7. This report focuses on the provisions for which the Senedd’s consent is sought that have been revised or are new for the UK Fisheries Bill 2019-21, and on areas where concerns raised in our previous report have yet to be adequately addressed.

## 1. The UK Fisheries Bill 2019-21 and the Legislative Consent Memorandum

8. The UK Government’s Fisheries Bill 2019-21 (‘the 2019-21 Bill’) was introduced in Parliament on 29 January 2020. According to the Explanatory Notes (‘the EN’) accompanying the 2019-21 Bill:

“...the Bill will provide the legal framework for the United Kingdom to operate under the United Nations Convention on the Law of the Sea (UNCLOS) (the Law of the Sea Convention), with regards to fishing activities in the UK’s Exclusive Economic Zone (EEZ), after it has left the European Union (EU)’s Common Fisheries Policy (the CFP).”<sup>1</sup>

9. The 2019-21 Bill is similar to the 2017-19 Bill in many respects. However, the EN highlights the following key differences:
  - a single set of UK-wide fisheries objectives (including a new ‘climate change objective’);
  - a duty to create fisheries management plans to fish at sustainable limits for all stocks;
  - broader financial assistance powers;

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<sup>1</sup> <https://publications.parliament.uk/pa/bills/lbill/58-01/071/5801071en.pdf>

- further powers for the Welsh and Scottish Governments to reflect similar powers granted to the Secretary of State; and
- a change to the commencement provisions.

## The LCM

### Provisions for which consent is sought

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**10.** According to the LCM, consent is required for all provisions other than Clauses 4 and 5 (Secretary of State fisheries statement), and Clauses 28 to 32 (discard prevention charging schemes)<sup>2</sup>. The provisions are described in detail later in this report.

**11.** As with the 2017-19 Bill, there is a difference in opinion between the UK and Welsh Governments about whether consent is required for Clauses 23 to 24,<sup>3</sup> in relation to the distribution of fishing opportunities. Unlike the Supplementary LCM for the 2017-19 Bill, the LCM for the 2019-21 Bill offers no analysis in relation to this difference of opinion. The distribution of fishing opportunities is explored later in this report.

### Reasons for making provisions for Wales in the Fisheries Bill

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**12.** The LCM sets out the Welsh Government's reasons for making provisions for Wales in the 2019-21 Bill and concludes:

“...it is appropriate to deal with these provisions in this UK Bill as there needs to be a UK wide approach to create the Fisheries Framework which can only be done in a UK Bill. The Bill also contains several provisions which must be in place before the end of the implementation period. For non-framework powers, it is important the Welsh Ministers are able to act quickly and decisively in Wales, until we can bring forward a comprehensive Wales Fisheries Bill.”<sup>4</sup>

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<sup>2</sup> According to the UK Government's Explanatory Notes accompanying the 2019-21 Bill, clauses 28 to 32 require the Senedd's legislative consent.

<sup>3</sup> The corresponding clauses in the 2017-19 Bill were Clauses 18 -19.

<sup>4</sup> [www.senedd.wales/laid%20documents/lcm-ld13024/lcm-ld13024%20-e.pdf](http://www.senedd.wales/laid%20documents/lcm-ld13024/lcm-ld13024%20-e.pdf)

## Our view

The primary purpose of the 2019-21 Bill is to establish a framework for fisheries management in the UK once it has left the Common Fisheries Policy ('CFP')<sup>5</sup>. It also includes provisions that go beyond those which are necessary to establish a common framework.

These 'additional' provisions include extensive regulation making and executive powers for the Welsh Ministers, with further powers added in the 2019-21 Bill.

In our report on the 2017-19 Bill, we expressed concern about the Welsh Government's failure to provide adequate justification for seeking extensive regulation making and executive powers via a UK Bill. We expected the Welsh Government to have addressed these matters when bringing forward the LCM for the 2019-21 Bill. Regrettably, that is not the case.

During our scrutiny of the 2017-19 Bill, the Minister asserted that the powers being taken in the 2019-21 Bill were "transitional" and that she "fully intended" to introduce a Welsh Fisheries Bill before the end of the Fifth Senedd. Since then, the Welsh Government has changed its position. Although the Minister maintains that the powers are transitional, there will be no Welsh Fisheries Bill in the Fifth Senedd. This is disappointing.

In response to a letter from the LJC Committee, the Minister said that the inclusion of sunset provisions in the 2019-21 Bill is not necessary, as she is now committed to bringing forward a Welsh Fisheries Bill in the next Senedd. The Minister will be aware that she can make no such commitment. As such, the Committee is not reassured that sunset provisions are not required.

The 2019-21 Bill introduces a significant amount of additional outputs and responsibilities in relation to fisheries for the Welsh Government and its Marine and Fisheries Division, including the development of new regulations; new Fisheries Management Plans; new inter-governmental arrangements including the Joint Fisheries Statement, Memorandum of Understanding and dispute resolution arrangements; and greater responsibility for regulating and enforcing fisheries in the Welsh zone.

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<sup>5</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy is retained EU law under the EU (Withdrawal) Act 2018. The Regulation, as retained EU law, has been amended by statutory instruments and will be amended by the 2019-2021 Bill, if passed.

This Committee has, on several occasions, expressed concern regarding the capacity of this Division, including in relation to the Marine Conservation Branch. In March 2020, the Permanent Secretary informed us that this team is at half capacity. Similarly, our report on the impact of Brexit on Welsh Fisheries highlighted concerns about the capacity of fisheries policy and legal staff within Welsh Government to deal with the increased workload resulting from Brexit. We would be grateful for an update from the Minister on the latest estimates of changes in staffing profile that will be necessary because of the 2019-21 Bill.

**Recommendation 2.** The Minister should seek an amendment to the 2019-21 Bill to include a sunset clause in relation to the provisions that relate only to Wales.

**Recommendation 3.** If the Minister believes that a sunset clause is not necessary, the Minister should set out how she can give effect to her commitment that a future Welsh Government will bring forward a Welsh Fisheries Bill.

**Recommendation 4.** The Minister should set out the latest estimates of changes in staffing numbers and profile in her Marine and Fisheries Division and associated legal support that will be necessary as a result of the 2019-21 Bill.

## 2. Fisheries objectives

**13.** Clause 1 sets out the UK's 'fisheries objectives'<sup>6</sup>, which will apply across the UK. The objectives have changed since the 2017-19 Bill. The 'sustainability objective' has been redrafted, the 'discards objective' has been replaced by the 'bycatch objective', and new objectives of 'national benefit' and 'climate change' have been added.

**14.** The objectives reflect, to different degrees, several of the objectives in Article 2 of the CFP Regulations. Although the CFP Regulation places a duty on Member States to meet the objectives in Article 2, there is no corresponding duty on the UK administrations to meet the fisheries objectives in the 2019-21 Bill.

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<sup>6</sup> The "fisheries objectives" are sustainability; precautionary; ecosystem; scientific evidence; bycatch; equal access; national benefit; and climate change.

## Our first report

**15.** In our first report, we concluded that we were broadly content with the fisheries objectives, subject to a commitment that the Joint Fisheries Statement ('JFS') would include milestones and, where appropriate, specific and ambitious targets, against which progress could be measured (Conclusion 7). Further details on the JFS are set out later in this report.

**16.** We called on the Welsh Government:

- to work with the UK Government and the other devolved administrations to secure an amendment to the 2017-19 Bill to include a requirement to review the fisheries objectives (Conclusion 8); and
- to explore, as part of its *Brexit and Our Seas* consultation, whether it would be appropriate to include in a future Welsh Fisheries Bill a duty on the Welsh Ministers to take all reasonable steps to achieve the objectives (Conclusion 9).

**17.** The Welsh Government accepted the above. The Minister said that, if she was unable to secure an amendment to include a requirement to review the fisheries objectives, she had "sought, at the very least, for this to be included in the Fisheries [Memorandum of Understanding] as part of the JFS 6 yearly review".<sup>7</sup>

## Evidence from stakeholders

### Changes to the fisheries objectives

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**18.** There was general support for the changes made to the fisheries objectives since the 2017-19 Bill. Academics and representatives from the environmental sector believed the new 'national benefit' and 'climate change' objectives were important additions to the 2019-21 Bill. However, some questioned how these objectives would be interpreted and applied in practice.

**19.** Griffin Carpenter suggested that the 'national benefit' objective goes some way in acknowledging fisheries as a public resource.<sup>8</sup> A similar view was expressed by Professor Richard Barnes. However, he pointed out that the term was open to

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<sup>7</sup> <http://senedd.assembly.wales/documents/s86861/Paper%20to%20Note%20-%20Correspondence%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%2027%20Marc.pdf>

<sup>8</sup> RoP, para 13-14, 11 March 2020

interpretation.<sup>9</sup> Dr Beukers-Stewart noted that “the specific rules around [the ‘national benefit’ objective] have not been developed”. He added it was “unclear how [the objective] might apply to foreign (e.g. EU) vessels fishing in UK waters”.<sup>10</sup>

**20.** ClientEarth<sup>11</sup> and Dr Beukers-Stewart<sup>12</sup> welcomed the inclusion of the ‘climate change’ objective, which they referred to as “progressive”. According to Dr Beukers-Stewart, “few other countries around the world have incorporated climate change elements into their fisheries management plans”.<sup>13</sup>

**21.** Both the Welsh Fishermen’s Association (WFA) and Bangor Mussel Producers Ltd<sup>14</sup> raised concern that the objective failed to recognise the positive contribution made by aquaculture in tackling climate change.

**22.** There was broad support for the replacement of the ‘discard’ objective with the ‘bycatch’ objective. Griffin Carpenter stated it was sensible “to shift the focus earlier” to minimise bycatch.<sup>15</sup>

### Maximum Sustainable Yield

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**23.** Representatives from the environmental sector reiterated their concern about the lack of a duty on UK administrations to set fishing levels to achieve sustainable levels (for example, at or below the Maximum Sustainable Yield (‘MSY’) exploitation rate). They stated:

“As with the previous version, the Fisheries Bill [2019-21] replaces the legal commitment in the Common Fisheries Policy (CFP) to set fishing limits in line with sustainable levels with a simple aspirational objective to achieve a healthy biomass for stocks. This is a significant omission. This objective is not legally binding, is not subject to any deadline and is dealt with by way of a policy statement that can be disregarded in a wide range of circumstances...This represents a real regression in environmental standards...”<sup>16</sup>

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<sup>9</sup> RoP, para 16, 11 March 2020

<sup>10</sup> [Written submission from Dr Beukers-Stewart](#)

<sup>11</sup> RoP, para 279, 11 March 2020

<sup>12</sup> [Written submission from Dr Beukers-Stewart](#)

<sup>13</sup> [Written submission from Dr Beukers-Stewart](#)

<sup>14</sup> [Written submission from Bangor Mussel Producers Ltd](#)

<sup>15</sup> RoP, para 30, 11 March 2020

<sup>16</sup> [Written submission from Marine Conservation Society, ClientEarth and RSPB](#)

**24.** A similar point was made by Professor Barnes who highlighted that the 2019-21 Bill “provides a weaker commitment to the MSY than [Article 2] of the CFP”. He stated:

“Under the UK Fisheries Bill, MSY remains a policy objective. There is no target date for policy measures to be adopted that will achieve the MSY.”<sup>17</sup>

**25.** Client Earth told the Committee that the need for a level-playing field in negotiations with countries not bound by the MSY exploitation rate duty in Article 2(2) of the CFP has been used to justify the absence of an equivalent duty in the 2019-21 Bill. This appears to be the rationale provided by the Minister in her letter to the Committee on 1 May 2020. It was the view of Client Earth, Greener UK, and RSPB that Article 33 of the CFP (which remains retained EU law) should alleviate such concerns. Article 33(1) states:

“Where stocks of common interest are also exploited by third countries, [a fisheries administration must] engage with those third countries with a view to ensuring that those stocks are managed in a sustainable manner that is consistent with this Regulation, and in particular with the objective laid down in Article 2(2). Where no formal agreement is reached, the Union shall make every effort to reach common arrangements for fishing of such stocks with a view to making the sustainable management possible, in particular, concerning the objective in Article 2(2), thereby promoting a level-playing field for [operators within the United Kingdom].”

#### The lack of a duty to achieve the fisheries objectives

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**26.** One of the main criticisms of the 2017-19 Bill was the lack of a duty on fisheries policy authorities to achieve the fisheries objectives. For representatives from the environmental sector, this remains a significant concern in relation to the 2019-21 Bill.

**27.** Professor Barnes noted that, while the 2019-21 Bill does not include a duty on the fisheries policy authorities to achieve the objectives, “the mechanisms or the pathways for actually delivering the objectives are a lot better—they’re improved—than in the previous Bill”.<sup>18</sup> He added:

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<sup>17</sup> Written submission from Professor Barnes

<sup>18</sup> RoP, para 43, 11 March 2020



“...whilst there isn’t a duty now, I think there’s going to be greater transparency, and there will have to be more explicit reference to the fisheries objectives in the fisheries statement and the management plans, and that will provide a degree of at least political accountability.”<sup>19</sup>

## Evidence from the Minister

**28.** The Minister explained that the main benefit of the changes to the fisheries objectives and the new objectives “is a single set of strengthened UK wide fisheries objectives to ensure a more coherent UK framework”. She added:

“The previous Bill contained a subset of objectives which have now been included in the main objectives in clause 1, providing increased coherence in fisheries policy making across all four fisheries policy authorities.”

**29.** The Minister said that the ‘national benefit objective’ may, for example, “have the effect of requiring at least some catches to be landed in UK ports”.

**30.** According to the Minister, the ‘climate change objective’ “recognises the impact of fishing on the health of our oceans”. She added:

“In Wales, we have duties under our own legislation including the Well-being of Future Generations (Wales) Act 2015, Environment (Wales) Act 2016 and clear commitments to tackling climate change. Therefore, we support the inclusion of this objective, which brings this UK Bill closer to the existing Welsh situation...”

**31.** The Minister explained that the ‘discards objective’ (now the ‘bycatch objective’) had been redrafted “to more accurately reflect the outcome we are aiming to achieve – the end to the wasteful practice of discards which result from bycatch”.

**32.** In commenting on the concern about the lack of duty on UK administrations to set fishing levels to achieve sustainable levels. The Minister stated:

“We all want to fish sustainably, and MSY is the international standard. Indeed, I have been clear the UK Fisheries Bill could go further on MSY...”

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<sup>19</sup> RoP, para 46, 11 March 2020

**33.** However, she also stated:

“We also need to recognise the UK is not the only interested party. Almost all of our stocks are shared internationally. The annual quotas will be set at coastal states’ negotiations. A legally binding duty, which required the UK to effectively walk away if the other nations would not comprise, is in no one’s interest and could lead to unsustainable unilateral quota setting.

We are committed to fishing at levels below that which would achieve MSY as advised by ICES [International Council for the Exploration of the Sea], where appropriate. It is important Ministers, when taking these difficult decisions, are able to continue to balance all elements of sustainability.”

**34.** The Minister explained that, while the Welsh Government had sought an amendment to the 2019-21 Bill to include a requirement to review the fisheries objectives, the collective view of the four UK administrations was that it was not necessary “given the high level nature of the objectives”. She said that the objectives “are cornerstones of modern fisheries management and we want to maintain certainty and avoid them being changed regularly”.

## Our view

Like many of the stakeholders we spoke to, we welcome the changes that have been made in relation to the fisheries objectives. We note the comments that there may be a degree of ambiguity in what constitutes a “national benefit”; nevertheless, we would hope this objective could go some way to ensuring that Wales’ coastal communities are placed at the heart of fisheries policies.

We also welcome the inclusion of the climate change objective. We seek reassurance from the Minister that fisheries policies will dovetail with wider climate change policies and how this will work in practice.

We remain concerned about the lack of a duty on fisheries policy authorities to set sustainable fishing levels. We note the Minister’s comments on this matter, but a weakening of the commitment to MSY would undoubtedly constitute a backward step. In her letter the Minister claims that a legally binding duty on MSY would require “the UK to effectively walk away if the other nations would not comprise”. However, there is already flexibility under clause 33 of the CFP regulations with regards to the MSY duty during negotiations with countries

that are not bound by the same duty. The Minister should provide further explanation for the absence of a duty on MSY.

In our previous report on the 2017-19 Bill, we concluded that the Welsh Government should explore whether a duty should be placed on Welsh Ministers in a future Welsh Fisheries Bill to take all reasonable steps to achieve the fisheries objectives (Conclusion 9). The Minister accepted this conclusion, but this matter was not included in the Brexit and our Seas consultation. The Minister should explain why this is the case and how this will be taken forward.

**Recommendation 5.** The Minister should explain how she will ensure that the climate change objective as set out in the 2019-21 Bill will dovetail with wider Welsh Government climate change policies.

**Recommendation 6.** The Minister should commit to further exploring, with the other fisheries policy authorities, how a duty on MSY can be included in the 2019-21 Bill. The Minister should write to the Committee to outline solutions that have been considered, in particular whether the wording of Article 33 of the CFP regulations could alleviate her concerns.

**Recommendation 7.** The Minister should commit to explore whether a duty should be placed on Welsh Ministers in a future Welsh Fisheries Bill, to take all reasonable steps to achieve the fisheries objectives as set out in the 2019-21 Bill. The Minister should explain why this matter was not included in the Brexit and our Seas consultation document.

### 3. Fisheries Statement and fisheries management plans

**35.** Clause 2 requires the fisheries policy authorities to prepare and publish a JFS within 18 months of the Act being passed. The JFS must, among other things:

- set out the policies of the fisheries policy authorities for achieving, or contributing to the achievement of the fisheries objectives;
- contain a statement explaining how the fisheries policy authorities propose to use ‘fisheries statement plans’ to achieve or contribute to the achievement of, the fisheries objectives. Fisheries management plans are new for the 2019-21 Bill; and

- contain a statement explaining how the fisheries objectives have been interpreted and proportionately applied in formulating policies and proposals.

**36.** Clause 3 and Part 1 of Schedule 1 set out the procedure for preparing and publishing the JFS, or amendments to a JFS. This includes a requirement for the fisheries policy authorities to review the JFS at least every six years.

**37.** Clauses 6 to 9, and Part 3 of Schedule 1, make provision for fisheries management plans. Fisheries policy authorities must prepare and publish fisheries management plans (that have been listed in the JFS). These plans must, among other things, specify:

- the stock of sea fish, type of fishing and geographical area to which the plan relates; and
- indicator(s) to be used to monitor the effectiveness of the plan.

**38.** Each plan must comply with requirements on sustainable levels of fishing. For each stock of sea fish covered by the plan, the plan must specify whether the available scientific evidence is sufficient for the fisheries policy authorities to assess the stock's maximum sustainable yield.

**39.** Fisheries policy authorities must take appropriate steps to consult "interested persons", including members of the public, on draft plans and have regard to any representations made to them when finalising those plans.

**40.** Clause 7 sets out the requirements for preparing and publishing replacement fisheries management plans, or amendments to existing plans, where there has been a "relevant change in circumstance"<sup>20</sup>. When preparing a new plan, the authority (or authorities) must explain how and why it is different from the proposal included in the JFS.

**41.** Clause 10 requires the national fisheries authorities (which include the Welsh Ministers) to exercise their functions relating to fisheries, fishing and aquaculture in accordance with the applicable policies contained in a JFS, Secretary of State fisheries statement or fisheries management plan, "unless a relevant change in

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<sup>20</sup> For Clauses 7 and 10, the changes in circumstances that are capable of being "relevant" include (in particular) changes relating to – the international obligations of the UK; things done (or not done) by the government of a territory outside the UK that affect the marine and aquatic environment; available scientific evidence; or available evidence relating to the social, economic or environmental elements of sustainable development.

circumstances indicates otherwise”. If a national fisheries authority decides not to exercise its functions in accordance with the applicable policies, it must prepare and publish a statement describing, and explaining its decision. The requirement to prepare and publish a statement is new for the 2019-21 Bill.

**42.** Clause 11 places a requirement on fisheries policy authorities to prepare and publish a report, once every three years, on the extent to which policies in the JFS have been implemented and achieved, or contributed to the achievement of, the fisheries objectives. The report must also include the extent to which policies within fisheries management plans have been implemented and have affected the level of stocks of sea fish. The Welsh Ministers must lay a copy of the report before the Senedd. This provision is new for the 2019-21 Bill.

## Evidence from stakeholders

### Fisheries management plans

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**43.** Overall, respondents suggested that the provisions concerning fisheries management plans were a positive development. The Marine Conservation Society (‘MCS’), ClientEarth and the Royal Society for the Protection of Birds Cymru (‘RSPB’) welcomed the concept of fisheries management plans, and suggested they could potentially “help contribute to the recovery of the most at-risk [fish] stocks”. Notwithstanding this, they raised concern that, as drafted, fisheries policy authorities would have “complete discretion” over which stocks would have plans.<sup>21</sup>

**44.** ClientEarth explained:

“...there’s no provision in the Bill to require authorities to actually put in place a plan. All authorities have to do is say in a statement whether they’ll introduce a plan for a particular stock or whether they won’t, and the reasons for that. That’s obviously really concerning from an environmental perspective...”<sup>22</sup>

**45.** A similar point was raised by MCS who questioned how fisheries policy authorities would prioritise the preparation of fisheries management plans. It stated:

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<sup>21</sup> Written submission from Marine Conservation Society, ClientEarth and RSPB

<sup>22</sup> RoP, para 298, 11 March 2020

“...if there’s the opportunity to pick and choose which management plans you’re going to put into place and which ones you’re not, there’s a concern that some lower hanging fruit may be put in place before the ones that are most at risk.”<sup>23</sup>

**46.** Dr Beukers-Stewart suggested that such a ‘pick and mix’ approach would be “at odds with the stated objective of delivering precautionary and eco-system based management”.<sup>24</sup>

**47.** MCS, ClientEarth and RSPB called for a requirement on fisheries policy authorities to publish plans for “all commercially exploited stocks and any other stocks that fall below sustainable levels”.<sup>25</sup> According to WFA<sup>26</sup> and Dr Beukers-Stewart, however, it would be difficult, if not impossible, for plans to be prepared for all stocks, given the lack of available data for certain stocks.<sup>27</sup>

**48.** Several respondents raised concern that the 2019-21 Bill does not include sufficient detail about the expected content of fisheries management plans or the timescales within which they must deliver recovery of stock. In drawing a comparison with approaches taken elsewhere, ClientEarth stated:

“...in the US legislation, there’s a lot of detail around what the plans need to contain for the most at-risk stocks...a management plan must deliver recovery of a particular stock within 10 years of the plan being implemented, which is a really good thing to see. Now, there isn’t any of that sort of detail in the Fisheries Bill.”<sup>28</sup>

#### Power to depart from policies

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**49.** Like the 2017-19 Bill, the 2019-21 Bill provides power for relevant fisheries policy authorities to depart from policies contained in a JFS. MCS, ClientEarth and RSPB reiterated their concerns about the breadth of the power and how it would be used. They highlighted that the circumstances in which authorities could

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<sup>23</sup> RoP, para 299, 11 March 2020

<sup>24</sup> Written submission from Dr Beukers-Stewart

<sup>25</sup> Written submission from Marine Conservation Society, ClientEarth and RSPB

<sup>26</sup> RoP, para 179

<sup>27</sup> Written submission from Dr Beukers-Stewart

<sup>28</sup> RoP, para 314-316, 11 March 2020

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depart from policies were “much, much wider”<sup>29</sup> in the 2019-21 Bill than was anticipated under the 2017-19 Bill<sup>30</sup>. They explained:

“...the new Fisheries Bill introduces a definition of what constitutes a ‘relevant change in circumstances’, including ‘evidence relating to the social, economic or environmental elements of sustainable development’. This could mean that policies intended to recover fish stocks or contribute to the sustainable management of fisheries could be disregarded if they could have a negative impact on the profitability of the fishing industry.”<sup>31</sup>

**50.** Professor Barnes believed that the power for authorities to depart from policies was “useful”, given the dynamic nature of fisheries. He believed that the requirement on authorities to prepare and publish their reasons for departing from policies was an “important backstop” that would help to prevent any potential misuse of the power.<sup>32</sup>

## Evidence from the Minister

**51.** In commenting on the purpose and intended effect of the provisions in relation to fisheries management plans, the Minister stated:

“The fisheries management plan approach will provide us with the flexibility to implement management measures on a stock by stock, or fishery by fishery, basis, allowing for a holistic view of our fisheries and their link to the wider environment.”

**52.** The Minister explained it would be a matter for each fisheries administration to determine what fisheries management plans they plan to prepare. She said it was “too early to say which stocks will be subject to [a plan]” but provided assurance that the Welsh Government would work with stakeholders, scientists and other governments to determine which plans to put in place.

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<sup>29</sup> RoP, para 291, 11 March 2020

<sup>30</sup> The Fisheries Bill 2017-19 Bill provided for relevant national authorities to exercise their functions in accordance with policies in a JFS unless “relevant considerations” dictated otherwise. The term, “relevant considerations” was undefined. According to the EN accompanying the 2017-19 Bill, such considerations could include “changes in scientific advice, new international standards or catastrophic events which have an impact on fisheries management or the marine environment”.

<sup>31</sup> Written submission from Marine Conservation Society, ClientEarth and RSPB

<sup>32</sup> RoP, para 76-77, 11 March 2020

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**53.** The Minister said that, although fisheries policy authorities have the power to deviate from the JFS, “this would be exceptional, would not be taken lightly, and would, of course, be challengeable in court”. She asserted that removing this power “would run the risk of forcing the JFS to be drafted at an extremely broad and high level, to preserve our devolved competences and the flexibility required to sustainably manage our fisheries”. According to the Minister, the effect of this would be to make the JFS “meaningless”.

## Our view

In our first report, we called on the Welsh Government to seek an amendment to the 2017-19 Bill to include a requirement for fisheries policies authorities to report to the relevant legislature on progress made in policy implementation and in delivering the fisheries objectives (Conclusion 10). The Welsh Government accepted our conclusion and we welcome the inclusion of the reporting requirement in Clause 11.

Nonetheless, some concerns remain to be addressed. We expect the Welsh Government to deliver on the commitments it made in response to our previous report in relation to the JFS. In particular, the Committee was concerned that the JFS should include milestones and ambitious targets.

We welcome the inclusion of a requirement to publish a statement on reasons for departing from JFS. This will improve both transparency and accountability.

The Committee has been consistent in calling for Welsh stakeholders to have the opportunity to shape the contents of the JFS for Wales. The Minister has said there will be a programme of engagement events to inform and shape the content of the JFS. We would be grateful for an update on progress on this matter.

We also welcome the Minister’s commitment that the Welsh Government will work with stakeholders, scientists, and other governments in developing work around Fisheries Management Plans. We seek reassurance that the Welsh Government will ensure the sustainability of all stocks in Welsh waters, not just those with active Welsh fishing interests. Further, the Welsh Government should provide reassurance that Fisheries Management Plans will set out actions and timescales for the recovery of stocks, where appropriate.

In response to the Committee’s report on the impact of Brexit on Welsh Fisheries, the Minister said she would continue to work with the International Council for the Exploration of the Sea (‘ICES’) to assess stock levels. We would be



grateful for an update from the Minister about the agreements that have been developed between the UK and ICES for future fisheries assessments and the extent to which ICES will inform the science within Fisheries Management Plans. The Minister should set out to what extent she anticipates that the Welsh Government will need to commission new research to inform the development of Fisheries Management Plans.

**Recommendation 8.** The Welsh Government should deliver on the commitments it made in response to our previous report in relation to the Joint Fisheries Statement. In particular, the Committee was concerned that the Joint Fisheries Statement should include milestones and ambitious targets.

**Recommendation 9.** The Minister should provide an update on the development of the programme of engagement events to inform and shape the content of the Joint Fisheries Statement.

**Recommendation 10.** The Minister should provide reassurance that, through the Joint Fisheries Statement and Fisheries Management Plans, the Welsh Government will ensure the sustainability of all stocks in Welsh waters, not just those with active Welsh fishing interests.

**Recommendation 11.** The Minister should provide reassurance that Fisheries Management Plans will set out actions and timescales for the recovery of stocks, where stocks are below sustainable levels.

**Recommendation 12.** The Minister should set out the extent to which she anticipates the Welsh Government can rely on existing bodies to provide scientific data to inform Fisheries Management Plans and whether Welsh Government will need to commission new and additional research.

## 4. Access to British Fisheries and regulation of foreign fishing vessels

**54.** Clauses 12 and 13, and Schedule 2, make provision for access to British fisheries by British and foreign fishing boats. Schedule 2 (introduced by Clause 13) contains amendments to subordinate legislation to ensure that foreign vessels are subject to the same regulations as British fishing boats when fishing in UK waters. Clauses 14 to 18, and Schedule 3, make provision for licensing of fishing boats. Clauses 19 to 22, and Schedule 4, provide for access and licensing offences.

**55.** The above provisions are broadly the same as those contained in the 2017-19 Bill. However, Schedule 2 (Regulation of foreign fishing boats) is new for the 2019-21 Bill.

## Our first report

**56.** In our first report, we called on the Welsh Government to provide further details on the proposals for a Single Issuing Authority ('SIA'), and on future licence requirements in respect of the Welsh waters (Conclusion 13).

**57.** In response, the Minister explained that the SIA would be "hosted by MMO [Marine Management Organisation]" and would "act on behalf of all fisheries policy authorities to issue licences to foreign vessels". She added:

"While the practical issuing of licences will be undertaken by the SIA...it will be for the Welsh Ministers to set appropriate and proportionate license conditions in relation to Wales and the Welsh zone."<sup>33</sup>

**58.** She subsequently told us that officials were working with counterparts to develop any additional licensing requirements which may be considered necessary in respect of Welsh waters.<sup>34</sup>

## Evidence from stakeholders

**59.** In commenting on the provisions in relation to access to British waters, Griffin Carpenter asserted "there are some huge controversies that haven't been picked up". He referred to "growing consensus" that foreign vessels would continue to operate in Welsh waters, albeit with potential restrictions on access to in-shore waters.<sup>35</sup>

**60.** Griffin Carpenter also explained that current arrangements in relation to UK-registered vessels that are foreign-owned would remain unchanged. He stated:

"This is, in Wales, the Spanish-owned fleet that fishes the vast, vast majority of Welsh quota at the moment. If you talk about access to UK waters, it gets more complicated with those vessels, and what the

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<sup>33</sup> <http://senedd.assembly.wales/documents/s86861/Paper%20to%20Note%20-%20Correspondence%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%2027%20Marc.pdf>

<sup>34</sup> <http://senedd.assembly.wales/documents/s98866/Correspondence%20from%20the%20Chair%20to%20the%20Minister%20for%20Environmnet%20Energy%20and%20Rural%20Affiars.pdf>

<sup>35</sup> RoP, apar 139, 11 March 2020

Secretary of State said is they're not looking at changing that. There will still be foreign ownership."<sup>36</sup>

**61.** Similarly, Professor Barnes explained that UK-registered vessels that are foreign-owned "will continue to be treated as UK-registered fishing boats, and they will continue to have access to quotas".<sup>37</sup>

**62.** ClientEarth emphasised the need to ensure that foreign vessels granted access to British waters would be required to comply with at least the same environmental standards as UK vessels. It suggested this could be achieved through the imposition of licence conditions.<sup>38</sup>

**63.** Most respondents reiterated the importance of effective monitoring and enforcement. According to MCS, "monitoring, control and enforcement are an essential yet lacking area, consistently, with fisheries management".<sup>39</sup> MCS, ClientEarth and RSPB called for "a commitment to roll out CCTV cameras on all vessels fishing in UK waters to record what is being caught, ensuring full and verifiable documentation of catches and robust monitoring and enforcement".<sup>40</sup>

**64.** Griffin Carpenter stated that the monitoring and enforcement provisions were "sufficient" in so far as they were "enabling". However, he raised concern about the cost of effective enforcement. He added:

"...you need to figure out how much you're willing to spend on fisheries to ensure enforcement. If you're spending more, then the landed value of the fish—. At some point, someone needs to ask, 'What's the public benefit here? What's the national benefit if we're losing money on this industry?' There are very valid reasons for that—cultural, political, vulnerable communities—but these are the questions you need to answer."<sup>41</sup>

## Evidence from the Minister

**65.** The Minister explained that any licence granted in respect of Welsh waters "will first be authorised by Welsh Government officials taking into account

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<sup>36</sup> RoP, para 140-141, 11 March 2020

<sup>37</sup> RoP, para 138, 11 March 2020

<sup>38</sup> RoP, para 345, 11 March 2020

<sup>39</sup> RoP, para 329, 11 March 2020

<sup>40</sup> Written submission from Marine Conservation Society, ClientEarth and RSPB

<sup>41</sup> RoP, para 99, 11 March 2020

previous access by the vessel and historic practice”. She said that each fisheries administration “will provide generic and area-specific conditions, such as special restriction if required”.

**66.** The Minister told the Committee that, as a minimum, “foreign vessels will in future be subject to the same licence conditions as UK vessels operating in Welsh waters”.

**67.** The Minister confirmed that the 2019-21 Bill “does not prevent foreign-owned vessels registering as British”. She emphasised that “any vessel which is registered as a UK vessel would be subject to the policies which support the national benefit objective”.

**68.** The Minister explained that the Welsh Ministers currently have the power to require onboard CCTV and remote electronic monitoring as a condition of the licence, although it has not been used to date. She also explained that a range of enforcement tools are already employed by UK administrations, including Vessel Monitoring Systems and Electronic Recording Systems. She added:

“...we will look to use the powers within licensing to enhance the reporting by non-UK vessels operating in our waters...These powers will extend to all non-UK vessels and not just those which are over 12 metres. We will also use licence conditions to ensure non-UK vessels adhere to UK domestic requirements...”

## Our view

We note the concerns expressed by several contributors about a current lack of effective monitoring and enforcement of regulations. As a result of the 2019-21 Bill, the Welsh Government will have greater responsibilities for the regulation of fisheries than ever before. We believe this provides an opportunity to ensure that the enforcement regime in Wales is robust and proportionate.

Last year the Minister consulted on Vessel Monitoring Systems for fishing boats in Wales. She stated that the preferred option is to introduce a statutory instrument which included provision to make it mandatory for all British fishing vessels under 12 metres in length operating in Welsh waters to carry a functioning vessel monitoring system on-board. The summary of outcomes document states that the date of implementation was expected to be from late 2019. The Minister should write to the Committee with an update on this matter.

We support, in principle, making Vessel Monitoring Systems and onboard CCTV licence requirements. However, we note the comments made in relation to the potential costs of such requirements. The Welsh Government should assess the financial implications of such measures and should publish the results.

**Recommendation 13.** The Minister should provide an update about the timescales for introducing legislation in relation to Vessel Monitoring Systems for all British fishing vessels under 12 metres in length operating in Welsh waters to.

**Recommendation 14.** The Welsh Government should assess the financial implications of making onboard CCTV a licence requirement and should publish the results of that assessment.

## 5. Fishing opportunities

### Power of Secretary of State to determine fishing opportunities

**69.** Clause 23 provides that the Secretary of State will set the total UK fishing opportunities in terms of both the maximum quantity of sea fish (the catch quota) and the maximum numbers of days that British fishing boats may spend at sea (the effort quota) but may only do so to comply with international obligations to determine fishing opportunities of the UK.

**70.** Clause 24 provides that a determination of fishing opportunities (catch and effort quota) under clause 23 can only be made after consultation with Welsh Ministers, Scottish Ministers, Northern Ireland Department and the MMO.

**71.** Equivalent clauses were included in the 2017-19 Bill.

**72.** The UK Government does not believe these provisions require consent. Conversely, the Welsh Government considers that the above provisions fall within the Senedd's legislative competence, and therefore require consent. The LCM offers no further details on the Welsh Government's position. In contrast, the LCM for the 2017-19 Bill stated the Welsh Government was "not content with the drafting of [the equivalent clause in the 2017-19 Bill]". The Supplementary LCM for the 2017-19 Bill expanded on the Welsh Government's concerns:

"...the implementation of international agreements in areas of devolved competence is not reserved, and falls within the Legislative Competence of the National Assembly for Wales. This was confirmed by the Supreme Court in Reference of the UK Withdrawal from the EU (Legal Continuity) (Scotland) Bill [2018] UKSC 64. As the term

‘International Obligations’ (used in the Bill) is broad and may cover the implementation of such an agreement, the Clause does impact on devolved competence...”

**73.** During the Committee’s consideration of the LCMs for the 2017-19 Bill, the Minister made clear that unless the matter was resolved, she would not recommend that the Senedd give consent to all relevant provisions in the 2019-21 Bill.

### Distribution of fishing opportunities

**74.** Clause 25 amends what will be provisions in retained EU law setting out criteria for the distribution of fishing opportunities. Article 17 of the CFP Regulation requires Member States to distribute fishing opportunities domestically according to transparent and objective criteria including those of an environmental, social, and economic nature.

**75.** Clause 25 will, in effect, ensure that existing requirements in the UK are maintained and applied to the Fisheries policy authorities (including the Welsh Ministers) and the MMO.

**76.** In the 2017-19 Bill, the requirement only applied to the Secretary of State and the MMO.

### Sale of Welsh fishing opportunities for a calendar year

**77.** Schedule 5 (introduced by Clause 27) provides for the Welsh Ministers to make regulations for the sale of rights to use Welsh fishing opportunities (catch quota and effort quota) for a calendar year. This power is new for the 2019-21 Bill.

**78.** The Welsh Ministers must consult such persons as they consider appropriate before making regulations. These regulations are subject to the affirmative resolution procedure.

### Our first report

**79.** In our first report, we concluded that the 2017-19 Bill was a “missed opportunity to rebalance a fundamental unfairness in the allocation of UK quota”, which, if left unaddressed would result in “marginal benefits for Welsh fisheries [post-Brexit]” (Conclusion 16). In response, the Minister told us that the 2019-21 Bill was not the appropriate place to address the imbalance in Wales’s quota share and that legislative provisions were not required to achieve this.

**80.** We set out what we considered a fair and sustainable approach to the allocation of UK quota in future, which included amending Article 17 and reviewing the Fisheries Concordat (Conclusion 17). We also called for any quota arising from Brexit to be allocated in accordance with environmental, social, and economic criteria, rather than historic catches (Conclusion 18).

**81.** In response, the Minister said that “Article 17 does not require amendment for the UK to move away from the use of historic catches as the main determination for allocation”. She told us that discussions with the other UK fisheries policy authorities had already begun with a view to addressing historic imbalances in Wales’s share of quota.

**82.** Finally, we called for an amendment to the 2017-19 Bill to address concerns about the extent of the power for the Secretary of State to determine fishing opportunities (Conclusion 19). The Minister told us that she had been unable to reach an agreement with the UK Government on amendments to provisions in relation to fishing opportunities. Instead, she had agreed that the UK Fisheries Framework Memorandum of Understanding (“MoU”) would set out more detail on the intended use of the Secretary of State’s power and strengthened consultation processes. This would “align with the work already underway on establishing an agreed Dispute Resolution Mechanism”.

## Evidence from stakeholders

### Distribution of fishing opportunities

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**83.** Professor Barnes noted that current arrangements for allocating quota between the UK fisheries policy authorities, i.e. through the Fisheries Concordat, are expected to continue post-Brexit. He added:

“I would like to have seen more in the Bill dealing with the principles of allocation and how that’s taken forward, but I suspect, in practice, it’s a very politicised issue and there would be a reluctance to actually set out in law how that has to happen.”<sup>42</sup>

**84.** Dr Beukers-Stewart highlighted that, despite the UK Government’s position that the division of future fishing opportunities between the UK and EU should be based on the principle of zonal attachment, “the Bill doesn’t mention using this

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<sup>42</sup> RoP, para 127, 11 March 2020



approach when determining agreements between the devolved nations (instead appearing to stick with the 2012 Concordat)".<sup>43</sup>

**85.** Respondents emphasised the need to move away from the continued use of historic catch records as a basis for allocating quota, towards a fairer system based on environmental, social, and economic criteria. They explained that, although Article 17 (in retained EU law, and as amended by the 2019-21 Bill) would enable the UK fisheries policy authorities to allocate quota according to environmental and social criteria, there would be no requirement on them to do so. MCS stated:

“Article 17 has been in place for nearly 10 years now and it has resulted in very little change to the way quota is distributed within the UK, and the UK is responsible for how we distribute our own quota—that’s completely down to ourselves—and we haven’t done that. We’ve had the opportunity to do it for 10 years and it’s not been done.”<sup>44</sup>

**86.** ClientEarth suggested that, unless UK fisheries policy authorities are required to allocate quota according to environmental and social criteria, they will continue to use historic catch records.<sup>45</sup>

**87.** Griffin Carpenter believed that the future Welsh Fisheries Bill should be “more prescriptive” in setting out environmental and social criteria that will be used as a basis for allocating quota in Wales.<sup>46</sup>

#### Sale of Welsh fishing opportunities for a calendar year

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**88.** Several respondents commented that the powers to sell Welsh quota were in anticipation of Wales gaining new quota after Brexit but not having the immediate capacity available to utilise it. WFA stated:

“...if, for example, Wales wasn’t able to meet the allocation it has been provided, the surplus there could be leased out in-year, while in the meantime we build the capacity of our fleets to realise those opportunities going forward, and along with that develop the

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<sup>43</sup> ~~Written submission from Dr Beukers-Stewart~~

<sup>44</sup> RoP, para 355, 11 March 2020

<sup>45</sup> RoP, para 357, 11 March 2020

<sup>46</sup> RoP, para 133, 11 March 2020



infrastructure then to make sure that we maximise the economic benefits to Wales.”<sup>47</sup>

**89.** WFA<sup>48</sup> and Griffin Carpenter<sup>49</sup> explained that the powers could be useful to pre-empt any challenge under Article 62 (Utilization of the living resources) of the United Nations Convention for the Law of the Sea. Article 62 provides for a coastal State that “does not have the capacity to harvest the entire allowable catch...[to] give other States access to the surplus of the allowable catch”.

**90.** Professor Barnes referred to a concern raised during scrutiny of the 2019-21 Bill in the House of Lords that the powers would “just be a way of actually generating revenue” and would leave small-scale fisheries “in a vulnerable position”. He added:

“...if there is a sale or a tender, the smaller independents are probably less able to pay the premiums that the larger concerns are able to pay. So there is concern that, actually, it might end up consolidating the quota in other hands.”<sup>50</sup>

**91.** However, Professor Barnes told the Committee that the UK Government had provided assurance that generating revenue was not the principal purpose of the provisions, but was “just one among many other factors that could be taken into account”. He added that the provisions could be used “to encourage environmentally-friendly practices or to build up particular sectors of fishery”.<sup>51</sup>

## Evidence from the Minister

**92.** The Committee sought an update from the Minister on the development of the UK Fisheries Framework MoU. She said that drafting of the MoU is underway, although there had been “delays over the last year to progress this work”. She expected the MoU to be in place by the end of the Implementation Period.

**93.** The Minister maintained that the power for the Secretary of State in Clause 23 “remains a red line issue for me because it is paramount the exercise of this

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<sup>47</sup> RoP, para 207, 11 March 2020

<sup>48</sup> RoP, para 206, 11 March 2020

<sup>49</sup> RoP, para 88, 11 March 2020

<sup>50</sup> RoP, para 84, 11 March 2020

<sup>51</sup> RoP, para 84, 11 March 2020

power, in future, is done so in a manner which respects the devolution settlement”. She added:

“Achieving the necessary level of assurance in the MoU in this matter is a priority for me, and my officials are working collaboratively on the development of the MoU to ensure this is achieved. I will be looking to the content of the Agriculture Bill World Trade Organisation Agreement to steer our development of the MoU on clause 23 of the Fisheries Bill, to ensure the arrangements agreed are robust and effective.”

**94.** When asked to explain why the Welsh Government was seeking powers in relation to the sale of Welsh quota, and how those powers would be used, the Minister explained that the allocation of fishing opportunities would be “a key part of our Future Fisheries Policy”. As such, it was “prudent to have a power included in the Bill so our options for policy development were not curtailed”.

**95.** The Minister explained that the power “could generate revenue which could be reinvested into the Welsh fishing industry to help them adapt and take up additional fishing opportunities in the future”. While there were no plans to bring forward a scheme at this time, any future proposals would be subject to consultation.

**96.** The Minister did not anticipate any such scheme being used to sell Welsh quota to foreign vessels “unless there is clear evidence of the benefit derived in Welsh coastal communities”. She also said that she expected the power “to only apply to additional quota”, although this would be subject to policy development and consultation on any proposals.

## Our view

Clause 23 provides a broad power for the Secretary of State to set UK quotas, which could, as drafted, apply to stocks of fish species which are only present wholly within the waters of one of the devolved administrations.

The Committee is concerned that the MoU to address Clause 23 is still being drafted and will not be available ahead of the debate on legislative consent. However, the Minister has said this is ‘a red line’. The Committee does not believe it would be appropriate to seek legislative consent until the Minister can inform the Senedd about whether her concerns have been addressed.

This Committee previously concluded that the 2017-19 Bill constituted a missed opportunity to rebalance a fundamental unfairness in the allocation of UK quota. It is our view that this has still not been addressed and remains the case for the 2019-21 Bill.

We also remain of the view that the Fisheries Concordat should be reviewed to reflect an increased emphasis on environmental, social, and economic criteria when allocating quota to the constituent nations of the UK. The Welsh Government should take full advantage of any future review of the Fisheries Concordat to secure an increase in Wales' quota allocation.

We welcome the new provisions for the sale of fishing rights. The Committee made recommendations on this matter in its first report and we believe it could serve to support the development of fisheries in Wales. We believe the Minister should give a commitment that any proceeds from such sales will be used to support coastal communities and the marine environment. Further, there should be extensive consultation to inform the development of any relevant scheme.

**Recommendation 15.** The Minister should explain to the Senedd whether her concerns in relation to Clause 23, which constitute 'a red line' for her, have been addressed.

**Recommendation 16.** The Minister should not bring forward the motion to give consent to the provisions in the 2019-21 Bill until the Members of the Senedd have been able to consider the Memorandum of Understanding in relation to Clause 23.

**Recommendation 17.** The Minister should provide an update on discussions held with the UK Government and the other devolved administrations in relation to a review of the fisheries Concordat.

**Recommendation 18.** The Minister should give a commitment that any proceeds from the sale of fishing rights will be used to support coastal communities and the marine environment. There should be extensive consultation to inform the development of any relevant scheme.

## 6. Financial assistance powers

**97.** During the UK's membership of the EU, funding for fisheries has been provided under the European Marine and Fisheries Fund ('EMFF').

**98.** Schedule 6 provides Welsh Ministers with powers to make regulations to give financial assistance, or to arrange for such assistance to be given, to any person for certain purposes. The powers will allow grant and loan schemes to be established for Wales after the UK's withdrawal from the EU when EMFF funding will come to an end. Regulations to establish schemes are subject to the affirmative resolution procedure.

### Our first report

**99.** In our first report, we called for the Welsh Government to secure an amendment to the 2017-19 Bill to require the Welsh Ministers to consult on proposals for any future financial assistance scheme for Wales (Conclusion 21).

**100.** The Welsh Government accepted our conclusion and reported that discussions with the UK Government about a potential amendment were ongoing.

### Evidence from stakeholders

**101.** Griffin Carpenter noted that the financial assistance powers would enable the Welsh Ministers to provide funding for a broader range of purposes than under the EMFF. He welcomed the inclusion of financial assistance for training, which he suggested could help support young entrants and, in turn, potentially rejuvenate the fishing industry in Wales.<sup>52</sup>

**102.** WFA said the changes to the financial assistance powers since the 2017-19 Bill “improve the scope [of the powers]”. Notwithstanding this, it questioned whether the powers were sufficiently broad to support technological developments to improve selective fishing. It stated:

“...in Europe, obviously, the successor to EMFF is already underway, and it will have that suite of proposals there where their fleet is being helped to adapt towards selective fishing techniques and so on. That’s going to be an ongoing challenge.”<sup>53</sup>

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<sup>52</sup> RoP, para 94, 11 March 2020

<sup>53</sup> RoP, para 231, 11 March 2020

## Evidence from the Minister

**103.** The Minister explained that the financial assistance powers have been widened “[to] match the breadth of what is funded under the European Maritime and Fisheries Fund (EMFF)”.

**104.** When asked to clarify the timeline the Welsh Government is working towards for the development of any new financial assistance scheme, the Minister stated:

“The UK Environment Secretary has committed that the Government will put in place new, domestic, long-term arrangements to support the UK’s fishing industry and marine environment, through the creation of four new schemes comparable to EMFF to deliver funding for each nation...My officials are working with UK Government and the other devolved administrations to identify scope to maximise the economic growth of the UK’s marine sectors. This work will guide policy in how best to support the sustainable growth of the different industry sectors in a strategic and streamlined way.

The devolved administrations will lead on their schemes and discussions will continue. Welsh Government will continue to develop proposals taking into account the effects of Brexit and COVID-19. These will determine the timeline for consultation on the new scheme.”

**105.** The Minister explained that including a requirement on the Welsh Ministers to consult on proposals for any future financial assistance scheme “could cause a potential disadvantage for Wales and Welsh fishers”. For example, if the Welsh Ministers needed to exercise their powers in an emergency. She added:

“The current COVID-19 pandemic has reinforced this and clearly shown the need for a level of flexibility to enable the government to act in an emergency. It remains the position, it would be a last resort to introduce a scheme without full and thorough consultation with those people who would benefit/be affected by it. Welsh Government policy is to consult before making all legislation and in all scenarios, the regulations made under schedule 6 would be subject to the affirmative procedure in the Senedd.”

## Our view

This Committee previously concluded that future financial assistance schemes should be underpinned by the fisheries objectives. The Committee expected

this to be explored through the Brexit and our Seas consultation. It did not. We emphasise our belief that the Welsh Government should commit to the financial assistance schemes being underpinned by the fisheries objectives.

We note the Minister's comments that the devolved administrations are leading on the development of their schemes. We would be grateful for an update on the Welsh Government's progress, including when we can expect proposals to be brought forward for consultation.

Finally, the Welsh Government should ensure that any new vessels purchased using monies from financial assistance schemes should be equipped with technologies to enhance sustainability and improve monitoring (including but not limited to CCTV and bycatch reduction devices).

**Recommendation 19.** The Minister should give a commitment that the financial assistance schemes for Wales arising from the 2019-21 Bill will be underpinned by the fisheries objectives.

**Recommendation 20.** The Minister should provide an update on the Welsh Government's progress in developing its financial assistance schemes, including when she expects proposals to be brought forward for consultation.

**Recommendation 21.** The Welsh Government should ensure that any new vessels purchased using monies from financial assistance schemes should be equipped with technologies to enhance sustainability and improve monitoring (including but not limited to CCTV and bycatch reduction devices).

## 7. Imposition of charges: powers of devolved authorities

**106.** Schedule 7 provides power for the Welsh Ministers to make regulations to impose charges in respect of relevant marine functions, including functions relating to fishing quota, ensuring that fishing activities are carried out lawfully, registration of buyers and sellers and catch certificates. These provisions are new for the 2019-21 Bill.

**107.** The Welsh Ministers must consult such persons as they consider appropriate before making regulations. These regulations are subject to the negative resolution procedure.

**108.** Equivalent powers are provided for the MMO and the other devolved administrations.

## Evidence from stakeholders

**109.** WFA raised concern about the power to impose charges. It suggested that certain businesses within the Welsh fishing industry were “not in a healthy enough state to withstand costs and charges that are at the moment unknown”.<sup>54</sup>

**110.** Professor Barnes believed that the power was an important addition to the 2019-21 Bill and could be used to generate revenue “to help reinvest in the [Welsh] fleet”. Notwithstanding this, he suggested that the power could give rise to “challenges” if exercised in different ways across the UK. He stated:

“...that then might have impacts upon, for example, the competitiveness between the different sectors or the different fleets within Wales, Northern Ireland, England and Scotland, because, obviously, if you impose cost recovery in one administration, it increases the cost of fishing there, and that might then put pressure on fisheries activities in other areas. So, I think that’s something that has to be considered...”<sup>55</sup>

## Our view

The Committee did not pursue these provisions with the Minister in correspondence. However, we would be grateful if the Minister could clarify the purpose for which she is seeking these powers and in what circumstances she envisages them being used. We would expect the Welsh Government to consult stakeholders about any proposals arising from these provisions. We also expect any regulations arising from these powers to be subject to a comprehensive financial impact assessment.

**Recommendation 22.** The Minister should clarify the purpose for which she is seeking powers to introduce charges and in what circumstances she envisages using them. Any proposals arising from these provisions should be subject to consultation and a comprehensive financial impact assessment.

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<sup>54</sup> RoP, para 221-223, 11 March 2020

<sup>55</sup> RoP, para 96-97, 11 March 2020

## 8. Amendments to the Marine and Coastal Access Act 2009

**111.** Part 2 of Schedule 9 amends the Marine and Coastal Access Act 2009 to provide the Welsh Ministers with powers in relation to the exploitation of sea fisheries resources. These powers would enable the Welsh Ministers:

- to make orders in relation to Wales for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats;
- to make orders in relation to the Welsh offshore region for the purposes of conserving marine flora and fauna, marine habitats or types of marine habitats and features of geological or geomorphological interest.

**112.** Currently, the Welsh Ministers are only able to make orders in connection with Marine Conservation Zones in the inshore region (0-12 nautical miles), of which there is one.

**113.** These powers are not exercisable by statutory instrument. As such, the Senedd would not automatically scrutinise orders made under these powers.

**114.** The above provisions are broadly the same as those contained in the 2017-19 Bill.

### Evidence from stakeholders

**115.** There was broad support for the provisions in Part 2 of Schedule 9. Griffin Carpenter said that the Welsh Minister's extended powers in relation to the exploitation of sea fisheries resources "could potentially be revolutionary". He explained:

"...it might be the type of thing that we'll look back on in five or 10 years and not realise how important this was. So, for example, with the climate change objective, Wales or any other fisheries administration could say, 'We're not going to allow fisheries in this whole region. We need to protect the habitat where carbon is stored'. You also have this equal-access objective, where fishers from different administrations can move freely within UK waters. So, you would have this whole zone that is designated as a non-fishing zone...So, what I'm saying is that, potentially, you could have a very forward-looking climate-focused



Government that uses this provision in a very strict way that, maybe, we're not anticipating at the moment."<sup>56</sup>

**116.** RSPB commented that the extended powers were an additional tool to help achieve good environmental status in the marine environment and to support sustainable fisheries management.<sup>57</sup>

## Our view

The Committee did not pursue these provisions with the Minister in correspondence. However, the Committee would be grateful for clarification of the following matter.

Orders created under the broad powers of Schedule 9 of the 2019-21 Bill are not Statutory Instruments. Unlike similar powers provided for Scottish Ministers which are treated as Scottish SIs as a result of an Act of the Scottish Parliament, the powers for Welsh Ministers will not be subject to automatic scrutiny by the Senedd. We would be grateful if the Minister would explain how she will ensure transparency and scrutiny of orders made in reliance on these powers.

**Recommendation 23.** The Minister should set out what opportunities will be made available for the Senedd and stakeholders to consider and scrutinise Orders created under the broad powers of sections 134A and 134B of the Maritime and Coastal Access Act 2009, as inserted by Schedule 9 of the 2019-21 Bill.

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<sup>56</sup> RoP, para 121, 11 March 2020

<sup>57</sup> RoP, para 333-336, 11 March 2020

## Annex A: List of oral evidence sessions.

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
<b>11 March 2020</b>	<p><b>Debbie Crockard</b> Marine Conservation Society - representing Greener UK</p> <p><b>Gareth Cunningham</b> RSPB Cymru</p> <p><b>Sarah Denman</b> Client Earth</p> <p><b>Jim Evans</b> Welsh Fishermens Association</p> <p><b>Professor Richard Barnes</b> University of Hull</p> <p><b>Griffin Carpenter</b> New Economics Foundation</p>

## Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee’s website.

Reference	Organisation
<b>FB 01</b>	Marine Conservation Society, RSPB and Client Earth
<b>FB 02</b>	Professor Richard Barnes, University of Hull
<b>FB 03</b>	Dr Bryce Stewart, University of York
<b>FB 04</b>	James Wilson, Bangor Mussel Producers

### Additional Submission

Title	Date
FB 02a Professor Richard Barnes, University of Hull	13 March 2020