

WRITTEN BRIEFING FOR THE AERA COMMITTEE

AN UPDATE ON THE FISHERIES BILL (WESTMINSTER)

Background

1. This paper provides a written update on the Fisheries Bill further to the oral briefing to the AERA Committee by DAERA officials on 5 March 2020, and the publication of the AERA Committee report on 1 July 2020.
2. A brief update on the Fisheries Bill was included in the written briefing to the AERA Committee for its meeting on 3 September on the legislative programme and EU Exit Preparation and Delivery.

Purpose of the Fisheries Bill

3. The Fisheries Bill provides the legal framework for the UK to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982, after the UK has left the Common Fisheries Policy.
4. The Fisheries Bill describes eight high level fisheries objectives that the UK Government and the Devolved Administrations must achieve. Whilst some of the objectives originate in the EU Common Fisheries Policy, they have been added to and strengthened to suit the needs of the UK as an independent coastal state.

Progress of the Fisheries Bill

5. The Fisheries Bill was introduced in the House of Lords on 27 January 2020 and completed its passage in this first House on 1 July 2020.

[Fisheries Bill \(as brought from the Lords\)](#)

6. A number of non-Government amendments were passed at Report Stage in the House of Lords. These are summarised in Annex 1.
7. Following its passage in the House of Lords, the Bill was introduced in the House of Commons on 2 July 2020 and had its Second Reading on 1 September 2020. At Second Reading the Government indicated that it would table amendments at Committee Stage to reverse the non-Government amendments passed in the Lords.
8. The Committee Stage of the Fisheries Bill will run from Tuesday 8 September 2020 to Thursday 17 September 2020. A number of Government amendments will be tabled at Committee Stage, some of which will apply to Northern Ireland. A summary of these amendments (and those which are due to be tabled subsequently at Report Stage) are included at Annex 2.

Legislative Consent

9. The legislative consent of the Northern Ireland Assembly (and of the other Devolved Administrations) is required before the Bill's Report Stage, the final stage at which the Bill can be amended.
10. The Minister tabled a legislative consent motion in March 2020 seeking approval of the Assembly for the Bill as introduced. A date for debate in the Assembly has still to be scheduled.
11. The Bill is expected to receive Royal Assent by the end of November 2020.

NON-GOVERNMENT AMENDMENTS TO FISHERIES BILL PASSED IN THE HOUSE OF LORDS

Sustainability objective

1. A new subsection was inserted into Clause 1 to provide that the “sustainability” objective is the primary fisheries objective, and would require future policies to give priority to environmental sustainability over economic and social sustainability, as well as to the other seven fisheries objectives.
2. The UK Government response at the House of Lords Report Stage was that there should be no hierarchy of objectives, and that the place for applying these objectives to the policies in each of the Devolved Administrations should be the Joint Fisheries Statement.
3. In that regard DEFRA has established a Joint Fisheries Statement Working Group to take this work forward, which includes representation from officials in each of the Devolved Administrations.

National landing requirement

4. A new clause 18 was inserted in the Bill in the House of Lords which requires the Secretary of State to bring forward regulations to introduce a UK-wide landing requirement having consulted

Ministers in the Devolved Administrations and bodies that represent the interests of the UK fishing industry.

5. The effect of this clause is that it would require the Secretary of State to bring forward regulations on setting an average landing requirement across all relevant species that is not less than 65%.
6. The UK Government response at the House of Lords Report Stage was that this amendment would mean legislating in areas of devolved competence, and would have the effect of imposing fisheries management policies on the Devolved Administrations without their consent. The UK Government further indicated that the powers in the Bill already provide for a wider range of benefits to the UK than would be provided for by a UK-wide landing requirement.

Remote electronic monitoring

7. A new clause 48 was inserted in the Bill in the House of Lords which requires the DEFRA Secretary of State to mandate universal adoption of remote electronic monitoring (REM) on all over 10m vessels.
8. The effect of this clause is that it would require the DEFRA Secretary of State to make UK-wide regulations to require all over 10m fishing vessels of whatever nationality fishing within the UK EEZ, and for all over 10m UK vessels fishing outside the UK EEZ, to be fitted with REM systems and cameras for the purpose of monitoring fishing activities.

9. The make-up of the fishing fleets differs across each of the Devolved Administrations and a one size fits all approach reflected in UK-wide regulations would not be appropriate.
10. The UK Government response at the House of Lords Report Stage was that the Bill already provides for the necessary powers to mandate the use of REM on vessels, with the Devolved Administrations' agreement; and gives the necessary flexibility to adapt to scientific and technological advances.

Reservation of English fishing opportunities for new entrants and boats under 10 metres

11. A new clause 27 was inserted in the Bill in the House of Lords for the reservation of English fishing opportunities for new entrants and boats under 10 metres. This amendment reserves new quota from the English allocation for new entrants and under 10m boats.
12. Whilst the amendment is intended to allocate the English fishing opportunities, as drafted it would see the minimum quota taken from the overall UK quota.
13. The UK Government response at the House of Lords Report Stage was that this issue is not only about the availability of quota; it is also about capital investment and the securing of fishing licences. The amendment would not achieve those objectives. Furthermore, there is a risk that the amendment could result in quota being unused or others receiving less quota than currently.

UK Government position

14. The UK Government has indicated that it will table amendments at the Commons Committee Stage to reverse the new clauses passed in the House of Lords.

ANNEX 2

GOVERNMENT AMENDMENTS TO FISHERIES BILL IN THE HOUSE OF COMMONS THAT APPLY TO NORTHERN IRELAND

AMENDMENTS TO BE TABLED AT COMMITTEE STAGE (8 SEPTEMBER – 17 SEPTEMBER)

Subject - Joint Fisheries Statement

1. An amendment to Clause 2 will extend the time period post Royal Assent, by which the Joint Fisheries Statement is to be published, from 18 months to 24 months. This extension is premised on a number of factors including the need for Devolved Administrations to engage with their respective Statutory Committees at various intervals as the Joint Fisheries Statement is developed, and also the Purdah period, which precedes the 2022 elections in the Devolved Administrations.

Subject - Provisions to publish grant recipient data

2. Schedule 6 to the Bill provides the powers for devolved authorities to provide financial assistance schemes for fisheries. This amendment would allow DAERA to include requirements to publish information about the assistance given under the financial assistance schemes.

3. A similar Government amendment is being included at Committee Stage for requirements to publish information on the financial assistance given under the schemes in England, Scotland and Wales respectively.

Subject – Amendment to Wildlife (Northern Ireland) Order 1985

4. The United States (U.S.) Marine Mammal Protection Act (MMPA) gives a very high level of protection for marine mammals, which includes the prohibition of intentional killing. From the 1 January 2022, the U.S. will only permit the importation of fish and fish products that have marine mammal protection standards equivalent to those which apply to U.S. citizens.
5. Countries wishing to export to the U.S. from 1 January 2022 need to have obtained a “comparability finding” which they can only do if their fishing regimes and regulatory frameworks are in compliance with the MMPA. The U.S. has said that compliance needs to be in place by 1 March 2021 in order to allow a period of time for applications for comparability findings to be considered and, as part of that process, systems assessed.
6. Under current UK legislation, including the Wildlife (Northern Ireland) Order 1985, permission can be granted, albeit under licence, to shoot seals in order to protect fisheries interests. These generally relate to the protection of salmon farms.

7. The Scottish Government has amended the Marine (Scotland) Act 2010 and prohibited the intentional killing of seals to protect fisheries and fish farms. These amendments were made under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.
8. In England and Wales, licences for killing, injuring and taking seals may be granted under the Conservation of Seals Act 1970, and Defra is intending to use the Fisheries Bill to make the necessary amendments.
9. In Northern Ireland, DAERA may grant licences to kill seals for the purpose of preventing serious damage to fisheries. There is only one salmon farm in the Northern Ireland marine area, and a licence was last granted for this purpose in 2014 and has expired. The operator applied for a licence in 2018, but DAERA asked the operator to use alternative methods to protect the fishery, such as improved netting and acoustic deterrents.
10. Despite there being no active licences issued for the purpose of protecting fisheries, in order to obtain the necessary comparability finding with the MMPA, the Wildlife (Northern Ireland) Order 1985 must be amended by 1 March 2021 to remove the option of granting a licence to kill seals for the purpose of preventing serious damage to fisheries.
11. Given the deadline for having the necessary amendments in place, and the other environment and fisheries legislation being developed at this time, it would not be possible to make the

amendments to the Wildlife (Northern Ireland) Order 1985 through the Assembly. The Department has therefore asked for the amendments to be made through the Fisheries Bill and a new clause is being introduced.

12. This amendment to the Bill will be made at Committee Stage, and inserts a new clause which introduces a new Schedule on the conservation of seals and includes the necessary amendments to the Wildlife (Northern Ireland) Order 1985 (as amended), to enable it to comply with the U.S. MMPA.

Subject – Definition of Minimum Conservation Reference Size

13. This amendment is necessary to provide clarity for the definition of “minimum conservation reference size”, so that in relation to an aquatic organism, it is the size of a member of the species of which the organism is a member, at the level of maturity of that organism, below which capture or retention is prohibited or restricted.

Subject – Communication of fishing licences

14. Clause 17 of the Fisheries Bill (as introduced in the House of Commons) provides for the power to grant licences in respect of foreign fishing vessels and Part 2 of Schedule 4 (Access and licensing: minor and consequential amendments) makes a number of consequential amendments to the respective licensing legislation in each of the Devolved Administrations (including the Sea Fishing (Licences and Notices) Regulations (Northern

Ireland) 2014) which provide for the communication of such licences.

15. A further amendment to the Sea Fishing (Licences and Notices) Regulations (Northern Ireland) 2014 is one of a group of amendments necessary which applies to each the respective licences and notices regulations in each of the Devolved Administrations.
16. The amendments introduce an expedited process for the granting of temporary licences to foreign fishing vessels by communicating them electronically to the European Commission (or in the case of a non-EU fishing vessel, the relevant regulatory authority), and publishing them on the web.

AMENDMENTS TO BE TABLED AT REPORT STAGE (DATE STILL TO BE ANNOUNCED)

Subject – powers for DAERA to regulate fishing for marine conservation purposes in the Northern Ireland Offshore Region

17. The Bill (as introduced) amended the Marine and Coastal Access Act 2009 to provide powers for Scottish and Welsh Ministers to regulate fishing for marine conservation purposes in their respective offshore regions.
18. Amendments will be tabled at Report Stage to amend the Marine and Coastal Access Act 2009 to provide DAERA with similar

powers to the Scottish and Welsh Ministers to regulate fishing in the Northern Ireland offshore region.

Subject – amendments to subordinate legislation

19. Schedule 2 to the Fisheries Bill makes amendments to secondary legislation that applies in each of the respective Devolved Administrations to ensure that foreign fishing vessels licensed to fish in UK waters will be subject to the same requirements and restrictions as UK fishing vessels operating in those areas.
20. This includes secondary legislation made to address local issues which, because of EU law, could previously only be applied to UK vessels.
21. An amendment will be tabled at Report Stage to include the list of minor amendments required to 6 Northern Ireland Statutory Rules to ensure that the restrictions and requirements in them will apply equally to all fishing vessels licensed to fish in the Northern Ireland zone.

Subject - Delegation of powers to public authorities

22. The Scottish Government has asked that a new provision is inserted in the Bill to enable Scottish Ministers to delegate functions to other UK public authorities or agencies, in case that should prove to be useful under future fisheries management arrangements.
23. This amendment will provide the powers for the Scottish Ministers, the Welsh Ministers and DAERA to enter into

arrangements - for example, with other Devolved Administrations and the Marine Management Organisation.

24. The aforementioned authorities may in the future want to join up - for example, on control and enforcement, digital services and science. This amendment provides the legislative basis to easily put in place the necessary joint working arrangements.