

# Agenda – Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

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Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 3 – Y Senedd	Marc Wyn Jones
Dyddiad: Dydd Mercher, 16 Ionawr 2019	Clerc y Pwyllgor 0300 200 6363
Amser: 09.00	<a href="mailto:SeneddNHAMG@cynulliad.cymru">SeneddNHAMG@cynulliad.cymru</a>

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**Rhag-gyfarfod anffurfiol i drafod y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Pysgodfeydd y DU (09.00 – 09.15)**

Nodiadau Cyngor Cyfreithiol ynghylch y Memorandwm Cydsyniad Deddfwriaethol ar y Bil Pysgodfeydd

**1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau (09.15)**

**2 Trafod y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Pysgodfeydd y DU: sesiwn dystiolaeth gydag academyddion (09.15–10.15) (Tudalennau 20 – 42)**

Yr Athro Richard Barnes, Deon Cyswllt ar gyfer Ymchwil – Prifysgol Hull  
Griffin Carpenter, Uwch Ymchwilydd – New Economic Foundation  
Dr Bryce Stewart, Arweinydd Rhaglen BSc / MEnv Gwyddorau Amgylcheddol – Prifysgol Caerefrog

**Dogfennau atodol:**

Papur Ymchwil

Papur – New Economic Foundation

Papur – Prifysgol Caerefrog



**3 Trafod y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Pysgodfeydd y DU: sesiwn dystiolaeth gyda chynrychiolwyr o'r diwydiant pysgota**

(10.15–11.15)

(Tudalennau 43 – 54)

Jim Evans, Cadeirydd – Cymdeithas Pysgotwyr Cymru

Jon Parker, CamNesa

Jeremy Percy, Cyfarwyddwr – Cymdeithas Newydd Pysgotwyr o dan Ddeg

**Dogfennau atodol:**

Papur – Cymdeithas Pysgotwyr Cymru Cyf

Papur – Cymdeithas Newydd Pysgotwyr o dan Ddeg

**Egwyl (11.15–11.25)**

**4 Trafod y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Pysgodfeydd y DU: sesiwn dystiolaeth gyda sefydliadau amgylcheddol**

(11.25–12.25)

(Tudalennau 55 – 64)

Debbie Crockard, Greener UK

Sarah Denman, Cyfreithiwr gyda UK Environment – ClientEarth

Emily Williams, Cyswllt Amgylchedd Cymru

**Dogfennau atodol:**

Papur – Cyswllt Amgylchedd Cymru a Greener UK

**5 Papurau i'w nodi**

(12.25)

**5.1 Gohebiaeth gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig at y Cadeirydd ynghylch Bil Pysgodfeydd y DU – Memorandwm Cydsyniad Deddfwriaethol Atodol**

(Tudalennau 65 – 66)

**Dogfennau atodol:**

Gohebiaeth at y Cadeirydd – 8 Ionawr 2019

**5.2 Gohebiaeth gan y Cadeirydd at Weinidog yr Amgylchedd, Ynni a Materion Gwledig ynghylch Bil yr Amgylchedd (Egwyddorion a Llywodraethu) Drafft Llywodraeth y DU**

(Tudalennau 67 – 70)

**Dogfennau atodol:**

Gohebiaeth gan y Cadeirydd – 10 Ionawr 2019

**5.3 Gohebiaeth gan y Cadeirydd at Weinidog yr Amgylchedd, Ynni a Materion Gwledig ynghylch ystyried y Memorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil Pysgodfeydd**

(Tudalennau 71 – 75)

**Dogfennau atodol:**

Gohebiaeth gan y Cadeirydd – 11 Ionawr 2019

**6 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o gyfarfod heddiw ar gyfer eitem 7  
(12.25)**

**7 Y Memorandwm Cydsyniad Deddfwriaethol ar gyfer Bil Pysgodfeydd y DU: trafod y dystiolaeth  
(12.25–12.40)**

Mae cyfyngiadau ar y ddogfen hon

# Eitem 2

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

## Summary

1. As an enabling bill, the Fisheries Bill serves an important function in transposing existing legislation, but many of the important decisions over the future of fisheries in the UK are still to be made and in an increasing tight time frame.
2. The legislative framework of the Fisheries Bill is appropriate and concerns of a potential 'power grab' by Westminster appear to be addressed. This approach leaves much fisheries management up to the fisheries administrations including the Welsh Government, which comes with its own concern that the opportunities for new and innovative management approaches may not be seized.
3. The health of the marine ecosystem, on which all fishing activity is based, is front and centre in the Bill's objectives but key legal provisions are missing from the Fisheries Bill to ensure that these objectives are delivered.
4. The allocation of fishing opportunities takes a very status quo approach in the Fisheries Bill. Our research for the Wales Centre for Public Policy, as well as the excitement generated by the current spotlight on fisheries, is clear that a more transformative approach is required. There is also the significant issue that with the 2012 Concordat continuing to operate through the Fisheries Bill, Wales will continue to receive a small share of UK fishing opportunities.
5. Inshore fisheries management – the predominant form of management for the large numbers of small shellfish boats that characterise fisheries in Wales – should be empowered through the Fisheries Bill to really take control of fisheries management out to 12 nautical miles. A rethink is also required within Wales as to how inshore fisheries management should evolve in future fisheries legislation.

## Background

6. At the New Economics Foundation (NEF) we have been working on European fisheries for the past decade. Our work in the UK has included two recent reports on the impact of Brexit on Welsh fisheries, a report for the Wales Centre for Public Policy, *Implications of Brexit for fishing opportunities for Wales*, and a report produced with Miller Research, *Welsh Seafood Sector Brexit Readiness Research*.
7. Whereas environmental policies are often pitted against economic outcomes, our research has demonstrated that sustainable fisheries management makes economic sense. As fish populations have diminished in size due to overexploitation, decreasing fishing pressure would allow fish stocks to grow in size. It is both counterintuitive but also immediately evident that sustainable management, by allowing fish populations to grow in size, means that catches can increase from their current levels. Both environmental and economic objectives point in the same direction of change.
8. This approach to reducing fishing pressure in order to generate largest future catches has been slowly implemented in EU fisheries through recent reforms of the Common Fisheries Policy (CFP). Over the past twenty years fishing pressure has been decreasing, and in response, fish

stocks have been growing for the past ten, fishing limits (e.g. quota) are now increasing, and for the past five years revenues, profits, and investment are all increasing year-on-year.

9. Just as twentieth century fisheries management was a story of unsustainable fisheries pressure damaging fish stocks and economic opportunities, twenty-first century fisheries management in the EU has seen a reversal of this trend. The sustainability of fish stocks is recovering and with it the opportunities for sustainable economic opportunities. This story of environmental and economic improvement is different to the one usually told about UK fisheries during the Brexit referendum campaign, but the distinction is an important one. Profits in the UK fishing fleet are at a record high while the number of vessels and fishers are at a record low. In this sense, questions about future fisheries management in the UK quickly move to larger debates about how we think about our economy.
10. This evidence submission will add a perspective from new economic thinking to four main areas of relevance to the Fisheries Bill: the legislative framework, sustainability provisions, the allocation of fishing opportunities, and inshore fisheries management.

### **Legislative framework and enabling powers for Wales**

11. The Fisheries Bill is a piece of framework legislation, providing tools for fisheries management rather than detailed policies. The objectives that are set out are broadly good ones, although there is no explicit recognition in these objectives that fisheries are a public asset and as such should be managed for the UK public in both the present and the future as a public trust.
12. The Fisheries Bill aims to create a common framework for managing fisheries across the fisheries administrations, but it is not yet clear how the Welsh Government and the other fisheries administrations will shape that process (e.g. consultation, co-design, mutual agreement).
13. In the lead up to the First reading of the Fisheries Bill, there were concerns that there may be a power grab by Westminster. As we understand the issue this has not in fact occurred and broad powers are provided to the fisheries administrations. This has even occurred in surprising instances, such as the requirement that fishing opportunities are allocated in a transparent and objective manner (which only applies to England).
14. This empowerment gives rise to the opposite concern, however, that the Welsh Government is not in a position to seize on the opportunities provided. Historically the Welsh Government has not made major developments in fisheries policy and recent changes to inshore fisheries management are a worrying sign that future fisheries management will not see Welsh fishers really be taking control of their future.
15. There is also the issue of the Welsh share of UK fishing opportunities. At present this is governed through the 2012 Concordat and Wales receives a very small share of the UK total. At present through the Fisheries Bill this would be set to continue. As detailed in our report for the Wales Centre for Public Policy, *Implications of Brexit for fishing opportunities for Wales*, the consequence is that any gain in fishing opportunities from the EU would accrue mostly to English and Scottish fleets and landing to Wales could actually decrease (as Belgian fleets currently land in Wales).

### **Sustainability provisions**

16. Ecosystem health and sustainable resource use are appropriately front and centre in the Fisheries Bill's objectives. However, the actual legal provisions of the Fisheries Bill contain some important omissions that are cause for concern. One of these omissions is the removal of the objective in the EU's Common Fisheries Policy to end overfishing (reduce fishing pressure to levels that can produce the maximum sustainable yield) by 2020 at the latest. As this was

one of the landmark inclusions in the 2013 reform of the Common Fisheries Policy, its absence from the Fisheries Bill is glaring.

17. There are three potential reasons for this omission. First, given that 2020 is just one year away, this deadline may simply be assumed as the UK's position. However this is not a reason for failing to make a legal commitment, especially for something that is such an important element of the most recent CFP reform and something that is quantifiable.
18. The second potential reason for this MSY omission is that it may be seen to bind the hands of the UK Government in international quota negotiations. This is true not just for the MSY 2020 deadline but also beyond. The thinking is that if the UK is committed to MSY then the other actors in the negotiation could raise their fishing pressure and force the UK into a position where it must reduce its fishing pressure below its own share of the stock based on an MSY assessment in order to ensure that the stock is kept at MSY levels. But this dynamic of international negotiations is not new. The EU's commitment to MSY is there in annual negotiations with third countries including Norway, Iceland, the Faroe Islands, and Russia. Despite the fact that the EU cannot force these third countries to apply an MSY framework, the EU has a clearly defined MSY objective. What is required at least as a minimum is a publishing of how the UK will fish to MSY within its own considerations of stock sharing so that there is a transparent explanation of how the UK is holding to MSY despite the complications of international agreements.
19. The third and final reason is that the government is not committed to MSY. While this is not assumed, it is important to note that some voices in the fishing industry have resisted the MSY framework. One of the arguments used is that the MSY framework is not applicable to mixed fisheries. This is a misunderstanding of the MSY framework and assumes that the objective is to use MSY as a target rather than as a limit. While it is true that MSY cannot be fished for multiple species in a mixed fishery simultaneously, this is not an issue if MSY is properly considered as a limit. Some species in the mixed fishery will be fished benefit MSY reference points in order to protect the integrity of the whole fishery. Clearly when environmental and conservation groups advocate MSY their objective is not in fact to maximize the tonnage extracted from the ecosystem (as MSY is based on) but simply to bring fishing pressure down to at the very most this level. Within this space defined by MSY reference points there is legitimate debate about the optimal rate of extraction, but it should not be assumed that the optimum is always the maximum, especially in mixed fisheries.
20. The Fisheries Bill should be amended to include a duty to set fishing opportunities in accordance with MSY by 2020 and beyond.

### **The allocation of fishing opportunities**

21. Whereas the issue we take with sustainability provisions is the absence of commitments that are currently included in Article 2 of the EU's Common Fisheries Policy (holding and maintaining the 2020 deadline to achieve MSY for all commercial fish stocks), the issue we take with respect to the allocation of fishing opportunities is that the text of the ineffectual Article 17 is directly transposed into English law. To directly transpose Article 17 of the CFP with all the critiques that have been levelled is just as surprising as the Article 2 omission.
22. At the time of its inclusion in the CFP, Article 17 was intended to have a transformative effect on EU fisheries. Across the EU, Member States allocate fishing opportunities almost entirely based on track records. By shifting to a criteria-based approach, a more active approach to fisheries management would shape the industry around delivering public benefits from quota. Our 2011 report, *Value slipping through the net: Managing fish stocks for public benefit*, contributed to this shift in thinking by illustrating how different fishing techniques for cod – gillnets and



trawlers – generate (and erode) value for society in the form of GVA, employment, discards, subsidies, and carbon emissions.

23. This transformative effect did not materialise, however. To date, Ireland is the only EU Member State that sets aside quota for fishing vessels in a criteria-based approach and explains how it accords with Article 17. The UK fisheries administrations have not seized the opportunity. The only major change to the allocation of fishing opportunities, the reallocation of unused fishing quota by Defra to the under-10m pool, occurred in 2012 before the CFP reform and Article 17.
24. The key reason for this lack of Member State uptake is the fact that as written, Article 17 is only binding that criteria must be transparent and objective. Most Member States, including the UK fisheries administration thus continue to allocate fishing opportunities based on historical track records – one possible objective criterion. By merely transposing the existing wording of Article 17 there is little doubt that this text will continue to have no bearing on the actual functioning of UK fisheries management.
25. Curiously this obligation in the Fisheries Bill only applies to English fisheries. While different fisheries administration can apply, with good reason, their own criteria for the allocation of fishing opportunities, the drafting in the Fisheries Bill is a poor combination of open commitments that only apply to English fisheries.
26. It is possible that changes to the allocation of fishing quota will occur at a later stage, in particular with any fishing opportunities that are gained as a result of Brexit. While this is perhaps the easy approach to reforming the allocation of fishing opportunities and avoids confrontation (i.e. not ‘robbing Peter to pay Paul’ but rather ‘robbing Pierre to pay Paul’), there are major drawbacks to relying on extra quota post-Brexit.
27. First and foremost, there is no certainty when, if ever, these extra fishing opportunities will materialise. The recent developments with the Withdrawal Agreement only confirm this and the fears of this fishing industry.
28. Secondly, there is a mismatch between the fishing opportunities that the UK may gain in large quantities under a zonal attachment approach (e.g. sandeel, Norway pout, herring) and quota that is needed for inshore fisheries (e.g. haddock, some cod stocks). The largest gains are for the offshore pelagic fleets.
29. However, the most significant problem with relying on these reallocations at a later stage, is that it cements the idea that existing quota is property in the hands of quota holders. By continuing to allocate quota in the same method to the same quota holders, this has led to the development of a “reasonable expectation” for this to continue and without any scrutiny the “accidental privatisation of marine life”. Brexit, and in particular the Fisheries Bill, represents the best chance to give notice (e.g seven years) that quota will be renationalised and allocated in a different method. The Faroes provide a recent model for how this overhaul of existing holdings could take place. All future quota should be allocated as a time-bound lease. Denmark provides an example of this model, although the period of validity was recently extended during a reform that shifted more quota to a segment of small-scale, low-impact fishers.
30. The Fisheries Bill should be amended to include a mandate that environmental and social criteria are used in all fisheries administrations for the allocation of future opportunities (both existing and new), while the specific criteria within these domains can remain a devolved competence. Our report for the Wales Centre for Public Policy, *Implications of Brexit for fishing opportunities for Wales*, explores specific approaches and criteria that could be used to allocate fishing opportunities in Wales.

### **Inshore fisheries management**

31. Absent from the Fisheries Bill is the empowerment of inshore fisheries bodies. In England, these bodies, the Inshore Fisheries Conservation Authorities (IFCAs) have been progressing in remit and competences. In Wales the inshore fisheries bodies (Inshore Fisheries Groups - IFGs) have been disbanded and there has been a centralisation of management via the Welsh Marine Fisheries Advisory Group (WMFAG). In future fisheries legislation this absence of inshore fisheries bodies in Wales should be corrected.
32. To empower inshore fisheries management in future fisheries legislation, representative fishing organisations should be invited to re-join regional IFGs and their cumulative geographical remit should be extended out to 12 nautical miles. This matches NEF proposals for England, where the adaptive co-management model being developed through IFCAs holds promise for the management of the 12nM territorial waters, whether for MPAs, shellfish management or the development of recreational angling management and development strategies.
33. Furthermore, future modes of cost recovery (which are certainly necessary in all UK fisheries in recognition both of the costs of fisheries management, profits being made off a public resource, and environmental externalities that are generated) should be designed with a recognition that these inshore bodies will continue to grow as a primary point of management.
34. The Fisheries Bill should be amended to extend the geographical remit of the Inshore Fisheries and Conservation Authorities (IFCAs) from the current 6 miles to 12, to allow for local solutions to unique environmental challenges along our coastline.

### **Conclusion**

35. As a framework for fisheries legislation, the Fisheries Bill provides a useful basis for future policy and the provisions in the Bill enable the Welsh Minister to introduce new fisheries legislation post-Brexit. In our view there are no serious issues with the Fisheries Bill that would challenge or prevent the Minister from carrying out this function. However, we have some concerns with the Fisheries Bill in the areas of sustainability provisions, the allocation of fishing opportunities, and inshore fisheries management. We have suggested amendments in these areas to ensure that the future of fisheries around the UK is fair and sustainable.
36. We look forward to discussing the issues raised in this submission with the Climate Change, Environment and Rural Affairs Committee on 16 January 2019.

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,  
Environment and Rural Affairs Committee

Memorandwm Cydsyniad Deddfwriaethol ar Fil Pysgodfeydd y DU | Legislative  
Consent Memorandum on the UK Fisheries Bill

Ymateb gan : Dr Bryce D Stewart, Adran yr Amgylchedd a Daearyddiaeth, Prifysgol  
Caerefrog

Evidence from : Dr Bryce D Stewart, Department of Environment and Geography,  
University of York

*I am a marine ecologist and fisheries biologist (BSc (Hons) in Zoology at the University of Melbourne, PhD in Marine Biology at James Cook University) with over 25 years of professional experience. I am currently employed as a Lecturer in the Department of Environment and Geography at the University of York. I have been researching the potential effects of Brexit on UK fisheries and the marine environment since the end of 2015. I have published a number of articles and reports on the subject and have given oral and written evidence to the House of Lords and UK Parliament. I have also presented this research through numerous seminars, workshops and conferences, and in the media (online, print, radio and TV). This submission is in a personal capacity only.*

## **1. What are your views on the legislative framework for the UK after Brexit as set out in the UK Fisheries Bill?**

1.1. The Fisheries Bill is largely a piece of enabling legislation, designed to adapt the existing regulations that manage most UK fisheries (under the Common Fisheries Policy - CFP) once the UK leaves the EU (Brexit) and becomes an independent coastal state. As stated in your brief, the Bill does stipulate some reforms specific to the management of English fisheries, but these are of limited relevance to this particular enquiry.

1.2. At face value, the high-level objectives of the Fisheries Bill appear very positive. These include an aim to ensure the environmental sustainability of fisheries based on environmental and socio-economic criteria. The adoption of the precautionary principle is also to be commended, especially the goal to maintain fish stocks above (not just at) levels capable of producing maximum sustainable yield (MSY). I am further encouraged by objectives to implement the ecosystem approach and to use the best available science to manage fisheries. Likewise, there is a goal to eliminate fishery discards. Many in the UK fishing industry will no doubt also welcome the revocation of equal access for EU fishing vessels to waters within the UK fishery limits.

1.3. Despite these positive signs, the Bill appears to lack binding commitments. The details of exactly how all of the objectives in the Bill will be achieved, when they will be achieved, and how the UK government (and/or devolved nations) will be held accountable if they are not, remains unclear. This is primarily because the objectives in the Bill are only that, high-level aspirations, not duties. For example, true integration of the ecosystem approach to fisheries management has been promised by many governments, but has rarely been delivered successfully. Likewise, although the CFP commits to ending overfishing by 2020, the Fisheries Bill provides no such deadline. High expectations of increased UK catch opportunities (quota shares) post-Brexit, promoted by many in the UK fishing industry, and indeed the UK government itself, could lead to overfishing if there is not strong collaboration and agreement in the management of shared stocks. The Fisheries Bill may contain an objective to follow the best available science when deciding

on fisheries management measures, but this could be strengthened by making it a statutory mandate, as in the Magnuson-Stevens Act, which commits USA fisheries managers to follow scientific advice that ensures fish stock recovery and sustainability for all stakeholders.

1.4 Likewise, although there is an objective in the Bill to “gradually eliminate discards, on a case-by-case basis, by avoiding and reducing, as far as possible, unwanted catches” which sounds encouraging, it also raises concerns. This approach is actually less stringent and comprehensive than the CFP’s current landing obligation (fully implemented on January 1<sup>st</sup> this year) and suggests that unless its effectiveness is closely monitored, the UK may take a backwards step on discards when it does leave the CFP. This objective will apparently be achieved (in England only) by charging fishermen for unwanted catches. However, if the devolved nations chose different approaches this could cause enormous problems, with fishermen deciding where to land their catches based on which regime is most favourable to them. This example is one of many that highlight the need for a relatively common approach to fisheries management, right around the UK.

1.5 Finally, restrictions on access of EU fishing vessels to UK waters will likely lead to reciprocal restrictions on UK fishing vessels in EU waters. This could have significant negative implications for certain members of the UK fishing fleet, which requires further investigation and consideration.

## **2. What are your views on the provisions in the UK Fisheries Bill that will enable the Welsh Ministers to bring forward policy in relation to Welsh fisheries after Brexit?**

2.1. Wales has been granted some independent powers under the Fisheries Bill (e.g. in licensing, financial support and marine conservation) but the wider powers of the devolved nations remain to be agreed and are uncertain. The Bill aims to create a common framework for managing fisheries across the devolved nations, but it is not yet clear how Wales and the other devolved nations will feed into that i.e. through consultation or co-design and mutual agreement.

2.2. The UK government will continue to be responsible for international engagement (e.g. negotiations over matters such as trade and the management of internationally shared fish stocks) and for meeting international obligations (e.g. to UNCLOS, the Convention on Biological Diversity Aichi Biodiversity Targets, and the United Nations Sustainable Development Goals), although Wales can take independent measures to help support these obligations.

2.3. Importantly, the proportion of fishing opportunities (quota) available to Wales will continue to be controlled by the UK through the 2012 Fisheries Concordat, unless that is renewed / adapted in the future. Therefore, Wales will only be able control the distribution of the quota it has been allocated by the UK, within the Welsh fleet. Although fishermen in England may be able to tender for a certain amount of extra quota (if it becomes available after Brexit), the Bill effectively indicates there no current plans to re-allocate any extra share of quotas to Welsh fishermen. This will be the case even if extra quota is gained by the UK through it switching to a zonal attachment system for deciding quota shares between the UK and other relevant countries. This is because Welsh fishermen hold such a limited amount of UK quota at present, approximately 1% of the UK total. Instead, it appears that any gains in quota will largely be awarded to existing quota holders in other parts of the UK.

2.4. It has been argued that the Welsh fishing fleet does not currently have the capacity to take up extra quota if it becomes available in the future. That may be true, but the extra quota could be leased until the necessary capacity has been developed in Wales. Such growth of the Welsh of the fishing fleet would likely require financial support, at least in the short term.

2.5. An amendment to the Fisheries Bill, tabled by the UK fisheries minister George Eustice in December 2018, has allocated an extra £37.2 million to the UK fishing industry during the implementation period. This sounds positive, but what happens if the implementation period is extended (which seems likely at present)? Furthermore, only £2.4 million (6.5%) is being allocated to Wales. Is that equitable? In the same announcement, it was stated that a long-term replacement of the European Maritime and Fisheries Fund (EMFF) would be created for operation after the implementation period, with separate schemes for each nation of the UK. Details of this remain to be seen, but are due to be announced at the end of 2019.

2.6. At present Welsh fishermen are uniquely vulnerable in the face of Brexit – they hold very little quota for finfish or *Nephrops* prawns so concentrate almost entirely on non-quota shellfish species (e.g. crabs, lobsters, scallops and whelks) of which approximately 90% are exported to the EU or other countries through the EU's trade agreements. Therefore, Brexit does not provide any obvious gains to these Welsh fishermen, but could threaten their main market, the EU.

2.7. A 'no deal' Brexit would be the worst-case scenario for Welsh fishermen. Although this would result in moderate tariffs under WTO rules, a larger real threat is non-tariff barriers. These would result in delays to exports due to extra hygiene checks and processing of paperwork (e.g. catch certificates). Even small delays in the existing supply chains could severely affect the price and therefore profitability of exports, particularly for shellfish, which are normally exported fresh or alive.

#### *2.8. Recommended Priorities for Wales:*

- i) The nature of the common framework for managing fisheries among the devolved nations is clarified as a matter of priority.
- ii) Wales seeks to gain a more equitable (likely greater) share of the total amount of quota available to the UK.
- iii) Wales ensures appropriate levels of financial support are available to Welsh fishermen through the Brexit process, and to support development of its fishing fleet, should Wales gain a greater share of UK quota in the future.
- iv) Maintaining frictionless trade in seafood with the EU is prioritised at the highest level.

### **3. Do you wish to raise any other matters in relation to the provisions in the UK Fisheries Bill as they relate to Wales?**

3.1. General uncertainty around the future is a significant issue for fishing businesses, be they in the catching or processing sectors, or in Wales or in anywhere else in the UK. We still do not know what the final 'Brexit deal' will look like (assuming Brexit still happens or that we do not end up with no-deal). Likewise, we do not know if the Brexit transition (implementation) period will be extended, or by how much, but given recent developments in the UK Parliament it seems likely this will occur. The UK wants to separate out fisheries management (particularly EU access to the UK EEZ) from wider trade deals. The EU, on the other hand, maintains the two should be linked (i.e. frictionless trade with the EU will only be allowed to continue if the UK continues to allow current levels of EU fishing fleet access to the UK EEZ, and maintains the current system of quota allocation). Given the limited contribution that fishing makes to the UK's GDP relative to other industries that rely on trade with the EU, the EU certainly appears to have the stronger hand in this negotiation.

3.2. The lack of timeframes in the Fisheries Bill and general uncertainties around Brexit and negotiations with the EU (for example, over future allocation of quota shares between the UK and EU), make it difficult to know how long it will be until we see real changes in the management of UK fisheries or any extra quota available to the UK as a whole. Even if ultimately successful, some commentators have suggested negotiations with the EU over quotas could take the best part of a decade. In the first instance, it would

therefore be prudent to see Brexit as opportunity to reform the facets of the UK fisheries management system that do not require negotiation with the EU. Chief among these is fairer distribution of existing UK quota to the devolved nations (see above) and the small-scale (under 10 m) fishing fleet in general. Small-scale vessels make up the majority of the UK fishing fleet (and dominate the Welsh fishing fleet in particular), but currently hold less than 5% of the UK quota. These vessels generally have lower environmental impacts, but are more closely connected to local communities and provide more jobs. Making these changes would directly support one of the Fisheries Bill's primary objectives – to manage fisheries in a way that is environmentally sustainable while ensuring economic, social and employment benefits.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Memorandwm Cydsyniad Deddfwriaethol ar Fil Pysgodfeydd y DU | Legislative Consent

Memorandum on the UK Fisheries Bill

FB 06

Ymateb gan : Cymdeithas Pysgotwyr Cymru Cyf

Evidence from : Welsh Fisherman's Association Ltd



Welsh Fisherman's Association Ltd

Cymdeithas Pysgotwyr Cymru Cyf

## The Climate Change Environment & Rural Affairs Committee – Inquiry into the Legislative Consent Memorandum on the UK Fisheries Bill

- The Welsh Fisherman's Association – Cymdeithas Pysgotwyr Cymru Cyf (WFA-CPC) established in June 2011 and are the recognised National representative body for Fishermen's Associations in Wales, governed and directed by a Board made up of elected representatives from the following Welsh Fishermen's Associations:-
  - South Wales & West Fishing Communities
  - Cardigan Bay Fishermen's Association
  - North Wales Fishermen's Co-operative
  - Llyn Fishermen's Association
  - Llyn Pot Fishermen's Association

The WFA-CPC welcomes this opportunity to contribute evidence to the Committee's Inquiry under the Terms of Reference for the Legislative Consent Memorandum on the Passage of the UK Fisheries Bill, accordingly we are pleased to submit our written evidence herewith for your consideration:

### **What are your views on the Legislative Framework for the UK after Brexit as set out in the UK Fisheries Bill?**

After the UK has left the European Union (EU) and the Common Fisheries Policy (CFP) the Government and Devolved Nations of the UK will require additional powers necessary to effectively manage and control fisheries within the UK's Exclusive Economic Zone (EEZ) that enables the UK to operate as an independent party in international fisheries negotiations consistent with the UK's legal status as an Independent Coastal State under the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The Bill proposes common approaches to fisheries management between the UK Government and Devolved Administrations and also makes reforms to fisheries management in England. The primary purpose of the Fisheries Bill is to provide those charged with fisheries management responsibility at a UK level with the powers to deliver those responsibilities:-

- a) Empowering the UK to act as an Independent Coastal State at International fisheries negotiations and
- b) For the UK Parliament, Secretary of State, Devolved Legislature and Ministers (through delegated and devolved powers) to manage domestic fisheries in the UK's EEZ on a sustainable basis.

The Fisheries Bill provides the legislative foundations necessary for a future fisheries policy that respects devolved legislatures, supports coherent/consistent frameworks grounded on the principles of sustainable fisheries management; environmental, economic and social:

**KEY BILL PROVISIONS:**

- Fisheries objectives and fisheries statements:
- Access to British fisheries:
- Licensing of fishing boats:
- Access and licencing ; offences and consequential amendments:
- Fishing opportunities:
- Discard prevention scheme:
- Grants and charges:
- Powers to make further provision:
- Miscellaneous:
- Final Provisions:

**WFA-CPC Key Considerations:-**

The WFA-CPC broadly welcomes the Fisheries Bill (as amended in Public Bill Committee) 17<sup>th</sup> December 2018; In our view the Bill provides the powers for the UK to act as an Independent Coastal State when the UK departs from the EU and by extension the CFP (following an implementation period which may apply) in particular powers for the UK to set quotas and control the access over who can fish in UK waters and under what conditions.

Revoking the automatic right of non UK vessels to fish in UK waters would be entirely consistent with any Coastal States' authority to sustainably manage the exploitation of naturally renewing resources.

Under the key provision of the UK Fisheries Bill non UK fishing vessels would require a licence to fish in UK and Welsh waters, these together with associated licence conditions, would create the mechanism necessary to control and enforce foreign fishing effort and activity in UK waters. Domestic and foreign fishing boat licences in the Welsh Zone would be granted, or otherwise, by Welsh Ministers as such non UK vessels would be expected to adhere to the same rules as apply to UK vessels when fishing in UK/Welsh waters.

The WFA-CPC welcomes the recent amendment and introduction of Clause 39 which rightly confers the legislative competence of the National Assembly for Wales in relation to fishing, fisheries or fish health in the area of the Welsh Zone beyond the seaward limit of Welsh territorial seas.

As international fisheries are a reserved matter we understand it is the Secretary of State who would hold the authority to set quotas, any powers historically resting with the EU in respect of quota setting would be revoked therefore the authority to negotiate with the EU, Norway and other coastal states would rest with Secretary of State in consultation with Welsh Ministers.

*Does the Committee consider consultation sufficiently robust to uphold Welsh fishing interests/resources at annual international fisheries negotiations?*

**Fisheries Objectives:-**

**Sustainable Fishing:**

The WFA-CPC fully support the sustainability objective on the face of the Bill, however, Maximum Sustainable Yield (MSY) as introduced within the reform of the CFP basic regulation in 2013 whilst a convenient expression of that aspiration in practice has proved challenging particularly in respect of



achieving MSY for all TAC species by 2020 particularly within mixed fisheries. We support the Bill and whilst retaining the MSY objective, has removed the arbitrary MSY timetable together with the unscientific and unachievable language with which the concept of MSY was expressed within the CFP. In our view we absolutely need flexible responsive and adaptive management that works within the context of dynamic marine resources subject to wide ranges of natural variability and a dynamic and multifaceted fishing sector supported by a statutory monitoring programme providing the necessary evidence to inform sustainable fisheries management which, we believe, the Bill, as currently drafted, will provide the necessary powers which will complement and contribute to the Sustainability Principles of the Environment Act (Wales) 2016 and the Goals of the Wellbeing & Future Generations Act (Wales) 2015.

### **Precautionary Objective**

We support the Precautionary Principle, understood to mean that the absence of definitive data or information should not obstruct proportionate risk based timely intervention to prevent harm. There are however instances whereby the Precautionary approach has been applied under the CFP resulting in successive annual automatic 20% reductions in TAC for skates and Rays which have proved harmful and counterproductive undermining effective management and leading to widespread discarding, we fully support the objective 'to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above biomass levels capable of producing Maximum Sustainable Yield' as this is consistent with the provision within the Environment Act (Wales) 2016 and the goals of the Wellbeing & Future Generations Act (Wales) 2015.

### **Ecosystem Objectives**

The ecosystem based approach to fisheries management is generally interpreted as minimising any harmful effects of fishing activities on the marine environment. We support this objective within the more inclusive concept of a 'social-ecological system of ecosystem-based management' which considers; the ecosystem, conservation, socio-economics, tourism/recreation and fisheries management; recognising that humans with their cultural diversity are an integral component of many ecosystems and captures the three pillars of sustainability environmental, economic and social integral to sustaining the life and lives of coastal communities.

### **Scientific Evidence Objective:**

The WFA-CPC strongly advocates and supports a science based fisheries policy which builds a robust evidence information base from which to inform management decisions. In our opinion there is no substitute for evidence led decision making that positively engages rather than negatively alienates stakeholders.

### **Discards Objectives:**

In our view it is important and sensible to maintain the commitment to gradually eliminate discarding on a case-by-case basis incentivising the avoidance and reduction, as far as possible, of unwanted catches gradually ensuring that all catches are landed, however, fisheries management is inherently complex and blunt legislation (e.g. the current EU Landing Obligation) which has generated profound difficulties for the fishing industry and fisheries managers alike. The language in the Bill is both aspirational and realistic about practical realities that exist within mixed fisheries that we believe strikes the right balance between policy and practice:

### **Equal Access Objective:**

We are supportive of the equal access objective which ensures that the access of UK fishing boats to any area within British fishery limits is not affected by the location of the fishing vessels home port, however, consistent with the principles of Sustainable Management of Natural Resources (SMNR) as established within the Environment Act (Wales) 2016 together with the goals and principles of the Wellbeing & Future Generations Act (Wales) 2015. We would seek provision, possibly within the Joint Fisheries Statement (JFS) for Welsh Ministers, to determine effort limits for fishing vessels active within the Welsh Zone, subject to and supported by, annual science-based evidence and monitoring programmes that determine non-TAC stock levels consistent with the principles of MSY and the duty placed on Welsh Ministers for the SMNR under the Environment Act (Wales) 2016.

### **Clause 2 – Fisheries Statements:**

The Fisheries Bill/Act defines the rules of Welsh Ministers as Fisheries Policy Authorities (FPA's) and places a requirement on FPA's to act jointly in the production of a Joint Fisheries Statement (JFS) stating their policies for achieving the fisheries objectives and formally consulting with stakeholders. The FPA's must prepare and publish a JFS before the 1<sup>st</sup> January 2021 and every 6 years thereafter. 'Schedule One' defines the roles of the Welsh Legislature and Welsh Ministers for the preparation of a JFS including provisions to adapt or amend periodically. The policies within the Statements will be legally binding unless an FPA can provide a valid reason for departing from the agreed policy. We welcome the introduction of Fisheries Statements as they present a flexible and adaptive vehicle for fisheries policy, however, in our considered opinion we believe that the JFS would be strengthened with the inclusion of a dispute resolution mechanism where agreement cannot be reached between FPA's and the creation/inclusion of a formal advisory council comprised of appropriately qualified authoritative fisheries experts to inform policy decision during development and prior to their publication:

### **Clause 7: Revocation of Requirement for Equal Access for EU Fishing Vessels:**

The revocation of the Principle of Equal Access in so far as it applies to non UK fishing vessels which is derived from the CFP is an essential precondition to deliver the UK's stated intention to act as an Independent Coastal State in accordance with international law (UNCLOS)

Clause 8 mandates that 'a foreign fishing boat must not enter British fishery limits unless in possession of a valid UK fishing licence or for a purpose recognised in international law or treaty'.

### **Clause 9: Licencing of British Fishing Vessels:**

This Clause provides that fishing can only be undertaken by licenced British fishing boats subject to a number of exceptions under sub-section 2(A) inclusive and authorised by Welsh Ministers:

Clause 9 (3) gives the Secretary of State power to amend this section by regulations with the consent of Welsh Ministers.

*Does the National Assembly for Wales consider the SoS powers under Clause 9 (3) are consistent with the sustainability principles of the Environment Act (Wales) 2016?*

### **Clause 12: Power to Grant Licences in respect of Foreign Fishing Boats:**

Confers powers to each Devolved Administration of the UK to grant a licence to administrative sea areas as described in sub section 2(B) 'Wales and the Welsh Zone' - given that Welsh/UK territorial waters, 0 – 12nm from base lines, are expected to be exclusively for UK licenced fishing boats and the protection of vulnerable inshore fisheries, we would suggest amending 2(B) to reflect the Welsh offshore area seaward of 12nm to the extent of Welsh fishing limits (Median Line). 2(B) could be a temporary description relating to the

potential for continued access of non UK vessels (subject to licencing) until the notice period in respect of the 1964 London Fisheries Convention expires in July of 2019.

**Clause 18: Fishing Opportunities:**

Provides that the Secretary of State will set the total UK fishing opportunities expressed in quota or effort days only for the purposes of complying with the International obligation to determine the fishing opportunities of the UK. This Clause provides broad powers to the SoS to set UK quotas which could be interpreted as applicable to stocks wholly within the waters of a Devolved Administration

We fully support the representation of the Minister for Environment, Energy and Rural Affairs Lesley Griffiths AM in respect of the Legislative Consent Memorandum (LCM) regarding Clause 18. We note that the SoS must consult the UK Fisheries Administrations regarding any proposed changes by regulation.

**Clause 21: Duties to Ensure Fishing opportunities are not exceeded:**

Places a duty on Welsh Ministers to exercise their functions relating to fisheries to ensure that no seafish are caught by British fishing boats in excess of the catch quota in any calendar year as quota is managed at a UK level. It is important that all Fisheries Administrations avoid exceeding quota allocations that would disadvantage vessels within another administration. By placing an obligation on each administration to only fish within their respective allocations would offer an effective safeguard:

**Clause 27: Discard Prevention Charging Schemes:**

The Bill presents a partial solution to the problem of choke species associated with the full implementation of the Landings Obligation (Discard Ban) in 2019 by way of a 'Discard Prevention Charge Scheme'.

The Scheme allows vessels to land unavoidable catches of over-quota bycatch species which are sold for human consumption but a charge is then levied. This charge is intended to remove the incentive for any vessel to target valuable bycatch species for which they have no quota but avoid choking the main target species. Whilst we appreciate that the provisions under Clause 27 relate to England and the MMO we would respectfully suggest that Welsh Ministers seek such provision as an option to mitigate future risks of Choke that could develop as quota adjustments post Brexit are realised increasing Wales' quota holding and potential for risk of choke.

**Clause 28: Financial Assistance, Powers of the Welsh Ministers:**

Introduces Schedule 4 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes relating to Wales, the Welsh Zone or Welsh fishing boats

**Clause 31: Powers to make further provisions about fisheries aquaculture etc.:**

We understand that Clause 31 & 33 relate to the delegated powers sought by the Secretary of State to make certain provisions in regulation regarding fisheries and aquaculture as currently regulated by the EU under the CFP. The purpose of these powers is to enable the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation including the regulations of the CFP incorporated into UK law by the EU (Withdrawal) Act 2018.

We fully appreciate and understand the need for delegated powers, however, we also understand the concerns expressed in relation to giving such extensive powers to Ministers of the UK Government without scrutiny of the UK Legislatures, in our opinion such powers are necessary given the time available to ensure the 'Act' functions at the time the UK leaves the EU.

We are reassured that Clauses 31 to 36 inclusive provide a level of safeguarding that requires the Secretary of State to either, consult with, or seek the consent of, Welsh Ministers before making provisions in so far as they would apply to Wales or the Welsh Zone.

**Clause 39: Legislative competence of the National Assembly for Wales:**

The WFA-CPC warmly welcomes the amended Bill Clause 39 which makes provision about the legislative competence of the National Assembly for Wales in relation to fishing, fisheries or fish health in the area of the Welsh Zone beyond the seaward limit of the territorial sea:

**What are your views on the provisions in the UK Fisheries Bill that will enable the Welsh Ministers to bring forward policy in relation to Welsh Fisheries after Brexit?**

There is consensus that the UK needs a dynamic system of fisheries management that has the capability to respond quickly to changes in the marine environment, changes in scientific advice and to international commitments, there is also support to move away from the CFP and provide for effective and dynamic fisheries management.

In July 2018 the Cabinet Secretary for EP & RA, Lesley Griffiths AM, held a debate in the Senedd regarding 'Brexit & the Fishing Industry' the Welsh Government motion with Plaid Cymru amendments was passed, the debate began by recognising the significant and distinct challenges Brexit poses to the Welsh fishing industry and marine environment and highlighted the following key themes:-

- Plan to make best use of our seas:
- Provide effective stewardship for the marine environment and our natural resources:
- Continue to be responsible partners in UK marine and fisheries management:
- Secure a fairer deal for the Welsh fishing industry:
- Stand on our own two feet:
- Finally re-iterating the Governments support for full an unfettered access to EU markets:

Further to the debate on the 3<sup>rd</sup> July 2018 the Climate Change, Environment & Rural Affairs Committee published its report and recommendations on 'The Impact of Brexit on Fisheries in Wales' in October 2018.

In Wales we also have unique legislation under the:-

- Environment Act (Wales) 2016:
- Well-Being & future Generations Act (Wales) 2015:

These Acts provide the foundation for Welsh Policy relating to the environment, natural resources and sustainability. We understand that the Welsh Government will be consulting in early 2019 on 'Brexit & Our Seas' which we anticipate will build on the key themes of the Senedd debate 'Brexit & the Fishing Industry' together with the CCERA Committee recommendations 'The Impact of Brexit on Fisheries in Wales'. We anticipate that the impending consultation on 'Brexit & Our Seas' will draw together and build on the reports and recommendations to date that will create a future Welsh Fisheries Policy.

In our view the Fisheries Bill (as amended in Public Bill Committee) 18<sup>th</sup> December 2018 and significantly the provision within Clause 39 which addresses the Legislative Competence of the National Assembly for Wales will provide the powers necessary for Welsh Ministers to bring forward a policy programme that delivers Sustainable Fisheries for Future Generations. Once we have defined our policy we will have a clearer understanding of what may need to be provisioned through a Welsh Fisheries Bill.

**Do you wish to raise any other matters in relation to the provisions in the UK Fisheries Bill as they relate to Wales?**

- In our opinion it would be a missed opportunity if the Bill did not include a provision to add flexible management powers to S156 & s189 of the Marine & Coastal Access Act 2009 that would provide Welsh Ministers with the necessary powers to vary or amend regulation that would deliver adaptive fisheries management in Wales consistent with a future fisheries policy:
- The Fisheries Bill will provide an enhanced and clear legislative framework, it is imperative that we create a transparent and coherent Welsh Fisheries Policy, but, as yet, we do not have the ability to manage adaptively once Welsh Ministers are in receipt of such powers:

WFA-CPC

January 2019

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,  
Environment and Rural Affairs Committee

Memorandwm Cydsyniad Deddfwriaethol ar Fil Pysgodfeydd y DU | Legislative  
Consent Memorandum on the UK Fisheries Bill

Ymateb gan : New Under Ten Fishermen's Association (NUTFA)

Evidence from : New Under Ten Fishermen's Association (NUTFA)

When Richard Benyon became Fisheries Minister he said that 'if I was starting, it wouldn't be from here', a reference to the corner that successive governments, aided and abetted by their officials had painted themselves into over many years [often with the willing complicity of the larger scale fleet].

The current situation needs little explanation but is worth reiterating in brief.

Access to over 50% of UK quota entitlements is in foreign hands, flag ships continue to take significant quantities of fish from UK waters, little troubled by the requirements of the weak and ineffectual economic link legislation [that appears to be in a constant state of review], an amount of UK quota is held by 'slipper skippers' forcing working fishermen to spend up to half of their income in some cases on leasing quota to remain viable which in turn forces them to employ mainly far eastern crews instead of an indigenous workforce [including new entrants]. Small scale fishing activity in coastal communities the length and breadth of the UK has either disappeared altogether or is a shadow of its former self, these inshore fishermen have been in the majority of cases forced into the pursuit of often poorly understood and managed non quota stocks whilst the profit margins of larger scale quota owners continues to increase.

At the same time, the abject failure of both European and national fisheries management, so often lagging far behind the reality at sea, a lack of investment in science, especially for new or non quota species and the willing blindness to the excesses, albeit on an ostensibly legal basis, of massive industrial trawlers being able to fish with impunity in the UK's territorial waters has resulted in an urgent need for a complete rethink and overhaul of the management of fisheries in our waters.

The reason for this diatribe is to ensure that all concerned understand the gravity of the current situation for the majority of UK fishermen and therefore the need, and opportunity, for a root and branch reform of what is a broken system that serves the interests of a small number of increasingly wealthy operators, many of them foreign corporations and at the expense of inshore fishermen and the often vulnerable coastal communities in which they reside. The Fisheries Bill is only one part of that need and at least must provide the ability for the UK to genuinely meet the commitment to improved and world leading fisheries management.

#### General Comments:

As lay people, it is challenging to comment with any degree of authority on the legislative framework within the Bill but we consider that it is made up of more powers than duties and this approach causes concern with regard to accountability and the decision making process going forward.

In more specific terms, Clause 1[2] seems unnecessarily weak with regard to the requirement for environmental sustainability in the long term [but without defining the term] and 1[2][b] seems equally weak with regard to the current CFP Article 2 that demands a fair standard of living for fishermen and their coastal communities. The current clause refers to fishing and aquaculture activities being managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies and in our view needs to be more focused and specific, especially with regard to the link with Clause 20 that refers to the allocation of and access to fishing opportunities in a similar way to the current Article 17 of the CFP. This is of particular relevance in a Welsh context following the loss of access to wider UK fishing opportunities following the error of the then Welsh Minister in signing the Fisheries Concordat in 2012. This decision very significantly reduced the flexibility and opportunities for diversification for Welsh fishermen as it left them entirely reliant on the very small amount of quota affixed to the overall Welsh track record. This very small track record reflected the historic focus on non quota species by the under ten metre fleet in Wales but provides a serious impediment for future fisheries that could prove to be vital in years to come. The requirement in the Bill for all British fishing vessels to be able to fish in all British waters could easily result in vessels from other Administrations, as well as those in foreign ownership but on the UK register, being able to fish Welsh waters owing to their quota holdings whilst indigenous Welsh fishermen could only stand and watch through not having access to fishing opportunities [quota] in our own waters.

With regard to the Joint Fisheries Statement, a more technical element of the draft Bill, we make no apologies for referring to the wise and erudite comments made by Professor Richard Barnes of Hull University in this respect. He has a far more in depth understanding of such processes and we agree with his written comments to the Public Bill Committee of the House of Commons in this respect and we therefore copy below for clarity.

#### ***“Fisheries Statements***

*7. Fisheries statements provide a link between the general fisheries objectives and specific policy commitments. The Bill should include a provision requiring the Secretary of State or fisheries policy authorities to ensure that the fisheries objectives will be implemented. As noted above this would be best achieved by framing the objectives as duties. This would replace the somewhat weaker indirect reference to ‘policies (however expressed) for achieving, or contributing to the achievement of, the fisheries objectives’ in Clause 2(1). The term ‘however’ expressed’ allows too much latitude and could generate uncertainty as to whether specific measures relate to the fisheries objectives. This should be removed or framed in terms that express a stronger commitment to advancing the fisheries objectives.*

*8. JFS and Secretary of State fisheries statements (SSFs) play a critical role in establishing the framework for more specific legal measures to manage fisheries. As such they must be subject to full and transparent scrutiny. There is initial scrutiny of this through the Schedule 1 process. The scope of consultation is generally framed and linked to ‘interested persons’. Consideration should be given to be enhancing the rigour of this part of the process to recourse to statutory consultees including local authorities, the Environment Agency or other named stakeholders. And including a minimum period for public consultation.*

*9. There is a review process in respect of the fisheries statements in Clause 5. However, the review process appears to lack independence and formal structure. Objectivity is lacking since it is the fisheries policy authorities preparing the JFS, and the Secretary of State preparing the JFS, that must review the policies. Some indication of the purpose and content of the review is desirable, as*

*well as scope for external input into the review. If such requirements are not included in the primary legislation, then it would be appropriate for this to be contained in secondary legislation or policy guidance.*

*10. The SSFSs include reference to ‘promoting coastal fishing activities, taking into account socio-economic factors’ (Clause 2(2)(h)). This is important, but it should include specific reference to the interests of coastal communities since the interested concerns are not simply related to actual fishing activities. It is suggested the term be amended as follows: ‘promoting coastal fishing activities and the needs for dependent coastal communities, taking into account socio-economic factors.’*

*11. Clause 6 provides that fisheries statements must be adhered to by national authorities unless ‘other relevant considerations indicate otherwise’. This provides a potentially wide exception to the requirements to adhere to statement (and fisheries objectives). The threshold for exceptions should be higher: eg the public body shall exercise its functions with due regard to the (objectives/duties) and policies contained in a JFS unless there are overriding reasons in the public interest for doing otherwise”.*

#### Suggested amendments:

##### Article 9: British fishing boats required to be licensed

1) Fishing anywhere by a British fishing boat is prohibited unless authorised by a licence.

(2) Subsection (1) does not apply to fishing — [2][9] ‘by a boat used wholly for the purpose of conveying persons wishing to fish for pleasure’.

There is an inherent contradiction here in that on the one hand the ability of a licenced commercial fisherman to diversity effort into taking out recreational anglers is generally considered a good thing. It reduces commercial fishing effort, especially on quota species and it provides another string to a fishermen’s bow when it is not practical to go commercial fishing. On the other hand, a small number of operators are accused of fishing commercially under the guise of recreational fishing, either by retaining the majority of fish caught by the customers, or selling it to them at commercial rates, or indeed using commercial crews pretending to be recreational fishers.

Suggested amendment: **‘[2][9] by a boat used ~~wholly~~ for the purpose of conveying persons wishing to fish for pleasure and who are able to retain or discard their catch without further recompense for the operator’**

##### Article 20 – Distribution of fishing opportunities:

There is no doubt that the current methodology for the allocation of quota to the UK fleet as a whole is both unfair to the majority of UK fishermen and counter productive in socio economic and environmental terms to coastal communities.

The existing Article 17 of the current CFP was heralded as ‘potentially revolutionary’ by senior EU officials when it was launched as part of the overall reformed CFP.

It was possibly because of this that it failed to be implemented effectively in any EU member state.

Greenpeace subsequently took the government to the High Court, specifically with regard to their failure to implement the environmental criteria element, and lost.

DEFRA was able to argue that they already used social, economic and environmental criteria when allocating the UK quota against existing FQA’s [fixed quota allocations] – [this decision was a



fundamental nonsense not least as it can easily be shown that these criteria are not used in allocation to any meaningful extent].

In considering an amendment to the current draft Fisheries Bill, there seems little reason to try and write something new for the sake of it in regard to the allocation of quota when the existing legislation, suitably and simply amended to remove the unhelpful flexibility inherent within the current article, provides a practical option that tightens the required criteria but at the same time allows for legislative flexibility albeit at a much lower scale than with regard to the original.

**Article 20 amendment:**

**Criteria for the allocation of fishing opportunities by UK Fisheries Administrations**

*When allocating the fishing opportunities available to them, UK Fisheries Administrations shall use transparent and objective criteria including those of an environmental and social nature therefore recognising fish as public property held on trust for the people. The criteria to be used shall include, inter alia, the impact of fishing on the environment and the social and economic contribution to the local economy.*

*When allocating fishing opportunities available to them, UK Fisheries Administrations shall provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage.*

*The documents and evidence forming the basis for allocation decisions must be made available to the public within 20 days of the decision being made.*

**Articles 10 & 12** appear to give a potentially free rein to devolved administrations to create and allocate additional fishing licences without there being any overall control on the number of UK fishing vessel licences. The same seems to apply to the provision of licences to foreign fishing vessels. We consider this potentially both dangerous and divisive and there has to be an overarching requirement on central government to control the provision of additional licences for access to fishing UK waters. [It is only sub para 2 of Article 11 that requires the affirmative resolution procedure].

**Both articles therefore need some form of controlling amendment such as “ with the agreement of the other fisheries administrations...”**

**Article 22: Sale of English fishing opportunities for a calendar year**

This is a terrible article and one that flies in the face of all the arguments relating to quota as property and merely promotes the further consolidation of fishing opportunities into fewer and fewer hands. If the government is looking at this approach as a method of generating revenue then an infinitely more equitable method would be to simply increase the levy currently attributed to Seafish rather than effectively sell off a chunk of quota on an annual basis to the detriment of the vast majority of the fleet, not least those who do not have the financial reserves to enter into an auction race and those new entrants where it has been recognised that a major impediment to their ability to enter the catching sector is the cost of quota. It will without doubt only serve to benefit already wealthy operators at the expense of other fishermen and would ostensibly be open to resale or lease under the proposed rules, further underpinning the current imbalance in allocations.

In addition, **Article 22[3][n]** states: ‘for the payment of compensation to a person who holds but does not use rights sold in accordance with the regulations’;

In much the same way as UK fishermen are regularly disenfranchised by the quota held by slipper skippers and quota traders, anyone holding quota, other than genuinely working fishermen should do so on a use it or lose it basis. **On that basis, 22[3][n] should be deleted [and preferably the whole disgraceful Article].**

#### **Article 23: Discard prevention charging schemes**

Glad to see that “**regulations under this section are subject to the affirmative resolution procedure**”. A very powerful Section and one that causes concern with respect to Article 27[3][b] that provides for the “permitting or requiring charge collectors to use such receipts to cover expenditure incurred by them in carrying out their functions under the Scheme”. The inherent and obvious danger herein is that the subsection provides an incentive to charge collectors to be potentially over enthusiastic in their work as it has a direct bearing on their income. **The least we should strive for is a clearer explanation of this subsection and potentially its removal in the event of an adverse response to the question above.**

#### **Ad hoc comments:**

#### **Article 29: Power of Marine Management Organisation to impose charges:**

Subsection 8 requires that Regulations under this section are subject to the negative resolution procedure. I question why they should not be subject to the positive resolution procedure like some other articles?

## Executive summary

1. Greener UK and Wales Environment Link (WEL) welcome the introduction of the Fisheries Bill, recognising that it is a piece of framework legislation, providing tools for fisheries management, rather than setting out detailed policies once the UK leaves the EU.
2. The inclusion of fisheries objectives on the face of the Fisheries Bill is a good start and the increased powers the Fisheries Bill extends to the Marine and Coastal Access Act 2009 (MCAA), which will allow the UK to take control of managing Marine Protected Areas (MPAs) and our wider seas in the UK's offshore environment, are welcome.
3. However, the Fisheries Bill repeals crucial sustainability requirements set out in the Common Fisheries Policy (CFP). A significant omission is the lack of a duty placed on authorities, including Welsh Ministers, to achieve the sustainability objectives. This risks undermining the aim held by all UK governments to deliver truly sustainable fisheries management and with it thriving, healthy stocks, and consumer confidence that UK seafood is sustainably produced.
4. In addition, the Fisheries Bill repeals the requirement set out in Article 2(2) of the CFP to set fishing mortality at sustainable levels by 2020. It is critical for the health of our oceans that there is a duty to set fishing mortality at or below maximum sustainable yield (MSY) to prevent overfishing.
5. Schedules 6 and 7 of the Fisheries Bill introduce new powers for Welsh Ministers to bring forward policy in relation to Welsh fisheries. Given the wide-ranging powers afforded to Welsh Ministers, we are of the view that a formal consultation procedure should be established with wide stakeholder engagement prior to new policies and legislation being introduced.
6. The Fisheries Bill must be amended to ensure that domestic legislation delivers truly sustainable and accountable fisheries management that

minimises impacts on the marine environment and supports dependent coastal communities.

## Background

7. WEL's Marine Working Group is a coalition of environmental organisations campaigning for healthy, productive seas. WEL contributes to various Welsh Government stakeholder groups, including the Welsh Government's Seas and Coasts EU-exit roundtable group and the Welsh Marine Fisheries Advisory Group.
8. WEL works closely with Greener UK, a group of environmental organisations (some of which are also WEL member organisations) with a combined public membership of over eight million. WEL and Greener UK are united in the belief that as the UK leaves the EU, it must take the opportunity to restore and enhance the UK's marine environment. Both groups are working together to consider the new UK Fisheries Bill and its implications for Wales.
9. This is an opportunity to establish Wales and the rest of the UK as world leaders in sustainable fisheries management. This is an aspiration which many stakeholders – including the fisheries sector – support, as healthy fisheries benefit coastal communities.

## What are your views on the legislative framework for the UK after Brexit as set out in the UK Fisheries Bill?

10. Greener UK and WEL welcome the introduction of the Fisheries Bill to provide a framework for fisheries management after the UK leaves the EU. The inclusion of broad fisheries objectives to, *inter alia*, implement an ecosystems-based approach, and new powers to further safeguard marine species and habitats both inside and beyond the network of MPAs, is welcomed.
11. However, Greener UK and WEL have identified the following areas where the Fisheries Bill must be improved if the UK is to deliver sustainable fisheries that are truly 'world leading':

**A duty on all relevant public authorities to achieve the fisheries objectives and a requirement for annual updates on progress against objectives.**

12. The fisheries objectives are not currently framed with a clear legal duty on the relevant authorities to achieve them. As drafted, national fisheries policy authorities, including Welsh Ministers, must exercise their functions in accordance with a joint policy statement which sets out how they will achieve the objectives.
13. There are three legal concerns with this approach:
- a. There is little guidance or restriction on how strongly the policy statements will deal with the objectives and this leaves a lot of discretion to the policy makers. Consequently, there is no guarantee that the policy statements will contain effective policies that will actually achieve the objectives.
  - b. Only national authorities must act in accordance with the policy statements. Other public authorities that make fisheries decisions (including Natural Resources Wales) would not be bound by this duty.
  - c. National authorities are, in certain circumstances, entitled to act against the policy statement. There is no detail in the Fisheries Bill on what these circumstances would be and there is therefore a significant risk that authorities will disregard the policy statement, and therefore the fisheries objectives.
14. The Fisheries Bill must therefore include a specific duty to achieve the fisheries objectives. In addition, the scope of the duties relating to the current measures is too limited. To be fully effective, the duty to achieve the fishing objectives should apply to any relevant public authority having any function relating to fishing activities or fisheries management, including Natural Resources Wales.
15. Lastly, there should be a requirement on each national authority to publish an annual update on progress against objectives to ensure adequate accountability.

**A commitment to ensure that fishing limits cannot be set above MSY (the scientifically recommended levels that would deliver the objective to restore fish stocks to a healthy biomass).**

16. There must be a target for fishing limits to be set at sustainable levels by 2020 and an immediate duty to deliver on restoring stocks to healthy biomass levels. The setting of fishing limits is within our direct control and the 2020 target is certainly achievable and already represents the latest date by which exploitation rates must be set at sustainable levels (the date was previously set at 2015 and 2020 represented the ultimate

backstop). The target is set out in the CFP and the United Nations Sustainable Development Goal (SDG) 14 to end overfishing by 2020. Its absence therefore represents a regression of environmental standards. This target should apply to both stocks subject to fishing limits and non-quota stocks, for example shellfish. Where the rate of fishing mortality cannot be determined according to the best available science, there must be a suitable proxy to ensure that fishing mortality will still be set at sustainable limits.

17. This is vital to protect against short-term political pressure to set catch limits higher than scientific advice, which would lead to overfishing and damage the health of our oceans.

### **An approach which seeks to ensure shared stocks are managed sustainably.**

18. The Fisheries Bill does not make any firm commitment on how shared stocks will be managed. This is extremely concerning as setting clear sustainability criteria in relation to negotiations with other countries would help avoid, for example, another 'mackerel wars' scenario, particularly in areas where the British Fisheries Limit Extent is not defined, such as between Northern Ireland and the Republic of Ireland.
19. The UK will need to negotiate with the EU, Norway, and other states to agree an overall total allowable catch and allocations for each state of many commercially important shared stocks. Unlike most existing negotiations with third countries which involve just a handful of fish stocks, the UK shares over 100 stocks with the EU, which means it is critical that a clear and robust process is developed. In approaching these negotiations, the UK must be required to adhere to scientific advice and take all reasonable steps to avoid any agreement, or lack thereof, that results in overfishing.

### **A clear objective in the Fisheries Bill that fisheries management should be coherent with UK (including the devolved administrations) and international environmental legislation.**

20. Fisheries management does not take place in isolation and the impacts of fishing activity can have significant implications for the health of the wider marine environment.
21. One of the key achievements of the 2013 CFP reforms was to make the need for environmental integration explicit in the objectives to ensure

that fisheries policy is coherent with EU environmental legislation, in particular the objective of achieving a good environmental status by 2020.

22. Although the Fisheries Bill provides that the Secretary of State makes a fisheries statement for England, which should include policies for “contributing to the achievement by 2020 of a good environmental status as defined in the Marine Strategy Framework Directive”, there is no such obligation to include this in the Joint Fisheries Statement applicable to all fisheries policy authorities, including Welsh Ministers.
23. Further, Part 6 of the Environment (Wales) Act 2016 sets out a duty on public authorities, including Welsh Government Ministers and Departments, to seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems.
24. An amendment to the “ecosystem objective” in the Fisheries Bill to include a requirement to contribute to the achievement by 2020 of ‘good environmental status’ would therefore be in the spirit of Welsh environmental legislation.

**A mandate to allocate all fishing opportunities – existing and new – on the basis of transparent and objective environmental and social criteria, and to incentivise the most sustainable fishing practices.**

25. Article 17 of the CFP is amended by clause 20 of the Fisheries Bill and maintains the existing requirement for the Secretary of State and the Marine Management Organisation to use transparent and objective criteria including those of an environmental, social and economic nature when allocating fishing opportunities.
26. However, under the existing regime there is still a significant lack of transparency in how fishing opportunities are distributed. Article 17 does not mandate what the criteria for distribution shall be, or how environmental, social and economic criteria should be defined.
27. This issue can be addressed through strengthening the provision of Article 17 and requiring that all fishing opportunities - both in existing areas around UK shores and any potential new areas in waters beyond - are allocated on the basis of transparent and objective environmental and social criteria by treating the fishery as public property held

in trust for the people. This amendment, by giving explicit priority to environmental and social criteria, would be likely to lead to an increase in quota available to local fishing fleets using passive gear and providing local employment.

28. Clause 20 of the Fisheries Bill does not apply to Welsh Ministers (at their request). It is our view that the above principles should apply to all UK fisheries authorities involved in the allocation of fishing opportunities. Given the often small-scale, coastal nature of Welsh fisheries, we believe a move to allocation of quota according to environmental and social criteria would further Welsh Government's contributions under the Wellbeing of Future Generations Act 2015 and benefit Welsh coastal communities.

### A commitment to full documentation of catches.

29. There are no provisions in the Fisheries Bill on ensuring full documentation of catches. If we fail to achieve full documentation of UK fisheries, we will not have a true picture of what is being removed from the seas and therefore will not have accurate scientific data to ensure effective management of the shared stocks in UK waters.

### A commitment to robust monitoring and enforcement mechanisms.

30. There are no provisions in the Fisheries Bill to deal with monitoring and enforcement, a fundamental part of effective fisheries management.

31. EU legislation – specifically Regulation 1224/2009/EC of 20 November 2009 (the Control Regulation) and Regulation 1005/2008/EC of 29 September 2008 (the IUU Regulation) – creates a framework for the enforcement of the rules of the CFP and combating illegal, unreported and unregulated fishing. The enforcement system in the UK does not fulfil many of the criteria set out in the Control Regulation and IUU Regulation and is based on lengthy and expensive criminal proceedings.

32. The Fisheries Bill should therefore strengthen existing mechanisms. Vessel monitoring systems should be carried by all vessels, regardless of size, transmitting position data at least every 20 minutes and sharing such data with the relevant fisheries policy authorities. In addition, remote electronic monitoring with CCTV should be required for all large vessels (over ten metres) and for select smaller vessels to ensure accountability, assist with data on removal rates catch and bycatch of all marine life, and improve enforcement. The Fisheries Bill should also



ensure that an appropriate sanctioning system can be put in place to ensure that the provisions of the Fisheries Bill are effectively enforced.

### Access of foreign vessels to UK waters should be contingent on compliance with the same environmental standards applicable to UK boats.

33. There is no provision in the Fisheries Bill that foreign boats must comply with the same standards as UK boats, which is essential to ensure a level playing field and a high level of environmental protection.
34. The provisions on access are set out in clauses 7 and 8 of the Fisheries Bill and provide that foreign boats must only fish in UK waters in accordance with the terms of their licence. The licence can limit the area in which fishing is authorised, the period, the types of fish that can be caught and the method of fishing. However, there must be an explicit requirement in the Fisheries Bill that access of foreign vessels to UK waters should be contingent on compliance with the same environmental standards applicable to UK boats to ensure that both the environment and the UK fishing industry are not undercut by foreign vessels.

### A formal consultation procedure to scrutinise secondary legislation.

35. There are a number of provisions in the Fisheries Bill that give powers to the Secretary of State and ministers of the devolved administrations to create legislation, including on discards and provisions for 'conservation purposes' and 'fish industry purposes'. The use of these powers could result in major changes to fisheries management measures and therefore any powers provided by the Fisheries Bill to create secondary legislation should be subject to appropriate wider scrutiny, including by stakeholders.

### What are your views on the provisions in the UK Fisheries Bill that will enable the Welsh Ministers to bring forward policy in relation to Welsh fisheries after Brexit?

36. Clause 28 introduces Schedule 4 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes. It is our view that any financial assistance scheme developed should be aligned with the sustainability objectives in the Fisheries Bill and

maximise the contribution to the Wellbeing of Future Generations 2015 and Environment 2016 Acts e.g. by achieving environmental best practice above and beyond what is required by regulation.

37. Further to paragraph 35 above, constraints on the powers set out in Schedule 6 are simply procedural e.g. that the Welsh Ministers must consult the national authorities 'and any other persons likely to be affected by the regulations as the Welsh Ministers consider appropriate'. Given the wide-ranging nature of these powers, they should be subject to a formal consultation procedure with wide stakeholder engagement.
38. Clause 38 introduces Schedule 7 which contains powers for the Welsh Ministers in relation to the exploitation of sea fisheries resources. Schedule 7 provides powers relating to the exploitation of sea fisheries resources by inserting new sections 134A to 134C into the MCAA.
39. The new Section 134A enables 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. This section is similar to that already set out in the MCAA (section 189 which refers to section 155). Section 156 states provisions which may be made under section 155 (heads 1-6). Interestingly, the UK Fisheries Bill section 134C references only heads 1-3. We are of the view that heads 4-6 should also be included.
40. Section 134B enables the Welsh Ministers to make orders in relation to the Welsh offshore region (i.e. the area of the Welsh zone which lies beyond Wales) for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats or features or geological or geomorphological interest. We welcome this section in recognition that Welsh Ministers have executive competence for fisheries management and the marine environment, subject to reservations within Schedule 7A to the Government of Wales Act 2006 for Wales, the Welsh zone, and Welsh fishing boats beyond that zone.
41. Section 134 does not appear to be amended directly. This covers orders to protect Marine Conservation Zones in general (and the habitat regulations provide for this to cover European Marine Sites as well). We question whether this section should also be amended to extend its application to the wider Welsh zone.

42. Paragraph 14 of Schedule 7 inserts a new sub-section 136(1A) into the MCAA which extends the section 136 power to make interim orders to the Welsh offshore region. It is not clear whether these interim orders also apply to European Marine Sites but there may be merit in them doing so.

**Do you wish to raise any other matters in relation to the provisions in the UK Fisheries Bill as they relate to Wales?**

43. We are concerned that to date there has been limited consideration given to the impact of the UK's departure from the EU on funding for fisheries and marine environmental management in Wales. For example, LIFE and European Maritime & Fisheries Fund (EMFF) funding schemes have funded a significant number of Welsh Government's and Natural Resources Wales's MPA management activities. We would urge Welsh Government to determine, in the context of Schedule 4 of the Fisheries Bill, the figure spent to date on fisheries and marine management from European funding to enable the Marine and Fisheries Division to be able to contribute effectively to discussions on replacement funding.

Greener UK is a coalition of 14 major environmental organisations united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment.

Wales Environment Link and Greener UK are working in partnership:



## GREENER UK





Ein cyf/Our ref LG/0859/18

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8 Ionawr 2019

Annwyl Mike,

## **Bil Pysgodfeydd y DU – Memorandwm Cydsyniad Deddfwriaethol Atodol**

Gan fod y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig yn craffu ar y Memorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil Pysgodfeydd, hoffwn dynnu'ch sylw at Femorandwm Cydsyniad Deddfwriaethol Atodol sydd wedi cael ei osod heddiw. Amgaeaf gopi er gwybodaeth ichi.

Rydym wedi llwyddo i sicrhau gwelliant yn ystod cam Pwyllgor Tŷ'r Cyffredin sy'n darparu ar gyfer estyn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol o ran materion yn ymwneud â physgota, pysgodfeydd ac iechyd pysgod mewn perthynas â Pharth Cymru. Mae hwn yn gam pwysig ymlaen yn gyfansoddiadol a bydd yn galluogi Cynulliad Cenedlaethol Cymru i gyflwyno Bil Pysgodfeydd gan y Cynulliad mewn perthynas â Chymru a Pharth Cymru. Mae Llywodraeth Cymru o'r farn bod Cynulliad Cenedlaethol Cymru yn gallu deddfu eisoes (ac y bydd yn parhau i fedru gwneud hynny) mewn perthynas â chychod pysgota o Gymru y tu hwnt i Gymru ar y sail y byddai deddfwriaeth o'r fath "in relation to Wales" at ddibenion adran 108A(2)(b) o Ddeddf 2006.

Mae'r cymal 39 newydd yn diwygio adran 108A (cymhwysedd deddfwriaethol) Deddf Llywodraeth Cymru 2006 ("Deddf 2006") ac yn gwneud nifer o newidiadau canlyniadol pellach i Ddeddf 2006.

Mae'r fersiwn ddiweddaraf o'r Bil i'w gweld yma:

<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0278/18278.pdf>

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Mae'r Memorandwm Atodol hefyd yn nodi'r sefyllfa ddiweddaraf o ran Cymal 18, ar ôl inni godi pryderon yn y Memorandwm Cydsyniad Deddfwriaethol a osodwyd ar 15 Tachwedd. Mae'n nodi bod Llywodraeth Cymru yn parhau i weithio gyda Llywodraeth y DU i sicrhau y bydd gennym y dulliau mwyaf priodol ac eang ar gyfer rheoli pysgodfeydd Cymru wrth inni ymadael â'r Undeb Ewropeaidd.

Rwyf yn disgwyl gosod Memorandwm Atodol arall yn nes ymlaen yn ystod proses y Bil, ar ôl cynnal trafodaethau gyda Llywodraeth y DU am welliannau pellach a chyn cyflwyno dadl yn y Cynulliad er mwyn iddo gael ystyried rhoi ei gydsyniad i'r Memorandwm Cydsyniad Deddfwriaethol.

Yn Gywir,

A handwritten signature in cursive script that reads "Lesley". The signature is written in a light grey or blue ink on a white background.

**Lesley Griffiths AC / AM**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

Lesley Griffiths AC  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig

10 Ionawr 2019

Annwyl Lesley

### **Bil yr Amgylchedd (Egwyddorion a Llywodraethu) Drafft Llywodraeth y DU**

Byddwch yn ymwybodol i Lywodraeth y Du gyhoeddi drafft o Fil yr Amgylchedd (Egwyddorion a Llywodraethu) ('y Bil drafft') ar 19 Rhagfyr 2018. Yn y cyfarfod ar 10 Ionawr 2019, cytunodd y Pwyllgor y dylwn ysgrifennu atoch yn gofyn am eich barn am ddarpariaethau'r Bil drafft ac yn gofyn am y wybodaeth ddiweddaraf am gynigion Llywodraeth Cymru ar gyfer trefniadau llywodraethu amgylcheddol ac egwyddorion amgylcheddol yn dilyn ymadawiad y DU â'r UE.

### **Cymhwyso'r Bil drafft**

Mae'r papur polisi sy'n cyd-fynd â'r Bil drafft yn egluro bod yr amgylchedd yn faes datganoledig, ac eithrio nifer fach o feysydd a gadwyd yn ôl. Mae'r Bil drafft felly'n berthnasol i Loegr ac i'r DU o ran materion a gadwyd yn ôl.

- 1. I ba faterion a gadwyd yn ôl y mae'r Bil drafft yn berthnasol mewn perthynas â Chymru? A oes unrhyw faterion a allai fod yn destun anghytuno rhwng Llywodraeth Cymru a Llywodraeth y DU?**
- 2. Pa drafodaethau a gawsoch â Llywodraeth y DU i sicrhau bod y darpariaethau yn y Bil drafft yn ystyried tirwedd ddeddfwriaethol Cymru ac i sicrhau nad ydynt yn gwrthdaro ag egwyddorion a chyrrff amgylcheddol datganoledig presennol Cymru?**



## **Datganiad polisi ar egwyddorion amgylcheddol**

Bydd cymalau 1 i 4 (Datganiad polisi ar egwyddorion amgylcheddol) y Bil drafft yn gymwys mewn perthynas â Chymru o ran swyddogaethau Gweinidogion y DU yn unig. Mae Cymal 1 yn ei gwneud yn ofynnol i'r Ysgrifennydd Gwladol gyhoeddi datganiad polisi ar egwyddorion amgylcheddol. Mae'r datganiad yn egluro ystyr egwyddorion amgylcheddol a sut y byddant yn cael eu defnyddio. Yng Nghymal 2, nodir rhestr graidd o "egwyddorion amgylcheddol", a godwyd o nifer o ffynonellau presennol. Rhaid i Weinidogion y Goron roi sylw i'r datganiad polisi wrth wneud, datblygu a diwygio polisiau y mae'r datganiad yn ymdrin â hwy.

- 3. Pa drafodaethau a gawsoch â Llywodraeth y DU ynghylch cymhwyso'r darpariaethau hyn yng Nghymru?**
- 4. Beth yw eich barn am ystyr "egwyddorion amgylcheddol", fel y'i nodir yng Nghymal 2?**
- 5. I ba raddau yr ydych chi'n fodlon nad yw'r "egwyddorion amgylcheddol" hyn yn gwrthdaro ag egwyddorion presennol Cymru; er enghraifft, datblygu cynaliadwy a rheoli adnoddau naturiol yn gynaliadwy?**
- 6. Beth yw'r goblygiadau posibl o gael egwyddorion amgylcheddol ar waith yn Lloegr sy'n wahanol i rai Cymru, ac o gael gwahanol egwyddorion amgylcheddol yng Nghymru o ran materion datganoledig a materion a gadwyd yn ôl?**

## **Swyddfa Diogelu'r Amgylchedd**

Mae'r Bil drafft yn sefydlu corff annibynnol, Swyddfa Diogelu'r Amgylchedd (OEP), i graffu ar y gyfraith amgylcheddol, ymchwilio i gwynion a chymryd camau gorfodi o dan y gyfraith honno. Yn y Bil fel y'i drafftiwyd, nid yw'r diffiniad o "gyfraith amgylcheddol" yn cynnwys deddfwriaeth ddatganoledig. Felly, er y byddai awdurdodaeth yr OEP yn cwmpasu'r DU gyfan, byddai ei swyddogaethau o ran Cymru yn gyfyngedig i faterion amgylcheddol a gadwyd yn ôl.

- 7. O gofio bod amddiffyn yr amgylchedd yn fater heb ffiniau penodol, i ba raddau yr ydych yn fodlon ar gynigion Llywodraeth y DU ar gyfer yr OEP (gan gynnwys y ffaith bod newid hinsawdd y tu allan i'w gylch gorchwyl)?**





- 8. Sut ydych chi'n rhagweld y bydd yr OEP arfaethedig yn gweithredu yng Nghymru mewn perthynas â materion amgylcheddol a gadwyd yn ôl? Pa drafodaethau a gawsoch â Llywodraeth y DU ynghylch y mater hwn?**
- 9. Sut y byddwch yn sicrhau bod pobl yng Nghymru yn gallu gwneud cwynion am gyfreithiau amgylcheddol, a sicrhau eu bod yn deall i bwy y gallant wneud y cwynion hynny, pa faterion yr ymdrinnir â hwy yng Nghymru, a pha rai y bydd OEP yn ymdrin â hwy?**
- 10. I ba raddau yr ydych yn fodlon na fydd yr OEP arfaethedig yn tresmasu ar swyddogaethau'r cyrff hynny sy'n delio â materion amgylcheddol yng Nghymru ar hyn o bryd, nac ar gyfraith amgylcheddol yng Nghymru?**

Yn eich ymateb i adroddiad y Pwyllgor, *Trefniadau llywodraethu amgylcheddol ac egwyddorion amgylcheddol ar ôl Brexit*, dywedasoich na allech roi ymateb pendant ynghylch a ydych yn cefnogi'r camau i sefydlu corff llywodraethu ar gyfer y DU nes bod cynigion manylach gan Lywodraeth y DU ar gael a bod dadansoddiad o'r bylchau llywodraethu yng Nghymru wedi cael ei gwblhau.

- 11. O gofio bod y Bil drafft bellach wedi cael ei gyhoeddi, a allwch chi egluro'ch barn ynghylch sefydlu corff llywodraethu ar gyfer y DU? Os nad ydych eto wedi penderfynu, a allwch chi egluro pryd y byddwch yn gallu gwneud hynny?**
- 12. A allwch chi roi'r wybodaeth ddiweddaraf i'r Pwyllgor am hynt y gwaith dadansoddi o ran bylchau llywodraethu amgylcheddol yng Nghymru? Os yw'r gwaith dadansoddi yn parhau, pryd caiff ei gwblhau?**
- 13. Os yw casgliadau'r dadansoddi hwn yn ffafrio corff ar gyfer y DU, pa gyfle fydd ar gyfer cyd-ddylunio â Llywodraeth y DU cyn y caiff y Bil terfynol ei gyflwyno? Beth fyddai'r amserlen ar gyfer hyn?**
- 14. Pa gyfle fydd gan y Cynulliad i graffu ar unrhyw gynnig i sefydlu corff ar gyfer y DU?**

### **Bil Llywodraethu Amgylcheddol ac Egwyddorion Amgylcheddol i Gymru**

Rhoesoich ymrwymiad i gyhoeddi ymgynghoriad ar egwyddorion amgylcheddol a llywodraethu amgylcheddol yn nhymor yr hydref 2018. Ar adeg ysgrifennu'r llythyr hwn, nid yw'r ymgynghoriad wedi cae ei gyhoeddi.



**15.A allwch gadarnhau pryd y caiff yr ymgynghoriad ei gyhoeddi a rhoi amserlen ar gyfer datblygu unrhyw gynigion deddfwriaethol dilynol?**

**16.A allwch chi egluro a fyddai digon o hyblygrwydd yn y rhaglen ddeddfwriaethol i Fil Cymru ar egwyddorion amgylcheddol a llywodraethu amgylcheddol gael ei basio cyn diwedd y Cynulliad hwn, pe bai angen?**

**17.A allwch chi egluro a fyddai digon o amser, yn dilyn canlyniad yr ymgynghoriad, i gyd-ddylunio â Llywodraeth y DU unrhyw gynigion perthnasol ym Mil drafft y DU, pe bai angen?**

### **Trefniadau trosiannol**

Yn eich ymateb i'n hadroddiad *Trefniadau llywodraethu amgylcheddol ac egwyddorion amgylcheddol ar ôl Brexit*, dywedasoch y byddai'r cyfnod pontio arfaethedig o fis Ebrill 2019 i fis Rhagfyr 2020, yn ddarostyngedig i'r Cytundeb Ymadael rhwng yr UE a'r DU gael ei gytuno, yn rhoi amser ychwanegol i sicrhau bod corff llywodraethu amgylcheddol addas yn cael ei sefydlu. Gwnaethoch hefyd esbonio y byddai deddfwriaeth amgylcheddol bresennol yr UE yn parhau i fod yn berthnasol yn ystod y cyfnod pontio arfaethedig, ac y byddai'n ddarostyngedig i awdurdodaeth Llys Cyfiawnder yr UE.

**18.A allwch chi egluro pa drefniadau llywodraethu amgylcheddol a fydd ar waith o 29 Mawrth 2019 os nad oes cyfnod pontio cytunedig (h.y. am fod y DU yn gadael yr UE heb fargen)?**

Byddwn yn ddiolchgar pe byddech yn ymateb erbyn **Dydd Gwener 25 Ionawr 2019** fan bellaf.

Yn gywir,



**Mike Hedges AC**

**Cadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig**



Lesley Griffiths AM  
Minister for Environment, Energy and Rural Affairs

11 January 2019

Dear Lesley,

### **Consideration of the Legislative Consent Memorandum for the Fisheries Bill**

Thank you for agreeing to give evidence on the Legislative Consent Memorandum ('LCM') for the UK Fisheries Bill at the Climate Change, Environment and Rural Affairs Committee's meeting on the 24 January.

We would like detail and/or clarification, beyond that provided in the LCM and the Supplementary LCM, on the following issues to inform our work:

The LCM states:

"The Fisheries Bill creates the primary legislative elements of the UK Framework for fisheries management and support post EU Exit. **These provisions could only appropriately be applied through a UK Bill**, providing a uniform set of powers, obligations and objectives...With the current devolution arrangements an Act of the Assembly would not be able to make all of the provisions necessary for the coherence of the Bill. **This would leave us relying in part on the UK Fisheries Bill and in part on a Welsh fisheries Bill.**"

The LCM goes on to state that, **at the request of Welsh Government**, the UK Bill also includes powers for the Welsh Ministers.

The Welsh Government has given commitments to publishing a consultation, *Brexit and our seas* in the spring term and to introducing a Welsh fisheries Bill.

### ***The need for legislation and the approach taken***

**Question 1.** To what extent does the UK Bill include provisions that are additional to those necessary to establish a legislative UK Framework for fisheries post EU Exit? Which of these provisions could have been included in a future Welsh fisheries Bill?



**Question 2.** Which of the powers for the Welsh Ministers were included at the request of the Welsh Government?

**Question 3.** What is the rationale for requesting these powers, particularly if the Welsh Government intends to introduce a Welsh fisheries Bill?

**Question 4.** What are the implications for the Welsh Government and the fisheries sector if these powers are not included in the UK Bill?

**Question 5.** Schedule 6 includes broad powers for Welsh Ministers to make provision for 'conservation' and 'fish industry' purposes. Why is it necessary to include these provisions in a UK Bill, rather than a future Welsh fisheries Bill which will be subject to the full Assembly scrutiny process?

### ***Fisheries objectives***

The Common Fisheries Policy objectives (set out in Article 2 of the EU Common Fisheries Policy Regulations) will no longer apply following the UK's exit from the EU. Clause 1 of the UK Bill sets out the UK's "fisheries objectives", which reflect some of the Common Fisheries Policy ('CPF') objectives.

**Question 6.** How do the fisheries objectives in clause 1 differ from, and improve on those set out in Article 2 of the Common Fisheries Policy Regulations?

**Question 7.** What consideration was given to including milestones and/or targets for achieving the fisheries objectives in the Bill, for example in relation to Maximum Sustainable Yield (as currently included in the CFP)? Will these be included elsewhere, for example, in a JFS?

**Question 8** How will progress towards achieving the fisheries objectives be measured and monitored in Wales? Is there any intention to develop a common approach to measuring and monitoring progress across the UK?

### ***Fisheries statements***

Clause 2 to 6 make provision for a "Joint Fisheries Statement" ('JFS') and a "Secretary of State Fisheries Statement" ('SSFS'). Under this provision, the fisheries policy authorities (i.e. the UK Government and devolved administrations) must prepare and publish a JFS before 1 January 2021. A corresponding requirement is placed on the Secretary of State in respect of a SSFS.

Schedule 1 makes provision for the preparation and publication of a JFS. This includes consultation on a draft JFS before being laid before the appropriate legislature, and responding to any resolutions and recommendations.



Clause 2(1) provide that a JFS will state the fisheries authorities' policies for achieving, or contributing to the achievement of, the fisheries objectives. Clause 6(2) requires authorities (and the Marine Management Organisation - MMO) to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the policies contained in a JFS.

However, authorities can deviate from those policies but must state their reason.

**Question 9.** Can you explain in detail how the fisheries policy authorities will “act jointly” in relation to the JFS? How will the Fisheries Management Framework Agreement, referred to in the Supplementary LCM, inform this approach?

**Question 10.** Can you clarify whether the fisheries policy authorities would be expected to consult appropriate legislatures on any revisions to a draft JFS arising from scrutiny of another appropriate legislature, before the final text of a JFS is published?

**Question 11.** While Schedule 1 provides for scrutiny of a JFS by the appropriate legislature before it is published, a JFS will not be subject to the approval of those legislatures. What consideration was given to including such provision?

**Question 12.** Can you explain how and to whom a statement under clause 6(2) will be made? Why is there no formal mechanism in the Bill to this effect?

The SSFS covers many of the more detailed objectives which are contained within Article 2(5) of the Common Fisheries Policy. The SSFS must include the Secretary of State's policies in relation to these objectives. These objectives would only be applicable to reserved powers and those that apply to England only.

**Question 13.** Can you clarify the purpose and intended effect of a SSFS as it relates to Wales?

- What are the reserved powers that the SSFS will apply to?
- Do you intend to provide comparable detailed objectives that would apply to Wales? If so, when and how?

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

Clauses 18 and 19 make provisions in relation to fishing opportunities (or quota) for British fishing boats. Clause 18 provides that the Secretary of State may determine fishing opportunities. A determination may be made only for the purpose of complying with an international obligation of the UK in this regard.

Clause 19 requires the Secretary of State to consult Welsh Ministers (and the other devolved administrations) before making or withdrawing a determination under clause 18.



The Fisheries Concordat between the UK Government and devolved administrations ('the Concordat') states:

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"The Administrations note that this Concordat involves an agreement to allocate amounts of quota to each Administration. Such allocations do not constitute a permanent split of UK fishing opportunities."

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The Concordat sets out the basis on which quota currently allocated to the UK will be allocated to each of the administrations. It also enables the devolved administrations to make changes to how fishing opportunities can be allocated within their jurisdiction.

**Question 14.** Can you clarify whether the Bill, as drafted, provides Wales (and the other devolved administrations) with a *right* to fishing opportunities? If not, why not?

Wales currently receives 1% of the UK's quota share. Even if overall UK quota levels increase after Brexit, Wales will only get 1% of that increase.

**Question 15.** In terms of fishing quota, the benefit to Wales from the UK's exit from the EU will be marginal. Do you think this is acceptable? What discussion have you had with the UK Government in this regard?

**Question 16.** On what basis will fishing opportunities in Wales be distributed and what mechanism will be used?

**Question 17.** Will the Fisheries Concordat need to be reconsidered in light of the provisions in the Bill? If so, in what way?

**Question 18.** Can you clarify whether clause 20 relates to the distribution of fishing opportunities by the Secretary of State (or the MMO) to the UK's four nations, or to the distribution of fishing opportunities by the Secretary of State (or the MMO) to English fishing boats?

According to the Explanatory Notes accompanying the UK Bill, amendments to Article 17 of the Common Fisheries Policy Regulation provided for by clause 20, which describes how fishing opportunities should be distributed, will not apply to Wales. Article 17 contains provisions relating to transparent and objective criteria as the basis of that distribution. The Explanatory Notes state that clause 20 "does not apply Article 17 to the other Fisheries Administrations, at their request".



**Question 19.** Can you outline your reasons for this? What will this mean in practice?

***Sale of fishing opportunities and discard prevention charging schemes***

Clause 22 provides powers for the Secretary of State to introduce a different approach to quota allocation **for England only**. This includes setting out a process for selling fishing opportunities.

Article 15 of the CFP Regulations (which are unamended by the UK Bill) introduces a discard ban in the form of a landing obligation for all fish caught. The ban comes into full force on 1 January 2019.

Clauses 23 to 27 makes provision for the Secretary of State to establish, for England, a charging scheme allowing payment to be made for "an unauthorised catch of fish". According to the Explanatory Notes accompanying the UK Bill, clause 23 was included "to address the concerns on the impact of the discard ban". No equivalent provisions are made in relation to Wales.

**Question 20.** What consideration did you give to requesting corresponding provisions for sale of fishing opportunities and discard prevention charging schemes for Wales?

Finally, we are aware that the Bill has already completed committee stage in the House of Commons. **We would like you to provide a timeline for the Bill's passage through Parliament, and to seek assurance from you that this will provide sufficient time for the Welsh Government to negotiate any amendments that may be deemed necessary or desirable.**

I should be grateful if you would respond to the above by **Friday 18 January**. While I appreciate that this is a tight deadline, it will help ensure the best use of time at our session on 24 January.

Yours sincerely,



**Mike Hedges AM**

**Chair of Climate Change, Environment and Rural Affairs Committee**

Copied to: Mick Antoniw AM, Chair of Constitutional and Legislative Affairs Committee  
David Rees AM, Chair of European Affairs and Additional Legislation Committee

