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# Marine Conservation Society's submission to the Defra consultation on its White Paper: Sustainable Fisheries for Future Generations

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The Marine Conservation society (MCS) is a member of the coordinated Greener UK and eNGO partners group[1] and helped to develop a separate joint submission on the White Paper on Sustainable Fisheries for Future Generations. MCS fully supports the joint response but would also like to use this opportunity to reiterate and highlight areas that are of particular importance to MCS.

MCS welcomes the opportunity to comment on Defra's proposals and believes that as the UK leaves the EU it must take the opportunity to restore and enhance the UK's marine environment. We welcome many of the stated objectives within the White Paper including the strong commitment to delivering gold standard sustainable fisheries and the aim to build a vibrant and sustainable fishing industry. However, we feel the proposals lack the required ambition in places and fall short of delivering the detail needed to achieve this in others. MCS believes that the development of new domestic fisheries legislation is an opportunity to establish the UK and devolved nations as world leaders in sustainable fisheries management, an aspiration behind which all stakeholders including the fisheries sector are united.[2] Thriving fish and shellfish stocks and a healthy marine environment are critical for a profitable and prosperous industry and we believe that ultimately, fisheries are a common public resource and should be managed for the public benefit.[3]

MCS sees this as an opportunity to develop fisheries management in a more dynamic and responsive way that operates within ambitious and robust sustainability boundaries and delivers for both the environment and our coastal communities. A precondition to the success of this new management is, however, confidence in monitoring and in a well-

[1] The coordinated eNGO group working on marine and fisheries issues post Brexit includes the Marine Conservation Society, the Environmental Defense Fund, the New Economics Foundation and Greener UK which is a coalition of an additional 13 environmental organisations (WWF, RSPB, the Wildlife Trust, the National Trust, Clientearth, Greenpeace, the campaign to protect rural England, the campaign for better transport, E3G, Friends of the Earth, WWT, the Woodland Trust and Greenalliance).

[2] B D Stewart and B C O'Leary, 2017, Post-Brexit policy in the UK: a new dawn? Fisheries, seafood and the marine environment, University of York. DOI: 10.13140/RG.2.2.35329.76641

[3] As discussed in *Attorney General for the Province of British Columbia v Attorney General for Canada* [1914] AC 153, 168–170 (PC), affirmed in *The United Kingdom Association of Fish Producer Organisations v Secretary of State for Environment, Food and Rural Affairs v Marine Management Organisation, New Under Ten Fishermen's Association*, [2013] EWHC 1959 (Admin), at [9] and [100].

developed and robust evidence base. If the UK is to have world leading fisheries management, it needs to have a world leading evidence base and there is a stark need for the UK to improve and invest in monitoring and fisheries science to support and inform management. We want the UK to become synonymous with world leading management and sustainable seafood, and for consumers and seafood sellers to have confidence that this is what they are being supplied. To have this confidence, there must be the evidence base to support these claims.

MCS welcomes the acknowledgement of the need to strengthen Defra's partnership with the Devolved Administrations given that fisheries management is a devolved matter. This will be vital as the four UK administrations must work together in a transparent way to co-develop and co-design arrangements for environmental governance. A collaborative approach is vital to ensuring that shared environmental principles are applied to achieve recovered and biodiverse seas.

MCS, Greener UK and eNGO partners believe that the new fisheries regime across the UK should be aiming to deliver the following outcomes:

- An ecosystem-based approach: managing fish and shellfish as an integral part of healthy ocean ecosystems, and taking account of the cumulative impact of human activities on the environment.
- All fish stocks restored and maintained above biomass levels capable of producing the Maximum Sustainable Yield (MSY).
- Fisheries management decisions based on the best available science.
- Fully transparent and accountable fisheries where catches, both target and non-target, are fully documented, infringements are properly enforced and fisheries are effectively controlled.
- Fishing opportunities are allocated on the basis of transparent and objective environmental, social and economic criteria, in a way that incentivises the most sustainable fishing.

In the interests of delivering this we believe that an important element will be that the forthcoming Fisheries Bill include a duty on any public authority having any function relating to fishing activities or fisheries management to exercise its functions in accordance with certain general objectives. These objectives should include: stocks being restored and maintained above biomass levels capable of delivering MSY by ensuring that, by 2020 at the latest, fishing mortality is below levels that will deliver MSY; decisions are made according to the best available science; application of the precautionary approach and ecosystem-based approach to management; fishing activities being sustainable in the long term.

The inclusion of a clause setting out these objectives is not a novel approach in the UK as a number of existing laws adopt a similar method. Suggested drafting by MCS, Greener UK

and eNGO partners for an objectives clause in the Fisheries Bill is included in Annex 1. This proposed clause reflects the key elements that we believe are central to the delivery of sustainable fisheries management, namely:

- Sustainability at the heart
- Clear objectives and principles
- High environmental standards applied to all vessels in UK waters and for UK vessels fishing anywhere
- Scientific and transparent processes for setting total allowable catch and quotas
- International and intra-UK co-operation to manage shared stocks
- Eliminating discards and bycatch
- Accountability and enforcement
- Restoring and protecting the marine environment
- Inclusive and robust governance

We provide more detail on these elements and how they should be delivered in our response to the questions posed in the White Paper below. If delivered effectively there is a real opportunity to set a gold standard for sustainable fishing around the world as envisaged by the Secretary of State in his Foreword to the White Paper.

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# MCS Response

## Section 1. Setting our course

### Q1: Do you agree with the proposed powers in the Fisheries Bill?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

***General:***

***Legal underpinning for sustainability:*** We welcome the overall pledge that the Bill will "restate the UK's commitment to sustainable fisheries" and recommend that the government ensures this commitment is imbued with legal meaning by including it as an objective of the Bill which will frame, guide and restrict relevant actions, including the use of powers contained in the Bill.

An overarching objective of this type would help achieve the Secretary of State's ambition of "setting a gold standard for sustainable fishing around the world". The Greener UK and eNGO partner suggested drafting for an objectives clause (provided to Defra in June 2018 and enclosed at Annex 1) captures this objective.

***Cross referencing new and existing legislation:*** It will be important to carefully determine the relationship between the Fisheries Bill and other legislation, including the Environment Bill which will, amongst other things and pursuant to the European Union (Withdrawal) Act 2018 (the Withdrawal Act), set out key environmental principles and provide for the establishment of a new environmental governance body.

Our understanding is that the Fisheries Bill will generally apply across the UK including to the devolved nations on reserved matters, with certain aspects applying to England only, such as the extension of powers under the Marine and Coastal Access Act 2009. In its consultation paper, '*Environmental Principles and Governance after the United Kingdom leaves the European Union*', Defra envisaged that the new environmental principles and governance body "should cover England and environmental matters that are not devolved". Given their potentially different scopes and, in some instances, similar content (including objectives and principles), it will be important to carefully calibrate the Fisheries Bill with the Environment Bill (and other forthcoming legislation, including in the devolved nations) as well as with existing legislation such as the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

This calibration must ensure that the highest environmental standards are retained at all times. It is critical that such calibration exercises are carried out across all government departments when developing new legislation and policy in order to ensure that the Fisheries Bill does not conflict with existing environmental law.

***Comments on the nine proposed provisions:***

***i) Control of access and ii) equal access***

The White Paper states that the intention for the Fisheries Bill is to enable the UK to "take back control of access to the UK's fishing waters" by allowing the UK to decide which countries' vessels may fish in these areas and to preserve equal access for UK vessels through UK waters.

In establishing control of access to the UK's fishing waters, the Bill must require that all access to UK waters is conditional on compliance with the same rules applicable to UK vessels. The White Paper makes an assurance that the UK "will project our commitment to sustainable fisheries and marine conservation in negotiations [with the EU and other countries] and would require compliance with sustainable practices for any access granted to fish in UK waters". This requirement is consistent with international law[4] and should be reflected in primary legislation. The UK should ensure that the designation and management of Marine Protected Areas in our offshore waters is prioritised.

The provisions for control of access to UK waters must also ensure that appropriate monitoring and enforcement procedures are in place to ensure that foreign vessels meet the same requirements as UK fleets across all UK fishing zones, including adherence to sustainable practices. Any infringements should be treated seriously and equally, whether by a UK or foreign vessel.

Similarly, the Bill must include a clause requiring that UK fishing vessels operating overseas must comply with the standards which would be required of them when fishing in UK waters.

The Bill should also clarify the roles and powers allocated to the UK Government and each of the Devolved Administrations in relation to negotiating access to waters.

***iii) Setting and allocation of fishing opportunities***

[4] *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (SRFC Advisory Opinion)*, ITLOS Case No 21, 2 April 2015, [123]).

The White Paper recognises that provisions relating to the setting and allocation of fishing opportunities within the UK will be a key part of the Fisheries Bill, including in order to implement the international total allowable catch (TAC) agreements made between the UK, the EU and other coastal states.

As explored further in response to question 2, it is critical for the future of our fisheries and the health of the marine environment that the UK sets domestic catch limits designed to maintain or restore stocks above levels capable of producing maximum sustainable yield, as required by Article 61 of the UN Convention on the Law of the Sea (UNCLOS).

The UK must also cooperate and agree shared stock TACs with the EU and other coastal states which ensure that all stocks are restored and maintained above biomass levels capable of delivering maximum sustainable yield in line with Article 63 UNCLOS and Articles 2 and 5 of the UN Straddling Fish Stocks Agreement.

Setting catch limits should take into account the precautionary approach, especially in relation to stocks which may have limited available data.

The White Paper notes that fishing opportunities could be allocated within the UK according to either a quota-based or an effort-based system. As discussed further in response to question 10, we have serious concerns about the adoption of an effort-based system and disagree with the use of this method and the need for a trial of this system.

Fisheries are a public resource, and fishing opportunities must be managed in a way that maximises public benefit, which includes provision of environmental protection as well as social and economic benefits. Fishing opportunities should be allocated on the basis of transparent and objective environmental, social and economic criteria in a way that incentivises the most sustainable fishing practices.

As explored further in response to question 8, this will not happen if the existing methodology which uses Fixed Quota Allocations (FQAs) remains in place, as the White Paper envisages. There is instead the opportunity for the UK to reflect Article 17 of the CFP by looking at ways to allocate fishing opportunities based on “transparent and objective criteria including those of an environmental, social and economic nature”. This opportunity to address the distribution of quota in a way which supports environmental, social and economic growth should not be dismissed. MCS appreciates that this may take some time and will require significant investment and consideration but we believe that this could be hugely beneficial to the industry and our seas in the long-term

To achieve this, the Bill should clarify the criteria on which the allocation of quota can be based. These overarching criteria for quota allocation should be co-designed and agreed with the Devolved Administrations and put on the face of the Bill to ensure a common approach.

The specific detailed criteria should be developed through broad consultation and should be reliant on analyses of existing quota systems where the use of environmental and socio-economic criteria have resulted in sustainable management and benefits (both environmental and socio-economic) for specific fisheries, regions or socio-economic groups. We support the application of an approach which incentivises the most sustainable fishing practices and have reflected this in suggested Fisheries Bill drafting that will be provided by the Greener UK and eNGO partners.

While the overarching **criteria** for quota allocation should be consistent across the UK, there should be scope for each administration to distribute its own quota in line with the overarching criteria as befits the fleets under their administration.

This is an opportunity for the UK Government to introduce a new quota allocation system which will manage fishing opportunities as a public asset, which we have discussed further in the response to question 8.

***iv) Introduction of sustainability principles and objectives***

We note the statement that "For fisheries, retained EU law will include around 100 pieces of legislation that make up the CFP, and set out the CFP's high-level objectives". Whilst we acknowledge and expect that this law will initially be retained, given the UK Government's position that it will leave the CFP, it is critical that sustainability commitments are included on the face of a new Fisheries Bill in order to guide and frame new law and policy as well as old.

The White Paper notes that the Fisheries Bill will require the Secretary of State to develop a fisheries policy statement, with Devolved Administration ministers, on how to apply specified sustainability principles and objectives in fisheries management. MCS believes that sustainability principles and objectives should be included on the face of the Bill and that a fisheries policy statement could then be used to provide guidance on how they would operate. MCS as part of the Greener UK and eNGO group has produced a suggested clause for the sustainability principles and objectives that we believe needs to sit on the face of the Bill. This was provided to Defra in June 2018 and is enclosed at Annex 1. This clause is modelled on Article 2 of the CFP. The principles and objectives suggested in the proposed drafting sit together and are intended to operate in concert to support sustainable fisheries management.

In addition to setting out clear principles and objectives in the Fisheries Bill, the Bill must also establish a strong duty on all public authorities which have functions relating to fishing activities or fisheries management. We have suggested a duty which requires relevant authorities to **act in accordance** with the principles and objectives. This will ensure that they have a meaningful status in decision-making and that failure to adequately adhere to the principles and objectives can be challenged.

We expect that the sustainability commitments will be presented appropriately as either principles or objectives. While both principles and objectives serve valuable roles in law, they have a different legal character and there are meaningful differences in how they operate. Whereas objectives indicate a goal to be aimed at or achieved, principles help decision-makers reach decisions by guiding the approach to be taken.

Their legal treatment in the Fisheries Bill must be appropriate, and must calibrate and correspond with objectives and principles contained in the forthcoming Environment Bill as well as existing legislation such as the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

MCS advocates that the Environment Bill should contain new objectives and principles (as well as a Principles Policy Statement), accompanied by appropriate legal duties. For more detail, see the Greener UK response to Defra's consultation on Principles and Governance, which we support.[5]

***v) Amendment of retained EU law***

It is proposed that the Fisheries Bill will create powers enabling retained EU law to be amended by secondary legislation. As recognised in the White Paper, this power must be "as tightly constrained as possible". Unless agreement is reached with the devolved legislatures, these powers should only be exercisable to modify reserved matters or those affecting England only.

Any future amendments to retained EU law should be guided by the environmental principles and objectives we expect to see included on the face of the Fisheries Bill and Environment Bill.

Whilst we acknowledge the need for these powers, any powers, particularly those that enable the creation or amendment of legislation with substantive policy content or which establish technical requirements, must be accompanied by transparent formal stakeholder consultation procedures and robust Parliamentary scrutiny and approval procedures. The Bill must make provision for the application of these procedures alongside the granting of powers for such legislation to be developed or maintained. This would require the use of an enhanced scrutiny procedure at times and for a specialised parliamentary committee to be established.

[5] Greener UK, Environmental principles and governance after the UK leaves the EU (31 July 2018), available at http://greeneruk.org/resources/Greener_UK_response_to_Defra_EPG_consultation_310718.docx.pdf.

***vi) Management of exploitation of sea fisheries resources to ensure we can protect our marine environment including regulation of fishing outside MPAs***

As explored further in response to question 14, we welcome the proposal to extend powers in the Marine and Coastal Access Act 2009 to allow for the regulation of fishing activity in order to protect the marine environment both in inshore and offshore zones outside Marine Protected Areas. There should also be an accompanying duty to use these powers to protect the marine environment, and the powers should be extended to also include the regulation of gear and fishing methods as well as the prohibition of fishing activity.

We support the introduction of a more responsive management regime for the protection of the marine environment, allowing the relevant authorities to readily adopt appropriate measures. Relevant authorities should be empowered to adopt management strategies that take into account changes to fish stock distribution and abundance. These changes include those caused as a result of climate change as well as temporary aggregations of endangered species and spawning fish.

It is worth noting that in the case of Northern Ireland and Wales, there is no equivalent to the Marine Management Organisation or Marine Scotland thus there is a gap in an independent management structure.

***vii) Improvement of the Marine Management Organisation's cost-recovery powers and viii) modernisation of grant making powers***

MCS supports the development of a cost recovery mechanism for the Marine Management Organisation to help finance sustainable fisheries management in England.

As we leave the EU, it is essential that fishers contribute towards the increasing costs of management of our public resource. The costs of managing UK fisheries are substantial, covering aspects from enforcement to fisheries science. These fisheries management costs are publicly financed, but the financial benefits accrue largely to those within the fishing industry (and to a lesser extent ancillary industries and consumers). Habitats Regulation Assessments, for example are not the burden of the fishing industry but are funded by the tax payer, surely an environmental impact assessment should be the responsibility of the one carrying out the potentially damaging activity? The 'resource rent' generated from the fishery is limited as licences are capped. This cap on commercial fishing licences is a crucial protection for sustainability, but it prevents new entry into the fishing industry and generates economic benefits for those fishers already holding licences by limiting competition.

Other countries, other industries, and changes to UK fisheries management related to EU exit, all point to the unavoidable conclusion that cost recovery for fisheries management is

necessary and timely. Several cost recovery mechanisms are available and should be reviewed for their ability not only to raise funds but also to encourage sustainable behaviour within the fishing industry.

***ix) Powers which allow for the introduction of schemes to tender or auction quota***

As explored further in response to question 9, MCS believes that any additional quota should be allocated according to transparent social, economic and environmental criteria in a way that incentivises the most sustainable fishing practices, as set out in the MCS, Partners and Greener UK's suggested objectives drafting.

***Cooperation with Devolved Administrations***

The White Paper notes that the extent of the different provisions proposed for the new Fisheries Bill will vary depending on what powers already exist in different areas and what is agreed between the Devolved Administrations.

As acknowledged in the White Paper, there are certain aspects of fisheries management, such as those relating to international relations, regarding access to waters and setting quota which require a consistent approach across the entirety of the UK.

We welcome the commitment in the White Paper to establish common frameworks which respect the devolution settlements and the democratic accountability of the devolved legislatures. These frameworks must be transparently co-designed and co-managed by the four administrations.

The frameworks must be able to, inter alia: appropriately respond to transboundary environmental matters; enable the functioning of the UK market; ensure compliance with international obligations; ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; enable the management of common resources; administer and provide access to justice in cases with a cross-border element and safeguard the security of the UK.

However, there is a need for increased meaningful collaboration and co-operation to co-design marine and fisheries law and policy, and to co-manage its implementation. We are concerned there has been insufficient cross-administration collaboration on this to date.

The existing Concordat on Management Arrangements for Fishing Opportunities and Fishing Vessel Licensing in the United Kingdom provides a starting point for the development of future policy on co-operation between the UK Government and the Devolved Administrations.

## Q2: What are your priorities for UK negotiations with the EU on fisheries?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

***Effective negotiations for sustainable outcomes***

As acknowledged in the White Paper, it is "vital for sustainable exploitation" that the UK works closely with the EU and other coastal states to manage transboundary stocks including through agreeing TACs, access and shares of fishing opportunities. The importance of which was recently highlighted by the aggressive dispute between the UK and France over access to scallop grounds. To ensure sustainable use, TACs must be set at sustainable levels in line with best available scientific advice as currently required by Article 3(c) of the CFP.

As set out in the White Paper, the ability to rebuild and maintain stocks requires "close cooperation with our European partners with whom we share these precious resources". TACs must continue to be set in accordance with the objectives outlined in Article 2 of the CFP, in particular the Article 2(2) objective of restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield. Our recommendation is that all stocks are restored and maintained above biomass levels capable of delivering MSY (or the best proxy for MSY) by ensuring that, by 2020 at the latest, fishing mortality is below levels that will deliver MSY. This approach will help to build crucial resilience within shared stocks.

As recognised in the White Paper, Article 56(1)(a) of UNCLOS provides that coastal states have the sovereign right to exploit, develop, manage and conserve all the natural resources (including fish) found in the waters of its Exclusive Economic Zone (EEZ). However, as also acknowledged in the White Paper, international law requires that states cooperate in relation to shared stocks, for instance:

Article 63(1) of UNCLOS requires that where the same stock or stocks of associated species occur within the EEZ of two or more coastal states, states should agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks;

Article 118 of UNCLOS requires that coastal states cooperate with each other in the conservation and management of living resources including with a view to taking the measures necessary for the conservation of the living resources concerned;

Article 5 of UNFSA requires, inter alia, that coastal states and states fishing on the high seas shall adopt measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks, ensuring that such measures are based on the best available

scientific evidence and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield; and

Article 8 of UNFSA requires that coastal states and states fishing on the high seas pursue cooperation in relation to straddling and highly migratory fish stocks to ensure effective conservation and management of such stocks.

If the UK Government is to achieve a world leading fisheries management regime, it is critical that it negotiates effectively with the EU and other neighbouring coastal states in order to ensure that shared stocks are managed in a sustainable manner and in line with best available science.

Negotiations should be based on the premise that no state should be permitted to unilaterally set its own catch limits in relation to shared stocks. Should there be instances where there is no agreement on a shared stock[s], the UK (or relevant competent authority) must take all steps available to ensure that the combined exploitation is sustainable and consistent with MSY. It will be important for the Fisheries Bill to include relevant provisions to ensure this requirement is enshrined in UK law.

***Content of agreements with EU and other coastal states***

***Maximum Sustainable Yield (MSY)***

TACs agreed by the UK with the EU and other coastal states must be set in line with the best available scientific advice and at levels that provide for all stocks to be restored and maintained above biomass levels capable of delivering MSY (or the best proxy for MSY). To achieve this, the UK must ensure that, by 2020 at the latest, fishing mortality is below levels that will deliver MSY. This approach will help to build crucial resilience within shared stocks.

***Zonal attachment***

We acknowledge the UK Government's intention for the future allocation of fishing opportunities for quota stocks within the UK's EEZ to better reflect the quantity of fish found and caught in the UK's EEZ by potentially moving away from the principle of relative stability to zonal attachment.

It is crucial that any changes to the basis for allocating fishing opportunities are performed transparently and equitably. In addition, it is important that the system for allocation is in line with environmental objectives and principles in order to prevent the creation of an environmentally damaging system.

Changes to the methodology for the allocation of fishing opportunities must not increase TACs above the level recommended by the best available independent scientific advice.

***CFP wording***

Agreements made by the UK with the EU and other coastal states should use the CFP as their starting point and then improve upon those set standards.

For instance, the objectives outlined in Article 2 of the CFP objectives must be retained and improved in the UK's domestic statute books after exit to ensure that the UK continues to deliver on and achieve above and beyond important commitments relating to sustainable fishing.

These should then be reflected internationally by requiring compliance with these commitments in agreements with the EU and other coastal states. In this way, the UK can influence the actions of third countries, helping to ensure that the development and maintenance of sustainable fisheries are a global priority.

***Equivalent standards***

As reflected in the White Paper, "as an independent coastal state, [the UK] will decide who can access [its] waters after 2020 and on what terms". These terms are crucial. Access to UK waters by vessels from the EU and other coastal states must be conditional on compliance with the same sustainability rules, standards and practices applicable to UK vessels. Defra states in the White Paper that the UK "will project our commitment to sustainable fisheries and marine conservation in negotiations [with the EU and other countries] and would require compliance with sustainable practices for any access granted to fish in UK waters". This requirement must be enshrined in primary legislation.

The Bill must also include a clause requiring that UK fishing vessels operating overseas must comply with the standards which would be required of them when fishing in UK waters.

The UK must also produce detailed management plans and supply adequate resourcing for the control and enforcement of environmental standards in relation to both foreign and UK vessels in UK waters and UK vessels globally. This is necessary if the UK Government really wants to prioritise a healthy marine environment and "pursue an ecosystem approach...that aims for more sustainable management and accounts for, and seeks to minimise, impacts on non-commercial species and the marine environment generally".

***Dispute resolution***

We would welcome clarity around the dispute resolution mechanisms and enforcement powers that the UK will seek in its agreements with third parties. Whilst dispute resolution mechanisms under international law (in particular UNCLOS) are available, it is apparent that

these procedures have not been frequently exercised and instead independent adjudication procedures have been employed.

Due to the complex nature of future negotiations between the UK and other coastal states it may be pertinent, due to the fact that the procedures under UNCLOS are not often exercised, to establish a new international fisheries body with a remit to monitor and resolve any potential disputes around shared and transboundary stocks.

***Cooperation with Devolved Administrations***

As recognised in the White Paper, there must be close cooperation between the UK Government and the Devolved Administrations in relation to international negotiations. It is important that the UK Government does not act on behalf of the Devolved Administrations without their prior authorisation and that it acts with due transparency. There should be meaningful participation and collaboration between the four nations in arriving at common positions where appropriate.

## Q3. What are your priorities for controlling our waters after exit?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

The long-term social and economic sustainability of the UK's fishing industry as a whole is dependent on a productive and biologically diverse marine environment that supports healthy fish stocks. New laws must have a strong focus on the UK's domestic and international commitments to rebuild healthy fish stocks and recover, restore and protect marine habitats and species, enabling the sustainable management of shared resources in co-operation with international partners, as detailed in response to question 2.

To be effective, these new laws must also be underpinned and supported by effective monitoring, control and enforcement that are sufficiently resourced.

In order to ensure that stocks are being harvested sustainably and to minimise, and where possible eliminate, negative impacts of fisheries on the wider marine environment, MCS believes that fisheries must operate in a fully transparent and accountable manner with fully documented catches.

To help achieve this, Remote Electronic Monitoring with CCTV (REM) should be introduced as standard for all over 10m vessels. There is also a case for REM on selected under 10m vessels based on criteria that determine the risk of non-compliance with the discard ban

and/or measures to tackle bycatch of non-target species, for the protection of vulnerable habitats or for protected species bycatch monitoring.

CCTV coverage should be required for all over 10m and selected under 10m vessels fishing in UK waters, regardless of origin, and also UK vessels fishing elsewhere. This technology will not only increase vessel accountability and improve compliance but will have the additional benefits of contributing to important and much needed scientific data collection, increasing consumer confidence, and boosting the UK's sustainability reputation globally. Making the carriage of REM with cameras a condition of fishing in UK waters will send a clear signal that the UK is serious about its sustainability credentials in line with other nations such as Australia, New Zealand, Norway and Canada who already support the use of various techniques such as CCTV, electronic reporting and fully documented fisheries for these purposes.[6] Australia has been using cameras in its federal longline fisheries for a number of years[7] as have many other countries while New Zealand is in the process of introducing an integrated electronic monitoring and reporting system (IEMRS) on commercial fishing vessels with the understanding that this will enable a substantial improvement in several areas including: the monitoring of catch effort reporting; support the integrity of the Quota Management System (QMS); management of protected species; provide more accurate information for decision-making by the commercial sector and government; and provide improved information to support sustainability certification and traceability for market development.

Vessels over 12m are currently required to have a Vessel Monitoring System (VMS) on board. A switch to an integrated REM system with GPS and cameras could negate the need for additional VMS as this technology will also contribute in general to the monitoring and control of vessels operating in UK waters. It will be important to introduce this technology in a consistent way across fleets to help achieve a level playing field.

Importantly, REM could make an important contribution to an ecosystem-based approach to fisheries management as it can generate more granular information on target, non-target and protected species captured by fishing gear.[8] Knowledge of this is very much lacking at present. Only by understanding the true extent of incidental capture can we develop and deliver effective mitigation measures. The use of this technology will also improve understanding of the spatial and temporal extent of fishing activities in and around MPAs.

The UK should also ensure that an effective enforcement policy is in place. Recent studies and reports have shown that the UK fisheries enforcement policy does not currently guarantee that infringements attract penalties high enough to be dissuasive or effective. For example, a 2017 report from the European Court of Auditors highlighted that, in Scotland,

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[6] Best Practice in World Fisheries: Lessons for Brexit, Nov 2017. Blue Marine Foundation conference report.

[7] AFMA. E-monitoring requirements. Webpage. Available at http://www.afma.gov.au/fisheries-services/e-monitoring-requirements/ [Accessed 15/8/18].

[8] Needle, C. L., Dinsdale, R., Buch, T. B., Catarino, R. M. D., Drewery, J., and Butler, N., 2015. Scottish science applications of Remote Electronic Monitoring. ICES Journal of Marine Science. doi: 10. 1093/icesjms/fsu225.

"In practice, most of the action taken following infringements involved advisory letters and verbal and written warnings. These 'soft measures' were applied even in cases of serious infringements (e.g. catching fish after the closure of the respective fishery) and the measures did not seem to prevent recurrence. Even though the inspection efforts and coverage were higher than in other Member States, the recurrence was greater, which indicates that the sanctions were less dissuasive".[9] The new UK fisheries policy should ensure that, in the future, all infringements to fisheries law are effectively sanctioned by penalties set at a level high enough to be dissuasive and to act as a deterrent.

## Q4: What are your priorities for the UK's international role in fisheries (beyond the EU)?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

During the expected implementation period, the existing body of EU law is intended to apply and the UK will continue to be bound by the CFP. In line with this, during this period, the UK will continue to be bound by international agreements consistent with the position at the EU level.

Once the expected implementation period has ended at the end of 2020, the UK should continue to take a leading role in ensuring the sustainability of international fisheries and fishing activities. We support the White Paper's position that the government remains "fully committed to meeting [its] obligations under UNCLOS, UNFSA, FAO and relevant RFMOs, [including the North East Atlantic Fisheries Commission], [and] multilateral environmental agreements, such as the Convention on Biological Diversity (CBD) and Convention on International Trade in Endangered Species (CITES)" and its commitment to "reinvigorate [the UK's] role within these organisations".

Compliance with these agreements (and all other multilateral environmental agreements not listed, such as OSPAR and the Bern Convention) and membership of these organisations is essential to the UK's credibility on the international stage and is necessary to allow the UK the opportunity to advocate for, and champion the development and maintenance of, sustainable fisheries at the international level.

On RFMOs in particular, the UK will retain current membership of some Organisations such as the Indian Ocean Tuna Commission (IOTC) and the International Commission for the Conservation of Atlantic Tunas (ICCAT) by virtue of its Overseas Territories. MCS supports the UK Government's intention to apply to be an independent member of the North-East Atlantic Fisheries Commission and would also encourage an application be made to the

[9] European Court of Auditors (2017), Special Report N°08/2017, EU Fisheries controls: more efforts needed, p.49.

Western and Central Pacific Fisheries Commission so as to champion and promote legal, sustainable and fair governance of international fisheries.

It is crucial that the UK continues to support and participate in international efforts to end damaging fisheries subsidies in line with meeting United Nations Sustainable Development Goal (SDG) 14,[10] on oceans, one of the targets of which is the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing and the elimination of subsidies that contribute to IUU fishing by 2020 at the latest.

The EU has agreed to contribute to the achievement of the UN SDGs and continues to defend the position that harmful fisheries subsidies should be banned. Since the Doha Ministerial Conference in 2001, at the World Trade Organization (WTO), the EU has been negotiating for a prohibition on using subsidies that contribute to overfishing and overcapacity. At the 2017 Buenos Aires Ministerial Conference, WTO members agreed to adopt an agreement on fisheries subsidies at the 2019 Ministerial Conference and the EU subsequently submitted a proposal for this new agreement.[11]

The UK must adopt an approach consistent with the EU's by continuing to support efforts to end harmful fisheries subsidies including to secure a deal on fisheries subsidies by the next 2019 Ministerial Conference and beyond.

MCS support the development of an International Oceans Strategy as announced by the former Foreign Secretary in June 2018.This strategy, led by the Foreign & Commonwealth Office, provides an opportunity to bring together all of government's oceans work in a single strategy and to ensure the restoration and maintenance of our marine environment.

The UK should seek to play a role in ongoing UN Intergovernmental Conferences convened to develop a new instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The high seas, and the species they sustain, must be protected. Covering three-quarters of the Earth's surface, these ecosystems are critical to the functioning of our planet. As part of the ongoing discussions, the UK must endeavour to ensure that the eventual instrument is legally binding, ambitious, and grounded in the best available scientific evidence.

The UK must continue its membership of OSPAR in order to ensure its continued role in the important protection of the marine environment in the North-East Atlantic.

MCS also believes that it is essential that the role as an international leader in sustainable fishing does not stop at management on the water - the UK needs to be being a leader in the provision of sustainable seafood for consumers and businesses alike. We would encourage the UK to further ensure that all seafood that is sold in the UK is from sustainable

[10] https://www.un.org/sustainabledevelopment/oceans/

[11] https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_intro_e.htm

sources by phasing out the importing of seafood from unsustainable and damaging fisheries and fish farms.

## Q5: What are the fisheries policy areas where a common legislative or non-legislative approach (framework) across the UK is necessary?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

MCS agrees that common frameworks will be needed in some areas. These should be co-developed and co-managed with environmental principles at the heart, mutually agreed with the Devolved Administrations, respecting the devolution settlements and democratic accountability of the devolved legislatures.

The following areas for common frameworks are identified in the White Paper:

- to enable the functioning of the UK market, while acknowledging policy divergence;
- to ensure compliance with international obligations;
- to ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
- to enable the sustainable management of common resources;
- to administer and provide access to justice in cases with a cross-border element; and
- to safeguard the security of the UK.

A common UK framework is also critical for the following additional areas:

- management of transboundary environmental processes and impacts to ensure that conditions attached to access are consistent across UK waters; and
- consistent implementation and enforcement of the landing obligation which will come into force in January 2019

In order to ensure the health of our marine environment and avoid the overexploitation of fish stocks, it is crucial that these frameworks are environmentally sound.

The frameworks should be based on the best scientific advice and take an ecosystem-based approach. The White Paper acknowledges the need for an ecosystem-based approach to fisheries management and we strongly agree with this and have provided a more detailed response in question 6.

It is also essential that common frameworks should be mutually developed with the aim of supporting effective marine environmental management throughout the UK, incorporating the management of fish stocks, whilst respecting the devolution settlement and existing progressive country-specific measures.

As well as setting out the requirements of the Marine Strategy, the Marine Strategy Regulations also set out the relationship between the UK Secretary of State and each Devolved Administration. The UK Marine Strategy includes commercial fish targets co-developed by all four administrations, for whom it is then the responsibility to take the necessary management measures to achieve in their waters. This is a good example of joined-up policy-making that should be built on as new frameworks develop.

Cross border engagement will be important. A lack of compatibility has the potential to create management, monitoring and enforcement gaps which could be damaging particularly in the consideration of shared stocks and the functioning of the internal seafood market.

The common framework must include consistency in funding mechanisms across all four UK Administrations for any industry-based levies.

## Q6: Do you have any further comments relating to the issues addressed in this section?

An ecosystem based approach to fisheries management is essential. This requires that fisheries are not managed in a silo separately from wider marine environmental considerations but rather that management takes account of the impacts of fishing practices on the wider marine environment and requires more than just setting TACs in line with MSY for targeted species. There is a precedent set by the New Zealand Fisheries Act which embeds environmental principles within its legislation. This focuses on the long-term viability of all species affected by the fishing effort – not simply by managing the target species. The Act also requires the conservation of impacted habitats and biodiversity. Norway is similarly moving towards a more holistic approach to management under its new Marine Resources Act which adopts an ecosystem based approach protecting not only species but also habitats and biodiversity as key principles.[7]

Wider environmental impacts are inevitably transboundary, and so the lack of a UK-wide common framework would significantly risk the adoption of an effective ecosystem-based approach to management for cross-border activities and stocks.

Importantly we now have the opportunity to allow us to monitor the long-term health of our seas and the stocks which rely on them. To do this effectively will require much greater scientific data collection and analysis, and the UK and DAs need to invest accordingly. A

significant starting point for implementing an ecosystem-based approach across the UK is provided by the current UK Marine Strategy, which sets out how the UK will achieve and maintain Good Environmental Status (GES) in UK waters by 2020 and beyond. It brings the conservation and sustainable use of commercial and non-commercial fish together under the framework of an ecosystem-based approach to restoring and maintaining healthy seas.

Legal advice for WWF and the RSPB shows that the Marine Strategy Regulations 2010 contain the most detailed requirements to implement an ecosystem-based approach in the marine environment in UK law. These requirements, including taking those measures necessary to reach GES, should be built on in future UK legislation. Particularly those relating to:

**Descriptor 1** – Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.

**Descriptor 3** – Populations of commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.

**Descriptor 4** – All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.

**Descriptor 6** – Sea-floor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.

The UK GES targets were developed in 2012 before the Common Fisheries Policy was reformed. As such the UK Government and Devolved Administrations must take this opportunity to be more ambitious in their future legislative planning for both fisheries management and the wider Marine Strategy. We note that there is a requirement for the UK Government and Devolved Administrations to review these targets later in 2018 and we trust that this is seen as an opportunity to help deliver this increased ambition.

Any new criteria supporting this ambition should be developed in a meaningful way to support monitoring, assessment and management to improve the health of stocks and the wider marine ecosystem. These criteria should then be published in the proposed annual statement on fish stocks, which should also include assessments on wider ecosystem health, so the public can track progress towards achieving healthy marine ecosystems.

A significant wider impact of fishing includes the threat to non-target species (e.g. fish, marine mammals, seabirds, sharks, rays, and turtles) through fisheries bycatch. There are a number of simple but effective technical adaptations of fishing gear or by other changes in fishing practice (mitigation measures) which can minimise certain types of bycatch. With the

UK leaving the EU, a demonstrable act of global leadership would be to draw up a robust and adequately resourced bycatch strategy that applies best practice and caters for all bycatch species at risk of overexploitation, particularly species listed as endangered, threatened and protected (ETP). To support the development of such a strategy, it is important that the new Fisheries Bill provides a clear footing for the UK and Devolved Administrations and managing bodies to take necessary steps to ensure the negative impacts of fishing activities on the marine ecosystem are avoided or, where avoidance is not possible, minimised and remediated. Please see question 14 for further consideration. As previously stated, increased data collection, including through increased investment in technology such as REM and wider application of VMS, and increased analysis, will be essential to better understand wider ecosystem impacts and to monitor the long-term health of our seas and stocks.

Additionally, with regards to EBM there has been a consistent failure to link marine to terrestrial and freshwater system. This has been damaging to the interests of migratory species, such as salmon and eels with a lack of acknowledgement that these migratory species require special management.

Recent evidence indicates that the optimal nursery grounds for the early life stages of important marine species such as sea bass (grey mullet and to lesser extent common sole), lie within areas of low salinity (estuaries and saltmarshes). Some estuaries support critically important marine nursery grounds at a regional level and are designated as transitional waters under the Water Framework Directive (WFD). However, MSFD does not overlap with the transitional water bodies of WFD and there is an obligation to achieve GES under MSFD as well as Good Ecological Status under WFD.

Sustainable management of all species that move across these man-made boundaries can only be achieved with effective linkage between these two drivers and by an overhaul of management controls and funding mechanisms. This underlines the need for future sustainable management to take a much more holistic approach. We have provided 3 case studies: the first outlines the importance of EBM in the management of commercially important by-catch species, case study 2 provides an example of spatial management of stocks to provide an EBM approach and is detailed with regards to Scallop fishing in response to question 11, and case study 3 which details the importance of EBM in the management of low trophic species..

**Case Study 1:**

West of Scotland cod and whiting (although Celtic Sea cod in England is in a similar situation) are current examples of stocks which require additional measures to recover them to sustainable levels but where controlling the TAC alone will not be enough. These species are primarily caught as bycatch in trawl fisheries targeting other species which are in

a much better state. The ICES advice for both of these species in this area has been grim for several years and is for a zero catch in 2019. Unless greater efforts are made to avoid these species - or a complete cessation of fishing in the area - there is little hope of the situation improving.

In cases like this, we believe there needs to be a duty on managing authorities to develop (with relevant stakeholders) and implement various selectivity, avoidance, monitoring and mixed fisheries measures to ensure that stocks are supported in recovering as much as possible.

There are many options available to fisheries managers and industry participants to reduce bycatch of these species in these fisheries, but there has been a lack of on-water change to date. MCS believes there need to be meaningful incentives (regulatory, access to fishing opportunities, funding) so that on-water change actually occurs. It will be important for any future fisheries management regime to include such incentives.

**Case Study 2:**

Please see response to question 11, on the importance of a spatial approach to the management of scallop fisheries as another example of ecosystem based management.

**Case Study 3:**

An example which highlights the importance of a more holistic EBM approach to management is that of the offshore North Sea fishery for sandeel, which illustrates the importance of identifying both the potential direct and indirect impacts of fishing. This example is also of relevance to Q7 (measures for sustainable fishing) and Q 14 (protection of the marine environment).

The lesser sandeel is a key prey species for maintaining the productivity and population status of many seabird species including terns, kittiwakes, and puffins. Sandeels are also consumed in large numbers by harbour porpoise, other sea mammals, and piscivorous fish such as cod, whiting and mackerel. As such, the sandeel plays a pivotal role in the foodweb between primary productivity (plankton) and top predators. However, diminishing productivity of sandeels (along with other species of forage fish in the case of the North Sea[12]), in combination with other pressures in the marine environment, has driven a major decline of the UK's seabird population. In Scotland, 12 indicator seabird species were 50% less numerous in 2015 than in 1986.[13] Scientific evidence is mounting that sea warming is

[12] Clausen, L.W., Rindorf, A., van Deurs, M., Dickey-Collias, M. & Hintzen, N.T. (2017) Shifts in North Sea forage fish productivity and potential fisheries yield. J. Appl. Ecol. 55, 1092-1101.
https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2664.13038
[13] Scottish Biodiversity Indicator: The numbers and breeding success of seabirds – Dec 2016

responsible for reduced sandeel recruitment in the North Sea,[14] that this is a key factor in the decline of seabird populations, and critically that commercial sandeel fishing can aggravate this.[15]

To address this impact, in 2000 the EU created a closed area of 20,000km$^2$ extending offshore from the coast of NE Scotland to Northumberland, a 'box' which keeps the Danish sandeel fishing fleet at bay from the foraging ranges of sensitive seabird colonies. This industrial sandeel fishery continues elsewhere in the North Sea, mainly nowadays on the Dogger Bank, of which the UK part is a key focal area of the fleet. RSPB research[16] indicates that the Dogger Bank fishery could be having a detrimental impact on kittiwake productivity on the adjacent Yorkshire coast.

Moreover, whereas the stock assessment model used by ICES includes estimates of the quantity of sandeels consumed by seabirds and other predators in order to estimate the 'natural' mortality (M) of the stock, this does not involve any consideration of the biomass of sandeels that dependent predators need to be present in the sea in order to be able to find the amount that they consume. In other words, the predators' *ecological* as opposed to their *physiological* requirements are not used in setting catch limits for the sandeel fishery. In failing to cater adequately for the needs of seabirds and other marine wildlife (effectively not providing sufficient sandeel 'set-aside' for them), the management of the fishery therefore falls short of meeting the objective of an ecosystem-based approach committed to in the White Paper and is an issue that the UK should address if it is to deliver ecologically sustainable fisheries.

While the focus here is on sandeels (as the biggest single-species fishery in the North Sea) similar arguments apply to other low trophic level species (or 'forage fish'), notably sprat.

In conclusion, although management of the North Sea sandeel fishery has improved in recent years (closed area, management units, in-year assessment of recruitment), further measures are required in UK waters to protect the stock and the species which are reliant upon it as a food source.

## Section 2: Pursuing sustainable management: questions

[14] http://www.int-res.com/articles/meps2002/238/m238p199.pdf
[15] http://www.mccip.org.uk/impacts-report-cards/full-report-cards/2006/healthy-and-biologically-diverse-marine-ecosystem/seabirds/ceh-evidence/
[16] http://onlinelibrary.wiley.com/doi/10.1002/aqc.2780/full

## Q7: Do you agree with the measures proposed to ensure fishing at sustainable levels?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

We welcome the commitment to sustainable management using the best available scientific advice. Funding must be made available for the science needed to provide this advice - to support robust assessments for all harvested stocks, with a focus on reducing the large number of data deficient stocks, and improving our knowledge of stocks which may be indirectly impacted or at risk from fishing. We are encouraged to see the continued ambition of setting exploitation of all stocks at levels consistent with MSY in line with international objectives in UNCLOS (1982), the Johannesburg World Summit on Sustainable Development (2002) and SDG14,[17] coupled with the acknowledgement that sustainable exploitation is vital to the existence of the commercial and recreational fishing sectors.

However, a precautionary approach is needed to help provide resilience and a buffer against external factors which may affect a stock's viability, such as climate change. Catch limits should generally be set below the level of fishing mortality associated with MSY (FMSY). The White Paper recognises that achieving MSY may involve short term costs to some sectors - such as reductions in catches - to ensure long-term benefits. When stocks are restored to productive and healthy levels, with the level of fishing in line with MSY-based exploitation rates, this can result in subsequent increase in catch limits, for example plaice in the North Sea.[18] This can in turn lead to increased profits and more consistent catches over time.

### *Stock Biomass*

It is encouraging to see a commitment to work with the EU and other coastal states to "set harvest rates that restore and maintain fish stocks at least to levels that can produce MSY". However, the wording of the White Paper could be stronger. As it stands this wording is weaker in ambition than the current CFP, which aims to have biomass levels which are **above** MSY, not **at least** MSY. Additionally, there remains no defined deadline for reaching these levels.

Simply setting a direction of travel for stock improvement does not ensure that ambition will be met – there needs to be firm targets and appropriate ways to measure progress against them (e.g. X percentage of stocks with MSY assessments and X percentage above

17 FAO, 2018. Sustainable Development Goals: 14.4.1. Webpage available at http://www.fao.org/sustainable-development-goals/indicators/14.4.1/en/ [Accessed 20/8/2018].

18 GUK, 2018. The case for sustainable fishing limits. Greener UK briefing. Available at http://greeneruk.org/resources/The_Fisheries_Bill_The_case_for_sustainable_fishing_limits [Accessed 16/8/2018].

Bmsy). There must also be sufficient incentives to reach these targets and appropriate sanctions if they are not met.

As is highlighted in the White Paper, "success will ultimately be measured by our ability to rebuild and maintain stocks, while improving the health of our marine ecosystems"; this success can only be achieved if there are appropriate monitoring measures and targets in place. The planned annual statement on the state of stocks of interest to the UK will form a key part of the monitoring process but will only be a useful tool if referenced against the recommended scientific (ICES) advice on fishing limits, and used to guide improved management measures if these are found to be failing in delivery.

The use of fishing mortality ranges for fisheries management has the potential to allow fishing above levels consistent with MSY. The existing safeguards are based around maintaining a stock biomass above Blim with 95% probability. However, the use of Blim is flawed and has the potential to be detrimental to the recovery of a stock to healthy levels, as stock levels between Blim and MSYBtrigger and/or Bpa are considered **at risk** of being outside Safe Biological Limits.[19] To meet the ambitions for sustainable, healthy stocks, management should always aim to recover and maintain stocks to levels which maintain its long-term reproductive capacity, by keeping the Spawning Stock Biomass (SSB) **above** the biomass reference points MSYBtrigger and/or Bpa – **not Blim**. Setting ranges which purely aim to prevent the stock from falling below Blim is not consistent with long-term recovery and maintenance of a healthy stock, or to reaching the 25YEP and White Paper objective of "Ensuring that all fish stocks are recovered to and maintained at levels that can produce their maximum sustainable yield." If ranges are to be used they should be restricted to the maintenance of a stock biomass at levels above MSYBtrigger and/or Bpa.

***Ecosystem considerations***

Assessment of fisheries impacts on the wider ecosystem should be included as a measure of sustainability in fisheries management. At a minimum, the existing GES status indicators should be retained. The White Paper states an ambition to account for ecosystem based impacts under the umbrella of an ecosystem-based approach to management. We have detailed our further thoughts on EBM in our response to question 6.

It is important to note that spatial and temporal management of fisheries has also been proposed as an alternative and more appropriate method of management in some cases including for the management of skates and rays (e.g. ICES, 2014[20]). This approach will also

[19] Seafish. RASS Glossary. Available at http://www.seafish.org/rass/wp-content/uploads/2014/09/Glossary_2014.pdf [Last accessed 15/8/2018].
[20] ICES (2014). Cuckoo ray (Leucoraja naevus) in Subarea IV and Division IIIa (North Sea and Skagerrak and Kattegat): Advice for 2015. Available at http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2014/2014/rjn-34.pdf [Accessed 8/8/2018].

require sufficient and appropriate data to make scientifically robust recommendations for management.

***Vessel monitoring***

If fisheries are to be sustainably managed, fishing activities of individual vessels must be effectively monitored. There is a strong case for the adoption of REM given its ability to contribute to an ecosystem-based approach to fisheries management through the generation of information on non-target and protected species captured by fishing gears. This is something that we are very much lacking at present. Only by understanding the true extent of incidental capture can we develop and deliver effective mitigation measures. VMS currently remains the first port of call for the monitoring of vessel location over 12m in length, but it will be important to broaden out this coverage to all vessels, such as through iVMS which can be achieved with relatively little disruption to the industry. In the future an integrated REM system which includes cameras and GPS could allow for live vessel tracking and monitoring. This would mean that in addition to collecting environmental, species and catch information, an integrated REM system could also provide location information which in turn would make separate VMS unnecessary.

There must also be consistent methodology for the collection of all data, whether through VMS, REM, observer data, scientific research and fisheries-science partnerships, electronic recording and reporting systems (ERS) such as e-log books or catches, allowing the data to be used in, and compared with, broader scientific studies including ICES assessments.

***Impacts of negotiating shares***

Our final concern with regards to "ensuring fishing at sustainable levels" is reflected in the Ecologist article written by Griffin Carpenter (NEF).[21] Here Carpenter highlights the issues around negotiating or renegotiating with the EU the share of fishing opportunities the UK will receive for stocks in which it has interest. The White Paper outlines new ways of agreeing shares based on elements such as zonal attachment. However, the reality of the situation is that however the shares are distributed, the total amount able to be sustainably removed (as advised by ICES) must not be exceeded.

## Q8: Do you agree that existing quota should continue to be allocated on an FQA basis?

[21]Carpenter, G. (2018). Why brexit could lead to overfishing - to the detriment of everyone. Article in Ecologist. Available at https://theecologist.org/2018/mar/09/why-brexit-could-lead-overfishing-detriment-everyone [Accessed 16/8/2018].

## Q9: How should any additional quota that we negotiate as an independent coastal state be allocated?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

**MCS believes that questions 8 and 9 can be answered together and should not be treated as mutually distinct considerations.**

The White Paper states that "the fish in our seas, like our wider marine assets, are a public resource and therefore the rights to catch them are a public asset." It goes on to state that the White Paper "aim is to ensure that UK communities derive maximum benefit from UK quota."

If the government wants to manage fishing opportunities as a public asset and to ensure that communities are benefiting from fishing opportunities, then it follows that opportunities should be allocated according to public interest criteria. This means allocating fishing opportunities according to transparent and objective environmental, social and economic criteria in a way that incentivises the most sustainable fishing practices, as set out in the suggested objectives drafting in Annex 1 prepared by MCS, Greener UK and eNGO partners.

MCS appreciates that this is a large task and may not be possible to implement on day one for existing quota but it should apply immediately to any new quota which becomes available if it is to meet the White Paper aims. The initial distribution of new quota and subsequent re-distribution of existing quota based on this criteria-based approach would also go some way towards addressing the concerns of some fishers, particularly in the small-scale coastal fleet, with historical grievances related to current FQA shares.

There is also a significant environmental gain to be made through the incentivisation of selectivity improvements, both in gear and behaviour, through the access to fishing opportunities. This could be vital for reducing discarding of unwanted species and improving target catch. While the landing obligation has incentivised some movement towards greater selectivity of the fleet, there is still some lethargy in how new technologies and innovations can be tested and importantly applied to realise success. Quota allocation could form a part of the incentivisation programme. On a smaller scale, additional allocation of quota is an excellent driver to stimulate new thinking and design at the community or individual level. On a larger scale, innovations at fleet level require collaboration between fishermen as well as willingness to share information. Also important is the ability for fishery managers to help align incentives for the fishing fleets, and government have a role in developing these incentives through proposals such as the quota reserve option.

Selectivity is not limited to gear innovations but also includes avoidance measures, or fishing behavioural adjustments which might include fishing at different depths, switching gears, temporal changes, and real time, temporary spatial closures. These conditions should also be considered when using quota as an economic incentive to drive behaviour change on the water.

Additionally, real time, temporary spatial closures are an example of a type of spatial restriction that could be used in conjunction with receiving more quota. Fishermen are typically resistant to the implementation of closures, which limit their freedom to fish where they choose. However, today there are a number of fisheries in which fishermen have shown their willingness to embrace self-imposed closures due to the benefits that can accrue. For discard avoidance, voluntary, short-lived closures can be essential for avoiding areas with high juvenile catch rates of a 'hotspot' of choke species (i.e. where choke species have congregated) and closures could also be used as a bycatch reduction tool. Due to the sharing of sensitive information between fishing participants, a certain level of trust and/or third-party data collection will be required for successful implementation.

The Scottish Conservation Credits Scheme is a good example of incentivising fishermen to voluntarily adopt conservation-minded behaviours in exchange for additional days at sea, employed real-time rolling closures as well as seasonal and permanent closures of specified areas to avoid cod spawning aggregations and areas of high cod density.

## Q10: Do you agree that Defra should run a targeted scientific trial of an effort system in English inshore waters?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

MCS fully supports innovation and the development of new ideas, technologies and approaches to management, particularly to improve the management of small scale fisheries, but we do not support the effort-based management trial proposed. Days at Sea (DAS) is a 'blunt instrument' and nations have moved away from this approach as they have seen that it fails to deliver conservation or economic results. It has been trialled the world over including here in the UK and has never proven a successful way to sustainably manage fisheries. It would also be at odds with the rest of Europe, making harmonised management of shared fish stocks far more difficult.

In addition to this, MCS feels that the funding made available for this trial could be put to better use funding a new trial or innovation within the fishing industry.

Instead of adopting a DAS approach, design features can be built into quota management systems to aid fishermen - particularly small scale, inshore fleets – so that they can make

the most of their fishing opportunities, and in doing so would improve on the current system. For example:

- Peer-to-peer quota trading can be used to align catch with quota
- 'Risk pools' can be used to help fishermen pool their quota for high-risk species they are trying to avoid using the pool as an insurance policy should fishermen overshoot their quota
- Community quota schemes can enable a fishing community to sort out their individual fishing preferences amongst members of the community scheme, with greater control over their fishing activities and preferences

If, as we believe, the heart of the problem is the share of fish allocated to small scale fishermen (versus the larger commercial operators), switching to DAS would only mask and cannot solve *that* problem as evidence suggests that effort-based systems can lead to overfishing and reduced biomass levels. What is needed is a national conversation and evaluation of how to allocate a shared resource in order to tackle the embedded quota allocation issues in the system. This could include an evaluation of the current PO structure and whether some of the tools listed above could be incorporated by the POs at the most appropriate level. This is important for the non-sector and under 10m fleet who see effort as a solution because there are no tangible quota solutions on the table for them. Engaging in a dialogue and trials of community quota schemes, cooperatives, and an 'inshore' function of existing POs is a more pragmatic way to think about a quota system that will work for this disenfranchised sector.

## Q11: Do you agree with our proposals to explore alternative management systems for certain shellfisheries in England?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

MCS welcomes the government's proposals to develop an effective method for sustainable management of certain non-quota shellfish stocks in the western waters. As per our response to question 10, we do not believe that effort management systems provide sufficient safeguards to sustainably manage fisheries. Whilst we are encouraged by a number of Fishery Improvement Projects (FIPs) underway in this region to improve management,[22] it will be important for these to be underpinned by a more effective management and regulatory framework in the future.

[22] Seafish (2016). Project UK fisheries improvements. Leaflet. Available at http://www.seafish.org/media/1671744/project_uk_a4_leaflet_oct_16.pdf.

There are several non-quota species in this region, but we have focussed on scallops as a case study of the need for better management below.

### *Defining stocks and catch limits*

One of the areas of most concern for management of shellfish fisheries, particularly scallops, is the lack of stock specific measures, largely owing to a lack of understanding of stock definition and status.[23] Whilst there is generally some information regarding stock structure, this is rarely sufficient to define stocks or to evaluate biomass or fishing mortality in relation to reference points. This makes it difficult for management to be developed in relation to the size and health (including, density and age structure) of a population and to establish sustainable harvest rates. Scallops are relatively sessile and easy to catch and they have variable recruitment patterns which makes them very vulnerable to overfishing and has led to 'boom and bust' fisheries.[24] MCS therefore believes greater investment in fisheries dependent and independent science is needed to better define scallop stocks and recruitment dynamics which would then enable sustainable catch limits to be developed. Once such limits are established, specific measures (e.g. Site-specific harvest control rules) need to be put in place to ensure fishing pressure matches the advised catch levels and habitat type of specific areas (see spatial management approach discussed below).

### *Habitat impacts and a spatial management approach*

Mobile, bottom-towed fishing gear, such as mechanical dredges and demersal trawls, can have considerable impact on benthic habitats and species and reduce biodiversity of sea floor communities. Negative impacts have also been observed to other commercial species such as brown crab.[25] Impacts depend on how much mortality is caused by the fishing method and the recovery rate of the biota affected. The impact can be highly site specific and varies depending on seabed types, historical exploitation and natural disturbance.[26]

It is important to protect vulnerable marine ecosystems (VMEs) from scallop dredging, including reefs, maerl beds, seagrass beds and horse mussel beds. Destroying maerl beds for example, substantially reduces biodiversity, seabed stability, local nursery areas and

[23] ICES (2016). Report of the ICES Scallop Assessment Working Group (WGScallop), 3-7 October 2016,Aberdeen, UK.ICES CM 2016/ACOM: 24. 39 pp.
[24] Duncan, P.F., Brand, A.R., Strand, Ø.,Foucher, E. (2016). The European Scallop Fisheries for Pecten maximus, Aequipecten opercularis, Chlamys islandica, and Mimachlamys varia. In: Developments in Aquaculture and Fisheries Science. Vol 40. Editor(s): Sandra E. Shumway, G. Jay Parsons. Elsevier. Pages 781-858. Available at http://www.sciencedirect.com/science/article/pii/B9780444627100000195.
[25] Ondes, F., Kaiser, M. and Murray, L. (2016). Quantification of the indirect effects of scallop dredge fisheries on a brown crab fishery. Marine Environmental Research, 119, pp.136-143.
[26] van Denderen, P. D., Bolam, S. G., Hiddink, J. G., Jennings, S., Kenny, A., Rijnsdorp, A. D., & van Kooten, T. (2015). Similar effects of bottom trawling and natural disturbance on composition and function of benthic communities across habitats. Marine Ecology - Progress Series, 541, 31-43. DOI: 10.3354/meps11550.

therefore commercial fisheries.[27] There is a partial 'strategy' across the EU and within the UK to protect some important habitats (e.g. through SPAs, SACs and MCZs), but we are concerned about the ongoing use of bottom towed fishing gear on sensitive marine habitats both outside and inside Marine Protected Areas (MPAs) - especially in sites designated to protect seabed features or where an appropriate impact or risk assessment has not been undertaken to demonstrate that the activity has no significant effect to the site.

Owing to the important habitats that scallop populations can be located in (and help to create), catch limits alone will not be sufficient to ensure sustainability and integrity and health of the seafloor needed to achieve GES (See response to question 2).

To overcome this, a regional spatial approach to scallop management is recommended.[28] A spatial management approach would involve combinations of permanent and rotational closures to different sites based on the composition of the various habitats – including importance of certain areas for scallop recruitment - and status of species present. Such an approach supplemented with technical measures and stock specific catch limits would be the best way to ensure sea floor integrity, recovery and maintenance of biodiversity, healthy scallop populations and sustainable fishing.[29]

We are very supportive of the government's plans to be 'backed up by appropriate control and enforcement including the use of modern technology such as vessel monitoring systems and cameras'. Effective control and enforcement are vital management tools and deterrents to illegal fishing, and in moving to a more responsive and dynamic regime, we believe that vessels should play a more important role in the provision of data for management purposes. We believe it essential for all vessels to be monitored through VMS or iVMS, or, as per response to consultation question 13, REM with CCTV and/or observer coverage for all vessels over 10m in length and on certain under 10m vessels (in accordance with risk for non-compliance, high incidental capture of non-target species etc). To accompany this, there must also be an effective framework for the provision and analysis of data to ensure fisheries data better informs our understanding of our seas.

***Other non-quota species***

As mentioned, there are many other non-quota species beyond scallops in the western waters (and in the rest of the UK) which do not have effective controls on fishing pressure in relation to stock status, and MCS also believes plans should be extended to develop effective management for these species to ensure their sustainable exploitation. The below

[27] Hall-Spencer, J.M., Moore., P.G. (2000). Scallop dredging has profound, long-term impacts on maerl habitats. ICES J Mar Sci 57: 1407–1415.
[28] Howarth, L. M. & Stewart, B. D. (2014). The dredge fishery for scallops in the United Kingdom (UK): effects on marine ecosystems and proposals for future management. Report to the Sustainable Inshore Fisheries Trust. Marine Ecosystem Management Report no. 5, University of York, 54 pp.
[29] See Howarth & Stewart (2014), above.

species are some examples of non-quota species in the western waters in need of more effective management:

European lobster – some restrictions are in place, but there are no measures in relation to stock size. Overfished and subject to overfishing in the South West.[30]

Grey mullet – no quota or other specific management measures, stock is data limited and status unknown.[31]

Skates & rays – no species or stock specific quota or other specific management measures, several stocks data limited or unknown, and several overexploited.[32] Status also threatened for some species. Also these are not easy to identify from video monitoring and training in ID and tagging could provide more species specific information to feed into data collection and decision making.

Turbot - non-quota or other specific management measures, stock status is unknown.[33]

Squid & cuttlefish - no quota or other specific management measures, stocks are data limited and status unknown, with some stocks showing declining trends in biomass.[34]

Intertidal fisheries and unregulated and unreported fishing including bait collection for commercial fisheries.

To meet our domestic and international obligations (see response to questions 4 and 5), it is important for all harvested species to be effectively managed at sustainable levels, not just the most valuable commercial species.

## Q12: Do you agree that there is a case for further integrating recreational angling into fisheries management?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

[30] CEFAS (2018). Lobster stock status report 2017. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722748/2017_Lobster_assessments.pdf.
[31] MCS (2018). Good fish guide: grey mullet. Available at https://www.mcsuk.org/goodfishguide/search?name=grey+mullet
[32] ICES (2016). Skates and rays advice for 2015. Various. Available at http://www.ices.dk/community/advisory-process/Pages/Latest-advice.aspx.
[33] CWT (2018). Cornwall good seafood guide: turbot. Available at http://www.cornwallgoodseafoodguide.org.uk/fish-guide/turbot.php.
[34] Alemany, J., Rivot, E., Foucher, E., Vigneau, J., Robin, J. (2017). A Bayesian two-stage biomass model for stock assessment of data-limited species: An application to cuttlefish (Sepia officinalis) in the English Channel. *Fisheries Research*. Volume 191. Pp 131-143.

MCS believes there is a strong case for further such integration on a risk-based approach, proportionate to the additional pressure recreational sea angling (RSA) exerts on the stocks of particular target species.

RSA by individuals (angling refers to fishing with hook and line, however recreational fisheries are also undertaken with nets, pots or spear guns, also for non-commercial purposes) does not require a licence in the UK, although some IFCAs have recreational permit schemes.[35] Most recreational fisheries operate under a 'regulated open access management' regime, whereby individuals follow fishing gear and catch restrictions (such as the EU Minimum Conservation Reference Sizes) as well as national and local regulations.[36]

The contribution to the economy, as well as to the wellbeing of those taking part in the activity, is internationally recognised (OECD)[37] and according to Defra's *Sea Angling 2012* report,[38] sea angling in England supported £2.1 billion of total spending (considering indirect and induced effects), provided a total of over 23,600 jobs, and added almost £980 million of GVA to the UK economy. Sea anglers support around 19,000 jobs in the supply sector, and the estimated benefit to suppliers is around £71 million; boat anglers are considered to have the largest impact.[39]

Recreational angling includes both individuals fishing from shore and those in private or chartered vessels and is considered to have a relatively small impact on the environment and on target fish stocks, compared to commercial fisheries.[40]

However, for certain species (notably sea bass, cod and pollack) recreational fisheries contribute significantly to fishing mortality for those stocks and there is a clear case to include recreational fishing in the share of TAC or quota for certain key species. In the case of sea bass, early estimates from SA2012 put the total recreational take at up to 690 tonnes. [41] Since then, EU measures for bass have restricted the right of anglers to take any bass (following one season where 1 bass per angler per day was permitted).[42] As these measures,

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[35] https://permits.devonandsevernifca.gov.uk/Permits/Recreational-potting-permit

[36] Tinch, R., Mathieu, L., Shannon, A. & Radford, A. (2015). *Comparing Industry Sector Values, with a Case Study of Commercial Fishing and Recreational Sea Angling*. Eftec for the UK Fisheries Economists Network, supported by Seafish, Defra, Marine Scotland. http://www.seafish.org/media/publications/eftec_comparing_industry_sector_values_FINAL_Aug_2015.pdf

[37] OECD introduction to recreational fisheries http://www.oecd.org/tad/fisheries/recreational-fisheries.htm

[38] Armstrong, M., Brown, A., Hargreaves, J., Hyder, K., Pilgrim-Morrison, S., Munday, M., Proctor, S., Roberts, A. & Williamson, K. (2013) *Sea Angling 2012: A survey of recreational sea angling activity and economic value in England*. Defra. Crown copyright. http://webarchive.nationalarchives.gov.uk/20140305120543/http://www.marinemanagement.org.uk/seaangling/documents/finalreport.pdf

[39] Cappell, R. & Lawrence, K. (2005). *Invest in Fish South West: The Motivation, Demographics and Views of South West Recreational Sea Anglers and their Socio-economic Impact on the Region.* Report on recreational sea angling in the South West. http://resources.anglingresearch.org.uk/sites/resources.anglingresearch.org.uk/files/The_Motivation,_Demographics_&_Views_of_SW_Recreational_Sea_Anglers.pdf

[40] Tinch, R. et al (2015). *Comparing Industry Sector Values, with a Case Study of Commercial Fishing and Recreational Sea Angling*. Eftec for the UK Fisheries Economists Network, supported by Seafish, Defra, Marine Scotland. http://www.seafish.org/media/publications/eftec_comparing_industry_sector_values_FINAL_Aug_2015.pdf

[41] Armstrong, M. et al (2013). *Sea Angling 2012: A survey of recreational sea angling activity and economic value in England*. Defra. Crown copyright. http://webarchive.nationalarchives.gov.uk/20140305120543/http://www.marinemanagement.org.uk/seaangling/documents/finalreport.pdf

[42] EC (2016) How is the EU protecting sea bass? https://ec.europa.eu/fisheries/cfp/fishing_rules/sea-bass_en

in combination with restrictions on the commercial sector, are believed to have been at least partially effective, recent ICES advice (2018) points towards a lower total take by recreational fishers which therefore suggests they should be granted some access to the resource going forwards - but nonetheless this case study makes it clear that recreational fisheries for certain species need to be regulated as they can contribute significantly to mortality.[43]

Three crucial factors need to be considered for any RSA management:

**Enforcement:** anglers are dispersed along the coastline and recreational angling is very difficult to control and regulate (hence the need to include angling bodies in management decisions for key stocks);

**Data collection:** incentivising voluntary contribution of data such as through the recent substance-led sea angling diary scheme[44] will be essential as there is no equivalent mechanism to capture the cumulative take (as for example there is in the RBS for commercial fisheries). The potential of RSA to contribute to cost recovery for improved data collection could be considered and trials conducted to evaluate feasibility of implementation; and:

**Funding:** The current local authority levy system which raises funds for IFCA activities is financially constrained in the current economic climate. These bodies could conduct efficient expanded operations if some element of an industry based levy could be directed at their work. A distribution system to fund local socio-economic sustainability and controls on fishing would be required.

Around England many IFCAs (e.g. Sussex) are developing recreational angling strategies[45] and many IFCAs have significant representation of anglers and the RSA industry on their committees. IFCA committees are clearly a local and appropriate forum for including recreational fishers and charter boat skippers in fisheries management; an opportunity to develop best-practice and also promote what (if regulated correctly) can be both a lucrative and sustainable recreational activity. Developing local angling strategies and regulating angling (MCRS, bag limits, closed seasons etc) are essential if the UK is to develop a world-leading fisheries management system. For freshwater and coarse angling in the UK a rod licence is purchased from the Environment Agency. A feasibility study for sea angling would be worth investing in to determine the viability and possible benefits of applying a similar approach to RSA.

In Northern Ireland there are no IFCAs, therefore alternative strategies would have to be put in place to replicate the above or contribute to a common framework for recreational

[43] ICES (2018) *ICES Advice on fishing opportunities, catch, and effort Published 29 June 2018 bss.27.4bc7ad–h* *http://ices.dk/sites/pub/Publication%20Reports/Advice/2018/2018/bss.27.4bc7ad-h.pdf*
[44] Substance http://www.seaangling.org/
[45] Sussex IFCA (2016) RSA strategy https://www.sussex-ifca.gov.uk/recreational-fishing

angling. Similarly, fisheries in Wales and Scotland are managed by the Welsh and Scottish Governments. The Welsh and Scottish Governments should consider strategies for delivering new local fisheries management measures such as this.

We believe adopting a risk-based approach on a regional or local fishery by fishery basis offers the most effective way to do so, and the IFCA co-management model, which includes anglers and charter skippers on the committee, is an equitable and transparent way to ensure buy-in and contributions from all sectors who wish to access a fishery.

## Q13: Do you agree with the proposed package of measures and initiatives to reduce wasteful discards?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners*.**

MCS welcomes the fact that the UK remains fully committed to ending the wasteful discarding of fish and welcomes some of the proposed initiatives such as the introduction of REM with CCTV on vessels to promote compliance and strengthen data. However, there are other elements such as the introduction of charging for over-quota catch that we would require further detail on in order to provide an informed opinion.

Minimising and avoiding unwanted catches is a crucial element of sustainable and ecosystem-based fisheries management. We believe that not enough has been done over the last five years since the landing obligation was enshrined in the reformed CFP to incentivise behaviour change towards more selective fishing. Discard rates remain at levels similar to those before the landing obligation and while some operators have adopted more sustainable practices, many others continue to operate in a 'business as usual' fashion. Future fisheries management across the UK must address this effectively.

Examples of where this has been done successfully elsewhere include the Canadian groundfish fishery, which went through industry-led reform in 2002, and has made a great success of their fisheries management regime (including a discard ban) and now every species is under-harvested – including former 'choke' species.[46] The main reason for the success of the fishery is accountability. Each vessel is accountable for everything it catches and e-log book data is verified through video footage and at port inspections of landings. The verified data has the additional benefit that it can be used in science and management

[46] Doing it for the Halibut: 'How a discard ban saved my fishery' http://blogs.edf.org/edfish/2014/05/20/doing-it-for-the-halibut-how-a-discard-ban-saved-my-fishery/ [07/08/2018]

studies, because the data provides information on total catch mortality– retained and released.

As demonstrated by the Canadian example, 100% at-sea coverage is required to ensure the discard ban is effective and provides reliable data.

The White Paper suggests introducing charges for landings in excess of quota as a way to deal with 'choke' species. It is unclear how this scheme would work in practice to dis-incentivise discarding or overfishing and we would welcome greater detail on this.

Whatever system is taken forward, we believe that all over 10m vessels and selected under 10m vessels (based on criteria to determine high-risk of non-compliance with the discard ban and/or non-target species by-catch, or for protected species bycatch monitoring), fishing in the UK EEZ must be required to have 100% monitoring - either by REM with cameras or observers, or in some cases a combination of both.

Should the scheme go ahead we are supportive of the use of income generated from charges to be recycled back into the industry to promote more sustainable fishing behaviours ultimately reducing the need for the scheme.

There is a clear opportunity for any quota 'uplift' to be assigned using criteria which favours the vessels that can prove they are fishing in the most sustainable manner with the most selective gears. CCTV footage could be used to verify and support these decisions.

We believe high survivability exemptions must be applied with caution and only as a last resort and on the basis of robust independent scientific advice. Furthermore, if the exemption is applied, strict catch and release protocols must be followed to increase the chance of survival. In addition, the percentage of the catch discarded under such an exemption which does not survive should be recorded and accounted for in TAC setting to ensure fishing at sustainable levels.

MCS does not agree with the removal of stocks from (TAC) limits as a means to implement a landing obligation and think this would be a step in the wrong direction with respect to sustainable management. In many cases, removing a TAC would remove a clear limit on fishing mortality and substantially shift the situation to one where there is potential for catches to be uncapped and insufficiently monitored. This could undermine the requirement to limit exploitation rates to levels consistent with Maximum Sustainable Yield (MSY) and increase the overall mortality of the stock. Importantly, removal of TACs for non-target or less commercially valuable fish stocks (which also removes the associated obligation to land catches of these species) will neither solve the discard problem, nor reduce the waste in fisheries or foster further selectivity improvements intended by the introduction of the discard ban.

The proposals set out in the White Paper are being considered as future management tools but fail to acknowledge that full implementation of the landing obligation comes into force

in January 2019. We have significant concerns that mechanisms are not being put in place to ensure this deadline will be met, meaning any vessels still discarding harvested species after this date will be landing illegally caught produce into the supply chains and onto consumer plates. The UK Government and Devolved Administrations must act urgently to ensure that consumer confidence in the legality and the sustainability of our stocks can be guaranteed by January 2019 and beyond.

## Q14: Do you agree with the proposed approach to protecting our marine environment in relation to fisheries including the powers proposed in the Fisheries Bill (see section 1.2)?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

In addition to the below, please also see our response to question 6 on an ecosystem-based approach to fisheries management which considers the ecosystem and fishing impacts upon it as a whole and not in silo.

It is well understood that the impacts of fishing are not restricted to the targeted species and that damage to non-living elements of the ecosystems are equally as important to the long-term health of our seas. We strongly believe that going forward there must be better integration of fishing and environmental legislation and management and that future fisheries legislation (whether developed by the UK or Devolved Administrations) should fit within a framework of a wider marine policy that aims for recovered and biodiverse seas.

As such we strongly support the high-level aspirations for better integration of fisheries and marine conservation as set out in the current White Paper and welcome the strong links with other marine management legislation and frameworks.

However, the White Paper does not provide details of how all the government's aspirations can be met. The future implementation of fisheries and marine conservation management measures therefore requires significant development with key stakeholders.

**Protecting our marine environment**

As highlighted in our response to question 6, MCS welcomes the Government's recognition that sustainable and responsible fishing requires consideration of its wider ecosystem. We believe that a key aim of the new fisheries legislation should be to encourage the development and proliferation of fishing methods which have minimal negative impacts on the marine environment.

MCS believes that the White Paper lacks ambition when it comes to the recovery and maintenance of our marine ecosystems and instead would point towards the commitments in the **25 Year Environment Plan, Scotland's National Marine Plan 2015,[47] Environment (Wales) Act (2016)** and the **UK Marine Policy Statement** to reverse losses and restore marine biodiversity.

MCS highlighted in our response to question 6 the need achieve, at least, GES as set out in the **Marine Strategy Regulations (2010)**, committing all UK administrations to achieving GES by 31 December 2020.

We welcome the ongoing commitment to achieving GES by the end of 2020. However, we share significant concerns regarding progress towards this overall goal and believe that it is unlikely to be achieved.[48]

With the UK leaving the EU, a demonstrable act of global leadership would be to draw up a robust and adequately resourced bycatch strategy that applies best practice and caters for not only endangered, threatened and protected (ETP) species, but all species at risk of overexploitation as a result of bycatch as detailed in response to question 6. The bycatch strategy should be regularly evaluated.

MCS believes that **Marine Protected Areas** (MPAs), and the effective management of fishing and other activities within them, have a vital role in protecting and restoring marine habitats and species. Accordingly, we welcome the UK Government's ongoing commitment to creating a well-managed, ecologically coherent network of MPAs in English waters, as demonstrated by the recent consultation on the third tranche of Marine Conservation Zones (MCZs) in English waters. We look forward to continuing discussions to ensure that all impacts of fishing activities in MPAs are assessed and managed.

We recognise the Scottish Government has made welcome progress in developing the Scottish MPA network, with 31 new sites since 2014, fisheries management measures for the most vulnerable inshore sites, proposed management measures for offshore sites awaiting member state sign-off, and consultations on management measures for remaining inshore sites and four more sites for designation anticipated.

We understand that Welsh Government shall look to designate new Marine Conservation Zones in the next few years. We look forward to hearing more from the Welsh Government about their plans for site designation, which will also play a vital role in ensuring the ecological coherence of the UK MPA network.

[47] Scotland's national marine plan, 2015, General Policies, https://www.gov.scot/Publications/2015/03/6517/5

[48] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018SC0393&from=EN

We note that there has only been one tranche of MCZs designated in Northern Irish waters and there are still gaps in the network according to a recent report on ecological coherence from JNCC.[49] In addition, the assessment of the network does not take into account the management of the sites and according to DAERA's statistics for 2018 only 4.48% of the MPA sites in Northern Irish waters are well managed.[50]

Fisheries within MPAs in UK offshore waters (beyond 12 nautical miles) are currently managed by the Common Fisheries Policy (CFP) regulations. It is important that leaving the EU does not create a legal vacuum in which these sites cannot be managed. Currently, management measures for any offshore MPA must be agreed by all EU member states with a fisheries management interest in the area before final adoption by the European Commission. This has led to a weakening of management proposals in several sites due to strong lobbying from foreign fishing organisations who fish in the UK's MPAs.

New legislation must enable MPAs in UK offshore waters to continue to be managed after Brexit and to ensure that the UK government and the Devolved Administrations take the lead in protecting these important sites (see also below).

MCS shares the concerns of others regarding the potential **'governance gap'** as discussed in the White Paper. Our exit from the European Union will have profound implications for our environmental regulations, including through the loss of governance functions currently provided for under our membership of the EU. This loss is outlined in the Greener UK briefing: "The governance gap: why Brexit could weaken environmental protections",[51] which highlights the loss of the robust enforcement mechanisms that we currently have through the European Commission and the European Court of Justice. These mechanisms include binding judgements which can lead to significant lump sum payments and daily fines for non-compliance.

Furthermore, without acting to secure important environmental principles currently found in the EU treaties (including the precautionary and polluter pays principles), the important role that these principles play in shaping environmental law, guiding policy making, implementation and interpretation of legislation and decision-making risks being lost or weakened.

The White Paper acknowledges Defra's consultation on environmental governance and principles. As detailed in MCS's response to this consultation[52] we have a number of concerns with the proposals, including:

[49] https://www.daera-ni.gov.uk/publications/assessing-progress-towards-ecologically-coherent-network-marine-protected-areas-northern-ireland

[50] https://www.daera-ni.gov.uk/sites/default/files/publications/daera/ni-environmental-statistics-report-2018_1.pdf

[51] http://greeneruk.org/resources/Greener_UK_response_to_Defra_EPG_consultation_310718.docx.pdf

[52] MCS response to the Defra consultation on environmental governance and principles https://www.mcsuk.org/media/defra-environmental-principles-and-governance-consultation-final.pdf https://www.mcsuk.org/media/defra-environmental-principles-and-governance-consultation-final.pdf

- as they currently stand, the proposals will leave serious governance and enforcement gaps. The new Environment Bill must provide for the establishment of a new environmental watchdog which is able to take meaningful enforcement action where it considers that any public body is not complying with environmental law. This must include powers over relevant marine bodies and powers to issue sanctions, such as fines.
- environmental principles risk being watered down. In the government's proposals, the principles may only relate weakly to the development of policies by Ministers of the Crown. Instead, all public bodies should be required to **apply** the principles set out in the new Environment Bill and to **act in accordance** with the policy statement in all policy development and decision-making which intersects with the environment;
- the proposals listed in the governance and principles consultation are for England and reserved matters only. However, our exit from the EU creates a UK-wide governance gap and risks losing the full application of our principles across all four nations of the UK. The Scottish Government have stated that they will consult in the autumn on plans to address the governance gap and the Welsh Government have stated that they will address both issues around principles and governance at the first legislative opportunity. However, there is little evidence that any of the governments are exploring the objective of genuine co-design, rather we are seeing the development of separate but parallel thinking in the different jurisdictions. We would urge four-country collaboration to ensure an approach is co-designed that also works for each country.

As reflected above, with regard to the remit of the UK Government's proposed watchdog, it should cover all public bodies operating in England and on reserved matters, including those agencies that operate in the marine environment, such as IFCAs, the MMO and JNCC to ensure that they are fulfilling their statutory remit. The new watchdog has an important role to play in ensuring that management of all marine activities, including fishing, is compliant with the law and therefore must have vital oversight over all of the agencies whose activities potentially affect fisheries and marine environments.

MCS believes that the principles currently enshrined in EU law (e.g. the precautionary and polluter pays principles) should have a role to play across all environmental policy and decision-making, including in relation to fisheries activities. It is therefore vital that the Fisheries Bill does not include any measures that might run contrary to the achievement of these principles (see also below). The proposed Fisheries Policy Statement could provide further guidance on how they would operate.

***Fisheries Bill (Please also see response to question 1)***

Several proposed provisions within the Fisheries Bill are of direct relevance to the protection of the marine environment.

While welcoming proposed discussions between the Secretary of State and Devolved Administration Ministers on the **application of sustainability principles and objectives**, MCS believes that the results need to be put on a firmer legal footing than the simple development of a policy statement. As reflected in response to question 1, sustainability commitments (in the form of principles and/or objectives) must appear on the face of the Fisheries Bill, providing a statutory basis for sustainable fisheries management.

MCS welcomes proposals to extend the **powers of the Marine Management Organisation** to allow for the regulation of fishing in inshore and offshore areas beyond Marine Protected Areas (MPAs) in England. We look forward to future discussions with the MMO and other stakeholders to investigate the opportunities that these new powers will provide.

We believe that it is essential that future fisheries management is assigned adequate resources to enable the effective management of **Marine Protected Areas** (MPAs) in UK offshore waters (see above). Legislation must allow for:

- the 'carry across' of all existing management measures to ensure that existing levels of protection are not lost;
- the ability to put new fisheries management measures in place to ensure that all MPAs are protected, including those already designated or which may be designated in the future; and
- the final decision on management to be made by the Secretary of State, removing the effective veto that other member states currently have over fisheries management in UK waters.
- Similar powers should be created for all Devolved Administrations to ensure that offshore MPAs can be effectively managed in all UK waters.

## Q15. What opportunities are there for the sector to become more involved in both the provision and direction of science and evidence development needed for fisheries management?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

To ensure "flexible, efficient and effective fisheries management", as stated in the White Paper, scientific data and evidence gathering must be an inclusive and robust process

including industry and stakeholder engagement. Buy-in to any scientific assessment is essential and this can only be achieved if stakeholders feel included and effective. In addition to this the data that is collected by stakeholders must be usable - there needs to be scientific rigour and the importance of this must be made clear to all stakeholders.

The use of REM with CCTV, which is discussed in more detail under Question 13, is an important and unbiased method of data collection and an important part of fully documented fisheries. The video data gathered from CCTV on boats can provide information on a huge number of areas where scientific data is currently lacking such as volumes of by-catch, estimates of non-target species being discarded, tracking invasive species, identifying threatened, endangered and protected species interactions and much more. The amount of information that can be gathered through this method is impressive and as technology advances, information will be assessed even more efficiently.

This must be supplemented by other data collection methods such as observers, genetic analysis, egg surveys and catch data – all of which can benefit from the experience and knowledge provided by stakeholder science partnerships.

There are a number of successful examples of fisheries science partnerships with demonstrated benefits for both the fishing industry and the conservation of stocks. There are also successful examples of other industries providing scientific data and assessments to help with the management of our seas including Seasearch – which can provide data on the distribution of different seabed types in shallower waters, important for the designation and management of MPAs.[53]

The more we learn about the links between species and habitats the more refined and specialised the data we collect can be and the more information we can gather to address specific issues which can help support conservation of stocks and sustainable fisheries management. It is therefore important to start the process of stakeholder engagement in fisheries science as early as possible. Stakeholder consultation at an early stage can help to focus research into areas which are not only data deficient but are actually useful for practical management going forward.

## Q16. Do you have any further comments relating to the issues addressed in this section?

No comments.

# Section 3. Resourcing the new approach

[53] Seasearch. Webpage. Available at http://www.seasearch.org.uk/ [Accessed 16/8/2018].

## Q17: What would be your priorities for any future funding for the sector or coastal communities?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

It is clear that in the absence of EMFF funding a significant gap will exist for scientific research and management infrastructure, and implementation. It will be vital to ensure that adequate funding is forthcoming to deliver sustainable marine and fisheries management. Public funding should support delivery of a sustainable management regime, including financing for science filling of gaps in stock assessment, data collection and fisheries monitoring, effective control and enforcement and support for a marketing strategy for sustainable seafood.

**National picture**

The 2011 UK Marine Policy Statement set out a vision for the UK to deliver "clean, healthy, safe, productive and biologically diverse oceans and seas".

In 2012, the UK government's Coastal Communities Fund (CCF) was launched to support "*coastal communities that are able to use their assets (physical, natural, social, economic and cultural) to promote sustainable economic growth and jobs*". The initiative, administered by the Big Lottery Fund, reinvests some of the profits made from coastal and marine assets, managed by the Crown Estate, back into the communities closest to them. Since 2012, it has awarded grants to 218 organisations across the UK to the value of £125million. This funding is forecast to deliver over 18,000 jobs UK-wide, and help attract over £240 million of additional funds to coastal areas. In 2015, the Government announced that the CCF would be extended to 2021 with at least £90 million of new funding available. Also in 2015, the UK Government supported the creation of 118 Coastal Community Teams in England – bringing together local residents, business, and councils. The teams have been tasked with coordinating regeneration projects in their area and helping to shape bids for the Coastal Communities Fund.

In recent years, several national policies and government initiatives have been developed, thanks to the efforts of a range of groups on the coast and government agencies. More sustainable and innovative approaches are already happening, but they are still far too few to deliver the transformation that is needed.

Policies still have not been able to address the problem for many coastal communities that they lack the scale of power and resources needed to address their complex and many unique challenges. Now they face an increasingly uncertain economic future.

Therefore:

- The UK Government should treat the coast as a unique case in its national approach to both industrial strategy and infrastructure development and how these are supported by grant funding. There should be a coastal industrial strategy and targeted public investment to build the capabilities of places, people and communities on the coast.
- Local projects need better access to finance than the big banks are able or willing to provide. Government should encourage a more diverse network of local and regional banks to channel investment into sound local businesses.
- Government should ensure that, post-Brexit, the UK matches or exceeds EU funding streams that would have paid for research and innovation, including Horizon 2020 funding towards Low Carbon Technologies.[54]

### *Shared prosperity fund*

The shared prosperity fund[55] which was announced will have an immense gap to fill. From Universities through to small scale fishers the demand for grant support will be substantial.

Ensuring that the fund reaches those sectors which are most in need but have the least capacity to access the funds will be a significant challenge, hence the equitable design will need to be built in from the outset.

For fisheries and aquaculture, whatever replaces the EMFF should learn lessons from both the EFF and EMFF funding rounds, consider feedback and consider the following:

### *Fisheries*

Community Led Local Development (CLLD) and Fisheries Local Action Groups (FLAGs) – FLAGs have been one of the most important changes in how fisheries financial support mechanisms are structured, focussed on community led local development, rather than top down or individual based financial support. This approach has been welcomed and largely successful throughout the EU. After leaving the CFP and therefore the EMFF the UK Government should not lose this approach to funding.

The UK Government should adopt a Community Economic Development (CED) approach [56] for a proportion of funding available for fisheries support. Co-developing a strategy which

[54] Blue New Deal Action plan https://neweconomics.org/uploads/files/NEF-Blue-New-Deal-AP-HighRes.pdf

[55] https://www.gov.uk/government/publications/cross-government-prosperity-fund-programme/cross-government-prosperity-fund-update

[56] Community Economic Development https://mycommunity.org.uk/take-action/community-economic-development/

has strong grassroots support and input is likely to make schemes more democratic, resilient and therefore effective.

Not all sustainable fisheries are certified. This often happens when smaller, or less profitable, fishing businesses can't afford the cost of certification by a third party, or because their fishery lacks the data needed for certification.

Government should work with industry and others to ensure that smaller businesses, which are fishing sustainably, are able to benefit from seafood labelling schemes.

***Aquaculture***

Aquaculture is a significant industry in the UK, operating in all countries. In Scotland Atlantic salmon production was 162,817 tonnes (£765m by value) in 2016, making it the third largest global salmon producer and the largest producer of Atlantic salmon in the EU[57]. Other species farmed in the UK include shellfish, such as mussels and oysters, Rainbow trout and cleaner fish such as wrasse and lumpfish. Total production (finfish and shellfish) in England, Wales and Northern Ireland in 2014 was 21,342t in 2014, with as estimated farm gate value of £54m.[58]

Aquaculture is the fastest growing food sector at 5.8% per annum, with an estimated production of 104 million tonnes by 2030, representing a 37% growth from 2016 figures.[59] The UK, particularly Scotland, has ambitious targets to contribute to that growth by increasing finfish aquaculture production to between 300,000 – 400,000 tonnes by 2030.[60] In Wales the target is to double aquaculture production by 2020.[61]

With such plans in place to grow aquaculture it is imperative that government support and encourage technological and practical innovations which are focused on addressing environmental performance and impacts. Inshore fisheries and Conservation Authorities (IFCAs) in England are already progressing this and developing their own aquaculture strategies to help address competition for space. They need government support to provide the appropriate funding and resources to continue to develop this work.

It is crucial that public funds do not support the expansion of an aquaculture industry whose production methods lead to negative environmental impacts and in turn result in poor long-

[57] Kenyon, D & Davies, D. Salmon farming in Scotland. 2018. Scottish Parliament. Available online at: https://digitalpublications.parliament.scot/ResearchBriefings/Report/2018/2/13/Salmon-Farming-in-Scotland

[58] Hambrey, J & Evans,S. Hambrey Consulting. 2016. SR694. Aquaculture in England, Wales and Northern Ireland: An Analysis of the Economic Contribution and Value of the Major Sub-Sectors and the Most Important Farmed Species. Produced for Seafish. Available online at: http://www.seafish.org/media/publications/FINALISED_Aquaculture_in_EWNI_FINALISED__-_Sept_2016.pdf . Accessed 05/09/2018.

[59] AO. 2018. State of World Fisheries and Aquaculture. Available online at: http://www.fao.org/3/I9540EN/i9540en.pdf. Accessed 05/09/2018

[60] Scotland Food and Drink. 20165. Aquaculture Growth to 2030. Available online at: http://scottishsalmon.co.uk/wp-content/uploads/2016/10/aquaculture-growth-to-2030.pdf. Accessed 05/09/2018

[61] Welsh Government. 2017. Draft national Marine Plan. Available online at : https://beta.gov.wales/sites/default/files/consultations/2018-02/draft-plan-en.pdf Accessed 05/09/2018

term profitability. Public funds should support services for the public good, like data collection, research, balanced stakeholder engagement, monitoring, control and enforcement, and the establishment of a robust, comprehensive spatial planning framework as well as certification by independent certification schemes. In particular MCS would like to see the following supported and prioritised: The allocation of sufficient public funding in order to properly integrate environmental concerns in aquaculture development policies and practices; Public funding focussed on collective needs, such as data collection and monitoring; The allocation of public funds to support alternative models of development that are environmentally and socially more desirable (such as the use of better technologies and closed containers and independent certification).

Investment should be directed towards activities the UK has a natural advantage in, and which can support a healthier marine environment (e.g. shellfish aquaculture). For example, trialling restocking and restoring native oyster beds, developing offshore aquaculture technologies, increasing carrying capacity for existing shellfish sites in appropriate areas, further exploring seaweed production and markets, and supporting innovation in finfish aquaculture that addresses issues of environmental concern such as sea lice management, feed formulations and wider/long term impacts on habitats and species (with special attention to salmon farming).[62]

Government must set out a clear, long-term strategy and funding commitment to support more innovative and sustainable approaches to coastal management.

Access to funding will be a crucial issue given the gap that will be created by exiting from the EMFF. It is important that the new funding and mechanisms created are available to all Devolved Administrations and that the resource available matches the environmental and socio-economic need. Unbalanced funding will create gaps within future aquaculture and fisheries management, jeopardising any common frameworks developed.

Finally, MCS supports the modernising of grant making powers in England. While not achieving its full potential, the European Maritime and Fisheries Fund has enabled the development and delivery of a range of environmental projects. We believe that the ability to support such projects should continue in the future and we look forward to discussions with all relevant decision makers around effective new financial measures.

## Q18. Do you have any further comments relating to the issues addressed in this section?

No comments

[62] Blue New Deal Action plan https://neweconomics.org/uploads/files/NEF-Blue-New-Deal-AP-HighRes.pdf

# Section 4. Partnership working

## Q19: How far do you agree with our future vision to pursue a partnership approach with industry and others for sustainably managing fisheries?

***The response to this question is based on the joint submission from the Greener UK and eNGO partners.***

As detailed in the response to question 15 we strongly believe that partnership working should play a significant role in the future of sustainable management of fisheries, particularly when developing policy, management plans and data collection. Annex 5 of the White Paper outlines the wide range of stakeholder engagement that Defra has carried out since the EU referendum. However, while the White Paper highlights the Seafood Industry Expert Working Group as an example of the Government's commitment to work with the wider industry, this group is composed of a very narrow range of industry experts and **does not** sufficiently represent all stakeholders with a commitment to sustainable fisheries. This does not echo the White Paper's stated aim to "remain fully committed to working with a wide range of partners to introduce a management regime that works for the catching sector, coastal communities, the seafood sector, consumers, NGOs and the wider public".

Increased stakeholder engagement must be a priority, particularly to include under-represented stakeholders such as recreational anglers, processors and members of the general public, to facilitate wider engagement with coastal communities beyond the fishing industry and to further include the wider public during consultations. However, we do support more focused stakeholder groups to help with the more detailed and adaptive future management of our seas going forward, which may be on a more regional level.

There must be broad stakeholder engagement and inclusion in the development of any new stakeholder bodies developed to replace existing bodies or any new engagement with existing bodies e.g. the EU Advisory Councils. Additionally, to improve transparency in the industry it will also be important for any new governance frameworks to have significant stakeholder input.

## Q20. Do you have any further comments relating to the issues addressed in this section?

No comments.

## Annex 1: **Greener UK suggested drafting for an objectives clause in the UK Fisheries Bill supported by MCS.**

General objectives

(1) This section applies to any public authority having any function relating to fishing activities or fisheries management.

(2) Every public authority to which this section applies must exercise its functions in accordance with the objectives stated in subsection (3).

(3) This Act has the following general objectives:

(a) Fishing activities are environmentally sustainable in the long-term;

(b) Fisheries management decisions are based on the best available scientific advice;

(c) A precautionary approach is applied to fisheries management;

(d) The populations of all harvested species are restored and maintained above levels which can produce the maximum sustainable yield;

(e) Catch limits for all harvested species are set below FMSY or, where FMSY is not known, according to the best available proxy, by 2020;

(f) An ecosystem-based approach to fisheries management is applied so as to ensure that negative impacts of fishing activities on marine ecosystems are avoided or, where avoidance is not possible, minimised and remediated and to ensure that the interdependence of fish stocks with the marine environment is accounted for;

(g) Fishing activities are managed in a manner that is consistent with the UK's international law obligations and in compliance with other applicable domestic environmental legislation, in particular, legislation relating to the marine environment; and

(h) Fishing opportunities are allocated on the basis of transparent and objective environmental, social and economic criteria in a way that incentivises the most sustainable fishing practices.