



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Brussels
MARE.C.5/NG/vr

NOTE FOR THE ATTENTION OF MR MIKE ROWE

Subject: Consultation on spatial management measures for industrial sandeel fishing in English waters of the North Sea (Defra, 7 March 2023)

Dear Mike,

In late 2021, the UK held a call for evidence concerning the future management of sandeel as well as Norway pout.

We note that following this call for evidence, the UK has now launched a consultation on spatial measures for sandeel in English waters of the North Sea with a deadline of 29 May 2023. Amongst the options proposed, DEFRA identifies as its preferred option measures that entail the full or partial closure of these fishing grounds ⁽¹⁾.

Sandeel is an important stock for the EU fleet. The total catch in the North Sea is estimated to be worth ~€51M in 2023, of which ~€41M is estimated to be from the three areas that the UK suggests would be subject to a full closure. The effective closure will not only have substantial impacts on these fisheries but also on the onshore processing industry.

As acknowledged in the consultation documents, the adoption of closures of these fishing grounds would impact almost exclusively the EU fleet, the most affected Member States being Denmark and Sweden.

The implications of the closures would not be only socioeconomic. They would also raise concerns as regards compliance with Articles 494(3)(c), 496(1) and 496(2) of the TCA. Relevant parts of these articles are included in the Annex to this note, for ease of reference. These provisions refer to the overarching obligation to base conservation and management decisions for fisheries on the best available scientific advice that exists, principally that

⁽¹⁾ Our understanding is that the proposed sub-options under option 1 are:

- Full Closure of English Waters within the North Sea. This option would see full closure of Industrial sandeel fishing within the English waters of SA1r, SA3r and SA4.
- Closure of English waters within SA4 and SA3.
- Closure of English waters within SA1r.

Mr Mike Rowe

Mike.Rowe@defra.gov.uk

provided by ICES. They also refer to the obligation to apply proportionate and non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources.

In the supporting evidence of the present consultation, it is noted that “*Sandeels form a key component within the North Sea ecosystem and represent a major conduit of energy transfer from lower trophic levels (for example, plankton) to higher trophic levels including seabirds, marine mammals, and commercial fish species. This is UK legislation and a range of governmental strategies, designed to safeguard the functioning of the marine ecosystem, to which this advice has relevance* ⁽²⁾”.

First, sandeel are part of a wide group of forage fish species, fulfilling similar ecological roles ⁽³⁾ and we note that the UK has other forage fisheries focussing on herring and sprat, but these are not being targeted by similar measures. Therefore, given that the closure will exclusively affect the EU fleet and that no similar measures are considered at this stage for all other fisheries where the UK fleet has an interest, this raises concerns as regards compliance with the obligation of non-discrimination laid down in Article 494(3)(f) of the TCA.

Second, given the closures would prohibit the catching of sandeel in English waters of the North Sea, where almost 80% of the stock is fished, this raises concerns as regards compliance with the obligations in Articles 500(1) to (4) of the TCA, in particular the obligation in Article 500(4) of the TCA that the outcome of the annual consultations should normally result in each Party granting access to fish the stocks listed in Annex 35. Such non-compliance with the obligations in Articles 500(1) to (4) of the TCA could entitle the EU, following notification, to take compensatory measures pursuant to Article 501 of the TCA commensurate to the economic and societal impact of the change in the level and conditions of access to UK waters.

Third, given that wider ecological needs are already considered in ICES catch advice and that ICES has not raised so far any specific concerns regarding the exploitation of sandeels ^(4,5,6,7,8), this raises concerns as regards compliance with the obligation to base measures on the best available scientific advice laid down in Article 496(1) and 496(2) of the TCA.

⁽²⁾ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140706/What_are_the_ecosystem_risks_and_benefits_of_full_prohibition_of_industrial_Sandeel_fishing_in_the_UK_waters_of_the_North_Sea_ICES_Area_IV_.pdf

⁽³⁾ Engelhard, G. H., Peck, M. A., Rindorf, A., Smout, S. C., van Deurs, M., Raab, K., Andersen, K. H., Garthe, S., Lauerburg, R. A. M., Scott, F., Brunel, T., Aarts, G., van Kooten, T., and Dickey-Collas, M. Forage fish, their fisheries, and their predators: who drives whom? – ICES Journal of Marine Science, 71: 90–104

⁽⁴⁾ https://ices-library.figshare.com/articles/report/Greater_North_Sea_ecoregion_Ecosystem_Overview/21731912 (page 5)

⁽⁵⁾ https://ices-library.figshare.com/articles/report/Sandeel_Ammodytes_spp_in_divisions_4_a_b_Sandeel_Area_4_northern_and_central_North_Sea_/21815193?backTo=/collections/ICES_Advice_2023/6398177

⁽⁶⁾ https://ices-library.figshare.com/articles/report/Sandeel_Ammodytes_spp_in_divisions_4_a_b_Sandeel_Area_4_northern_and_central_North_Sea_/21815193?backTo=/collections/ICES_Advice_2023/6398177

⁽⁷⁾ https://ices-library.figshare.com/articles/report/Sandeel_Ammodytes_spp_in_divisions_4_b_c_Sandeel_Area_1r_central_and_southern_North_Sea_Dogger_Bank_/21815148?backTo=/collections/ICES_Advice_2023/6398177

⁽⁸⁾ https://ices-library.figshare.com/articles/report/Sandeel_Ammodytes_spp_in_divisions_4_a_b_and_Subdivision_20_Sandeel_Area_3r_northern_and_central_North_Sea_Skagerrak_/21815184?backTo=/collections/ICES_Advice_2023/6398177

In that regard, as you know, in order to reach a compromise during this year's consultations on sandeel both EU and UK committed to seek further information from ICES "*on how ecosystem considerations, particularly predator-prey interactions and the rebuilding of sensitive higher trophic level species such as certain seabirds, and other ecosystems-based fisheries management aspects are factored in and applied in the provision of single stock advice for forage fish species*" (paragraph 6 of the Written Record of fisheries consultation on 09 to 13 March 2023 between the United Kingdom and the European Union about sandeels in 2023). It would be in line with the principle of good cooperation and to base decisions on the best available scientific advice, that any management decision on sandeel should await the outcome of this request.

In this context, we do not consider that the preferred options identified by DEFRA, namely, full or partial closures, are consistent with the objectives and the relevant articles set out in the TCA.

Finally, we note that DEFRA consultation document does not consider other options such as a partial closure of industrial sandeel fishing in English waters of the North Sea. Rather, as the DEFRA consultation document states, "*[p]artial closures of the same waters proposed in the consultation are assumed to have similar but smaller impacts. This will be reviewed after the consultation*". Other options such as partial amendments to the existing closures should be given proper consideration in my view, as they could prove to be effective without being disproportionate.

We are keen to be kept fully informed of the outcome of this consultation, which we hope will be in line with obligations under the TCA and account for the considerations raised in this letter. In this regard, we reserve the right to come back to this in the near future in light of further internal reflections and of possible developments in the UK approach.

Charlina VITCHEVA

Annex: relevant TCA provisions

Articles 494(3)(c) and 494(3)(f) of the TCA provide that “[t]he Parties shall have regard to the following principles (...) (c) basing conservation and management decisions for fisheries on the best available scientific advice, principally that provided by the International Council for the Exploration of the Sea (ICES) (...) (f) applying proportionate and non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources, while preserving the regulatory autonomy of the Parties”.

Article 496(1) of the TCA provides that “[e]ach Party shall decide on any measures applicable to its waters in pursuit of the objectives set out in Article 494(1) and (2), and having regard to the principles referred to in Article 494(3).”

Article 496(2) of the TCA provides that “[a] Party shall base the measures referred to in paragraph 1 on the best available scientific advice.”

Article 500 (1) to (4) of the TCA provides that

“Access to waters

1. Provided that TACs have been agreed, each Party shall grant vessels of the other Party access to fish in its waters in the relevant ICES sub-areas that year. Access shall be granted at a level and on conditions determined in those annual consultations.

2. The Parties may agree, in annual consultations, further specific access conditions in relation to:

(a) the fishing opportunities agreed;

(b) any multi-year strategies for non-quota stocks developed under point (c) of Article 508(1);

and

(c) any technical and conservation measures agreed by the Parties, without prejudice to Article 496.

3. The Parties shall conduct the annual consultations, including on the level and conditions of access referred to in paragraph 1, in good faith and with the objective of ensuring a mutually satisfactory balance between the interests of both Parties.

4. In particular, the outcome of the annual consultations should normally result in each Party granting:

(a) access to fish the stocks listed in Annex 35 and tables A, B and F of Annex 36 in each other's EEZ (or if access is granted under point (c), in EEZs and in the divisions mentioned in that point) at a level that is reasonably commensurate with the Parties' respective shares of the TACs;

(b) access to fish non-quota stocks in each other's EEZ (or if access is granted under point (c), in EEZs and in the divisions mentioned in that point), at a level that at least equates to

the average tonnage fished by that Party in the waters of the other Party during the period 2012-2016; and

(c) access to the waters of the Parties between six and twelve nautical miles from the baselines in ICES divisions 4c and 7d-g for qualifying vessels to the extent that Union fishing vessels and United Kingdom fishing vessels had access to those waters on 31 December 2020.

For the purposes of point (c), "qualifying vessel" means a vessel of a Party which fished in the zone mentioned in the previous sentence in four of the years between 2012 and 2016, or its direct replacement.

Annual consultations referred to in point (c) may include appropriate financial commitments and quota transfers between the Parties.

Article 501 provides that

“Compensatory measures in case of withdrawal or reduction of access

1. Following a notification by a Party ("host Party") under Article 500(5), the other Party ("fishing Party") may take compensatory measures commensurate to the economic and societal impact of the change in the level and conditions of access to waters. Such impact shall be measured on the basis of reliable evidence and not merely on conjecture and remote possibility. Giving priority to those compensatory measures which will least disturb the functioning of this Agreement, the fishing Party may suspend, in whole or in part, access to its waters and the preferential tariff treatment granted to fishery products under Article 21.”