



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Brussels,
MARE.C.5/NG/ac(2023)

Subject: Consultation on spatial management measures for industrial sandeel fishing in Scottish waters of the North Sea (Scottish Government, 21 July 2023)

Dear Mairi,

Thank you for your letter from 24 July. I am pleased that you found your meeting with my team constructive and useful. They also reported a very good interaction on our side.

Regarding the Scottish Government consultations on sandeel fisheries in Scottish waters, I appreciate the information received. However I would like to express my serious concerns about the preference to close these fisheries in Scottish waters. Given the link to similar consultations launched by DEFRA, I have copied to this letter both Minister Spencer and Mike Rowe, Director for Marine and Fisheries at DEFRA.

I recall that in late 2021, the UK held a call for evidence concerning the future management of sandeel as well as Norway pout, which was supported by Scottish Government officials ⁽¹⁾. Following this call for evidence, the Scottish Government has now launched a consultation on spatial measures for sandeel in Scottish waters of the North Sea with a deadline of 13 October 2023. The Scottish Government proposes a full closure of these fishing grounds ⁽²⁾.

As noted in the Scottish Government draft Partial Business Regulatory Impact Assessment ⁽³⁾, a full closure will have zero direct impact on the Scottish catching sector,

⁽¹⁾ <https://www.gov.scot/publications/sandeel-consultation-consultation-paper/pages/3/>

⁽²⁾ <https://www.gov.scot/publications/sandeel-consultation-consultation-paper/pages/10/>

⁽³⁾ <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2023/07/sandeel-consultation-draft-partial-business-regulatory-impact-assessment/documents/sandeel-consultation-documents-draft-partial-business-regulatory-impact-assessment/sandeel-consultation-documents-draft-partial-business-regulatory-impact->

Mairi Gougeon MSP
Cabinet Secretary for Rural Affairs, Land Reform and Islands
Room 2N.08 | St. Andrew's House | Regent Road
Edinburgh | EH1 3DG

and no impact on the UK fleet overall, while the predicted Net Present Cost to the EU fleets would be in the order of £32.8 million. Sandeel is an important stock for the EU fleet, which will be the only one affected. A full closure will not only have substantial impacts on these fisheries but also on the onshore processing industry.

The implications of a full closure 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 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 “*Sandeel are a key component of the ecosystem of Scotland’s seas due to their role in marine food webs as a prey source for a range of species including seabirds, seals, cetaceans (e.g., whales, dolphins and porpoises), and predatory fish. Declines in sandeel abundance can negatively impact the survival and reproduction of ecologically important species.*”⁽⁴⁾”

In this regard, I would like to make the following considerations. First, sandeel are part of a wide group of forage fish species, fulfilling similar ecological roles⁽⁵⁾ and I note that the UK has other forage fisheries focussing on herring and sprat, but these are not being targeted by similar measures. This is recognised on page 1 of the scientific evidence⁽⁶⁾ “*In accordance, variations in the abundance and availability of sandeel **or other forage fish** can have important effects on both ends of marine food web (top-down regulation of lower trophic levels and bottom-up effects on marine predators) and disrupt the energy transfer across the whole food-web.*”

Therefore, given that a full closure would exclusively affect the EU fleet and that no similar measures are considered at this stage for all other forage fish 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 that a full closure would prohibit the catching of sandeel in Scottish waters of the North Sea, 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

[assessment/govscot%3Adocument/sandeel-consultation-documents-draft-partial-business-regulatory-impact-assessment.pdf](#)

(4) <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2023/07/sandeel-consultation-consultation-paper/documents/consultation-proposals-close-fishing-sandeel-scottish-waters/consultation-proposals-close-fishing-sandeel-scottish-waters/govscot%3Adocument/consultation-proposals-close-fishing-sandeel-scottish-waters.pdf>

(5) 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

(6) <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2023/07/sandeel-consultation-review-scientific-evidence/documents/review-scientific-evidence-potential-effects-sandeel-fisheries-management-marine-environment/review-scientific-evidence-potential-effects-sandeel-fisheries-management-marine-environment/govscot%3Adocument/review-scientific-evidence-potential-effects-sandeel-fisheries-management-marine-environment.pdf>

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 sandeel ^(7,8,9,10,11), 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.

In that regard, as you know, in order to reach a compromise during this year's consultations on sandeel, both the 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 sandeel in 2023). It would be in line with the principle of good cooperation to base decisions on the best available scientific advice, that any management decision on sandeel should await the outcome of this analysis, or provide a sufficient evidence for the proportionality of the measure to protect the stocks for their wider ecological benefits. I also note that the consultation document does clarify why existing measures in place, including through the network of Marine Protected Areas (MPAs), are not sufficiently effective.

Based on the above considerations, I do not consider that a full closure would be consistent with the objectives and the relevant provisions set out in the TCA.

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

Charlina VITCHEVA

⁽⁷⁾ https://ices-library.figshare.com/articles/report/Greater_North_Sea_ecoregion_Ecosystem_Overview/21731912 (page 5)

⁽⁸⁾ 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

⁽⁹⁾ 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

⁽¹⁰⁾ 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

⁽¹¹⁾ 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

Enclosure: Relevant TCA provisions

c.c.: The Rt Hon Mark Spencer, MP Minister of State
Mr Mike Rowe, Director for Marine and Fisheries, DEFRA

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.”