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**To:** 1. **Minister Spencer**  
2. **Secretary of State Thérèse Coffey**

**From:** EU fisheries policy and negotiations team; Domestic Fisheries Science team

**SCS Clearance:** Mike Dowell, Deputy Director, Marine & Fisheries

**Date:** 16<sup>th</sup> January 2023

## Publication approval and support for a consultation on management measures for industrial sandeel fishing

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### Summary

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1. Following a call for evidence in 2021 and alongside continued engagement with stakeholders, we are seeking your approval to consult on proposals for spatial closures to industrial sandeel fishing, including a preferred proposal, which is the full closure of industrial sandeel fishing in English waters (see Annex B for consultation document).
2. The proposal for a full closure of the industrial sandeel fishery is based on an evidence report provided by CEFAS, Natural England and JNCC which illustrates the importance of sandeels as a forage fish species in the North Sea. The report concludes that a full closure should increase the biomass of seabirds, improve the resilience of sandeel stocks to adverse natural conditions and have localised benefits to some commercial important fish species. As such a closure to the sandeel fishery would be a meaningful step towards ecosystem-based fisheries management, and could support the delivery of wider DEFRA objectives in the marine environment.
3. The suggested publication date of the 27<sup>th</sup> is based on a desire to publish the consultation ahead of the ICES advice for sandeels being published on the 28<sup>th</sup> of February and the TAC negotiations with the EU taking place the following week. It will support our consistent message since becoming an independent coastal State in our international negotiations on sandeels, that industrial fishing of forage fish is not compatible with our objective of moving towards ecosystem based management. [REDACTED]
4. To ensure consultees may give meaningful responses to the consultation, sufficient information must be made available to them, and so we also seek your approval to publish advice on the ecosystem risks and benefits of restricting industrial sandeel

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fishing, from Defra's scientific experts. Subject to your approval, the report (Annex C) will be published alongside the consultation document. We will also publish a de minimis impact assessment to show the impact of management measures on the UK economy. The impact assessment suggests very minimal impact to the UK economy.

5. We have agreed with the Department for Energy Security and Net Zero (DESNEZ) and EDS that a write round process is not required and cross Whitehall agreement will be delivered through a Private office to Private office clearance process between DEFRA, DESNEZ, No10 and EDS.

## Timing

6. We request a decision by 16th February 2023.

## Recommendation

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7. Approve the publication of a consultation on options for spatial closures that would apply to vessels fishing for sandeels in English waters of the North Sea, including a recommended option for full closure of the English waters of the North Sea to industrial sandeel fishing. The publication of the consultation document should be accompanied with the report from Defra's scientific experts on ecosystem risks and benefits of reduced sandeel fishing in the North Sea and the de-minimis impact assessment on the overall business impact.

## Key Information

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8. Industrial fishing is commercial fishing carried out on a large scale, where the harvested fish are intended to be processed into fishmeal and fish oil, rather than for direct human consumption. Without effective management measures, industrial fishing of forage fish<sup>1</sup> can cause detrimental impact to the marine ecosystem.
9. Sandeels are an important forage fish species in the North Sea, supporting commercially important fish species and wider ecosystem predators. Sandeels form core components of the diets of haddock and whiting, and so their increased availability can be linked to the increase in abundance and health of these commercial species. Sandeels are also an important food source for many seabird species and marine mammals, such as seals, toothed whales, and baleen whales. Declines in the abundance of sandeels due to industrial fishing has shown to impact the breeding success of UK seabirds, most notably in kittiwakes.

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<sup>1</sup> These forage fish are small to intermediate sized fish that play a key role in the marine ecosystem, providing the link between plankton and higher trophic level predators

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10. In terms of commercial value, over 300,000 tonnes of sandeels are landed from the North Sea (UK, EU and Norwegian waters) annually at a value of around £60 million<sup>2</sup>. The UK, however, holds less than 3% of the total quota and has only one vessel which has historically targeted this fishery. Most industrial fishing is carried out by Denmark and Norway.
11. Given the importance of sandeels as a forage species, with Ministerial approval, we undertook a call for evidence (CfE) in October 2021, to inform the Government's development of a strategy for the future management of sandeels in United Kingdom waters. It disclosed that many of the stakeholders were concerned about the negative effects that the removal of forage fish by industrial fishing is having on vulnerable seabird populations, commercial fish species like haddock and whiting, as well as its impact on the wider marine environment (please see Annex A for previous submission to Minister Prentis, including an overview of the summary of responses to the CfE).
12. Recognising that action is required to protect sandeel stocks, Defra commissioned advice from Defra's scientific experts at Natural England, JNCC and Cefas on the ecosystem risks and benefits of a reduction in sandeel fishing in the UK waters of the North Sea (Annex C). Modelling work from this report, predicts that a full prohibition of sandeel fishing in the UK waters of the North Sea could lead to an increase in seabird biomass of 7% in around 10 years. Given the significance of the potential benefits from spatial closures, Defra have therefore proposed three different options for spatial restrictions on sandeel fishing in English waters, these are:
  - a. full closure of English waters in UK EEZ,
  - b. a small partial closure of English waters (a combined closure of Sandeel Area 4 and Sandeel Area 3r in UK EEZ)
  - c. a large partial closure of English waters (a closure of Sandeel Area 1r in UK EEZ).
13. Of all the sandeels landed from UK waters, over 90% of these have come from English waters (2015-2019). Although none of these three options proposed equate to the area of UK waters initially modelled (as Defra cannot propose management restrictions for Scottish waters), we understand that Marine Scotland are actively considering a whole area closure for sandeels in Scottish waters in due course and are currently working through some issues as to the purpose and timing. Subject to this, there is still the potential to secure the benefits of the modelled results.
14. This submission is an update to the submission that was previously sent up on the 16<sup>th</sup> of January.

## **Key Risks and Benefits**

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<sup>2</sup> Estimated based on 2019 landing prices from UK waters

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15. Within the consultation, we have not included any other types of management measures, for example technical gear restrictions which would limit or reduce the level of sandeel fishing. This is because we do not have the same level of evidence indicating their ability to achieve our desired outcomes without having the same effect as a spatial closure. We also had concerns regarding the enforceability of any non-spatial measures. Whilst spatial measures are not guaranteed (due to the highly complex interactions with the marine ecosystem) to meet our desired outcomes such as the increase in seabird biomass predicted. Our current knowledge suggests they provide the greatest likelihood of us achieving our objectives.
16. With regards to timing, whilst a shortened consultation was considered (with a view to concluding prior to and therefore informing any decisions from the March 2023 negotiations), a routine 12-week consultation is recommended. Although environmental non-Government Organisations (e-NGO's) pressure to take action is high, a shortened consultation could result in scrutiny from the Secondary Legislation scrutiny committee (if any legislation were required to be implemented on the outcome of the consultation) and stakeholders. Given the need to not only balance the risk of potential legal challenge from e-NGOs but also the needs of reasonable notice and possibility of legal challenge from industry, we are advising a routine 12-week consultation period. As the consultation will not have finished prior to the opening of the sandeel fishery in April, alternative interim management measures for the 2023 season may require consideration, including a repetition of not apportioning sandeel TAC across the UK.
17. The publication of the scientific report presents a limited risk as it is a scientific document that has been peer reviewed, and as such its conclusions are robust. However, it is likely to provoke interest from a number of stakeholders.

### **Impact assessment summary**

18. The proposals set out in the consultation are estimated to have a small negative impact (£0 - £0.5m each year) on UK businesses who would have otherwise industrially fished sandeels.
19. Most vessels impacted by the proposals will be non-UK vessels who would have otherwise industrially fished sandeels in the proposed areas. They are estimated to lose up to £41.2m in revenue each year. There will also be indirect employment impacts to overseas factories, in Denmark for example, who would have otherwise processed the sandeels.

### **Handling Considerations**

20. Whilst the consultation itself is low risk, as it provides an opportunity for stakeholders to engage and provide their views towards the management measures of sandeel stocks, some of the management options proposed may provoke strong views from stakeholders. This is particularly likely with options a and c, which would close either all, or the most important parts of the current sandeel fishery in English waters.

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- 21. The European Union, particularly Denmark, have economically important fisheries for sandeel in English waters. Over 99% of the sandeel landed from English waters has historically been landed by EU vessels. In the Autumn 2022 negotiations, Denmark was made aware of our intention to consult, so whilst this consultation is not unexpected, it is possible that we will receive strong push back from the EU on behalf of Denmark.
- 22. Environmental non-Government Organisations strongly support measures to limit industrial sandeel fishing because of the harmful impact it has on the wider marine ecosystem, in particular seabirds. Kittiwakes are already under incredible pressure (red listed species) and are known to be impacted by avian flu. As such, e-NGOs are likely to welcome the consultation and the proposed management measures for restrictions on sandeel fishing. Whilst e-NGOs may prefer that management measures should be introduced this year and say that the routine timeframe will not address the risks to birds, we can explain that delivering with the routine timeframe takes into account the need for stakeholders to have a reasonable time to respond to the consultation and may help to reduce the risk of any decision in favour of closure being successfully challenged.

23. [REDACTED]

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- 24. We have agreement with EDS and BEIS that a write round process is not required. We will get cross Whitehall approval for the publication of the consultation document from BEIS and No10 through a private office to private office clearance process. Please note that the consultation document and impact assessment in the annex are currently going through internal clearances and may have minor changes.

**Legal Considerations**

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[REDACTED]

LEGAL PRIVILEGE

[REDACTED]

27. [REDACTED]

LEGAL PRIVILEGE

[REDACTED]

### Devolution Implications

29. The UK Government's position is broadly supported by Devolved Administrations. The Scottish Government are presently considering an introduction of management measures on fishing for sandeel in Scottish waters, and we will need to work with DAs to ensure that any measures that are introduced across UK waters are complementary and work together to deliver our objectives.

### Annexes

30. **Annex A** – Consultation document on the management options for industrial sandeel fishing in English waters of the North Sea.

31. **Annex B** – Sandeels de minimis impact assessment

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32. **Annex C** – Advice for publication from Defra’s scientific experts at Natural England, JNCC and Cefas on the ecosystem risks and benefits of a reduction in industrial sandeel fishing in the UK waters of the North Sea.
33. **Annex D** – Note on Sunbeam judicial review.

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**Clearance checklist**

*Inclusion of this checklist is **mandatory**. A submission without it will be sent back.*

**Note:** Contact names provided must have seen and approved the submission.

<b><u>Finance</u></b>	Does this involve any spending or affect existing budgets?	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Legal</u></b>	Does this include legal risk, a court case or decisions that can be challenged in court?	<input checked="" type="checkbox"/> If yes, named official: ██████████ <input type="checkbox"/> No <b>Confidential</b>
<b><u>Communications</u></b>	Could this generate media coverage, or a response from our sectors?	<input checked="" type="checkbox"/> If yes, named official: ██████████ <b>Confidential</b> <input type="checkbox"/> No
<b><u>Analysis and fact-checking</u></b>	Does this include complex data, statistics or analysis? Have data annexes been signed off by the lead analyst?	<input checked="" type="checkbox"/> If yes, named official: ██████████ <b>Confidential</b> <input type="checkbox"/> No
<b><u>Science</u></b>	Does this include or require scientific evidence? Has this been signed off by a Lead Scientist or CSA Office?	<input checked="" type="checkbox"/> If yes, named official: ██████████ <b>Confidential</b> <input type="checkbox"/> No
<b><u>Devolved Administrations and the Union</u></b>	Does this promote union wide policies, or will it affect Wales, Scotland or Northern Ireland?  Does it have implications for: Common Frameworks, the Internal Market, Northern Ireland Protocol and the Crown Dependencies and Overseas Territories.	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Trade and International Obligations</u></b>	Does this include options that will impact trade or our international obligations?	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Legislation</u></b>	Does this include options that may require or impact primary or secondary legislation/regulations? If yes, please discuss with the Defra Legislation Team.	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Parliamentary Handling</u></b>	Does this require engagement with parliamentarians or a statement in Parliament? If so, please discuss with the Parliamentary and Cabinet Team.	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Fraud</u></b>	Have you considered fraud risks?	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Commercial</u></b>	Does this include commercial or contractual implications?	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No
<b><u>Technology, digital &amp; data</u></b>	Does this rely on or have crossover with a tech/digital/data solution?	<input type="checkbox"/> If yes, named official: <input checked="" type="checkbox"/> No