

To: 1. Minister of State 2. Secretary of State
From: [REDACTED], Policy Adviser - EU fisheries policy and negotiations team **Confidential**
SCS Clearance: Mike Dowell, Deputy Director EU Fisheries Negotiations and Policy
Date: 14 September 2023

Management of sandeels in English waters of the North Sea

Summary

1. This is a long submission as it tests the application of ecosystem-based fisheries management for the first time in the context of the UK-EU Trade and Cooperation Agreement with regard to proportionality and the precautionary principle. It also builds on considerations following an unsuccessful Judicial Review made against the UK Government decision to not apportion and allocate UK sandeel quota since EU Exit.
2. The driver for taking action on sandeel management in English waters of the North Sea is the UK Marine Strategy Regulations 2010. These require the UK to take the necessary measures to achieve or maintain Good Environmental Status (GES) through the development of a UK Marine Strategy (UKMS), however this has not been met for seabirds and marine food webs. One of the ways to improve GES particularly for seabirds is to introduce measures which limit fishing mortality on sandeels in UK waters.
3. The link between seabird productivity and food availability has been demonstrated repeatedly, and we know that sandeels are important prey items for several seabird species. Implementing measures to manage sandeel fishing could improve availability of seabird prey species which may help ensure seabirds are able to find and consume sufficient food to survive and produce enough young to reverse negative trends. Amidst the ongoing avian flu outbreak and recognising the limited actions government can take to address the virus spread directly, management of the sandeel fishery will be an important step in increasing seabird resilience more widely. This aligns with NE-commissioned advice to support delivery of the Environmental Improvement Plan (EIP).
4. Following a public consultation about future management of sandeel we recommend that English waters of the North Sea are closed to fishing for sandeel by all vessels for the benefit of the wider marine ecosystem.
5. Responses to the public consultation demonstrated very strong support to prohibit the industrial fishery for sandeel in English waters of the North Sea. The Royal Society for the Protection of Birds (RSPB) ran a supportive campaign for the proposals, particularly welcoming their ecosystem-based approach. However, responses from the European Commission and the Danish Government do not support the proposed measure, and they will likely react very negatively to the recommended decision. Two responses from the Scottish Pelagic sector were unsupportive, both on behalf of a Scottish vessel operator (Sunbeam) that lost the aforementioned Judicial Review.
6. The Minister of State is due to discuss potential spatial management measures for sandeel fishing in English waters of the North Sea with Jacob Jensen (Danish Fisheries Minister) on Tuesday 19th September.

Timing

7. The Minister is asked to decide by 20 September.

Recommendation

8. That you agree to a full closure of English Waters within the North Sea to all vessels, noting the consideration we have given to the impact this will have on UK vessels (including Sunbeam) and EU vessels. This will end industrial sandeel fishing within the English waters of Sandeel Management Areas SA1r, SA3r and SA4.
9. That you note another submission will follow should you decide to close the fishery detailing how implementation of the closure should be handled, including written responses to the consultation responses submitted by Denmark and the European Commission.

Key Information

Background

10. Defra's general approach to sandeels and protecting the marine environment is part of a wider strategy to protect the environment and marine ecosystems including seabirds stretching back over a number of years. A detailed overview of the relevant policy landscape and environmental objectives was provided to the Scottish Court of Session in a witness statement during a judicial review earlier this year and a copy of that statement is provided with this submission as background. The key elements of this statement include:
 - a. The UK Marine Strategy Regulations 2010 that require the UK to take the necessary measures to achieve or maintain Good Environmental Status (GES) through the development of a UK Marine Strategy (UKMS). The target of Good Environmental Status has not been met for seabirds and marine food webs.
 - b. The UK Government's 25 Year Environment Plan (25YEP) and the first Environmental Improvement Plan (EIP23). Progress towards delivering the EIP23 will be monitored through the Annual Progress Report and the Outcome Indicator Framework. Diverse seas and the status of marine mammals and marine birds is one of the 66 indicators.
 - c. An objective under the UK Fisheries Act 2020 (the 2020 Act), is that fish and aquaculture activities are managed using an ecosystem-based approach so as to ensure that their negative impacts on marine ecosystems are minimised and, where possible, reversed. The 2020 Act defines an ecosystems-based approach as one which "ensures that the collective pressure of human activities is kept within levels compatible with the achievement of Good Environmental Status and does not compromise the capacity of marine ecosystems to respond to human-induced changes". Other relevant objectives include the Sustainability Objective, the Scientific Evidence objective and the Precautionary Objective.
 - d. The Joint Fisheries Statement (JFS), also states that "the fisheries policy authorities will achieve, or contribute to the achievement of, the ecosystem objective and GES through management regimes which maintain or, where required, recover, protect and improve the health of marine ecosystems. Such management approaches will be designed to minimise the impacts of fishing on the environment beyond individual stocks."

- e. Although not the only relevant principle, the EU-UK TCA requires that when introducing fisheries management measures the parties must have regard to the principle of taking due account of and minimising harmful impacts of fishing on the marine ecosystem and taking due account of the need to preserve marine biological diversity.
11. Introducing measures which limit fishing mortality on sandeels in UK waters and by considering wider forage fish management more generally to support seabirds and the wider marine ecosystem is considered one of the best ways to achieve progress towards GES for seabirds and is in line with the goals and targets in the EIP23, objectives in the 2020 Act and policies in the JFS.
12. Given the above context, Defra undertook a call for evidence 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 are concerned about the negative effects that the removal of forage fish by industrial fishing is having on vulnerable seabird populations, commercial fish species, and the wider marine environment. Respondents to the call for evidence acknowledged that sandeels have a high ecological value to the entire marine ecosystem, particularly as they form the base of many foodwebs and convert energy from primary producers into fish biomass. The outcomes of the call for evidence led to the need for further understanding of the ecosystem role played by sandeels.
13. Following the call for evidence Defra commissioned advice from scientific experts in the Defra group on the ecosystem risks and benefits of a reduction in sandeel fishing in the UK waters of the North Sea (ALB report). This report predicted 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 as well as delivering benefits to other fish species and marine mammals. Given the potential benefits from closing sandeel fisheries, Defra consulted on three different options for restricting sandeel fishing in English waters (full closure and two options for a partial closure). The results of the consultation show there is very strong public support (98%) to close all English waters of the North Sea to sandeel fishing. Additionally, there has been a Greenpeace petition set up in favour of closure with around 138,000 signatures, as well as an email petition by the RSPB which has generated some 20,000 emails to Defra. You have also replied to about ten letters from MPs on behalf of constituents concerned about the management of sandeel in our waters.

Discussion

14. In light of the potential ecosystem benefits (such as an increase in seabird biomass over 10 years), we are recommending a prohibition on fishing for sandeel in English waters of the North Sea by all vessels. This recommendation acknowledges there is uncertainty when adopting ecosystem based management actions, which is explained further below, as it has implications for the legal considerations.
15. This decision on sandeel management is the first opportunity taken to introduce significant fisheries measures based on ecosystem advice. The ALB report accepts there is uncertainty in the forecasts on the outcomes from new ecosystem based management actions. This advice is very difficult to produce results with 100% certainty due to the complexity inherent in marine ecosystems. For example, variability created by fluctuations in natural mortality from different predators, and changes in predator and prey populations due to environmental signals can mask the likely impact a fisheries management might have on a specific species.

16. Notwithstanding the evidential difficulties, the ALB advice is the best available evidence about the likely ecosystems benefits of full closure and introducing this measure is consistent with the JFS aim of taking an ecosystem-based, precautionary approach to fisheries management and adopt a balanced, proportionate approach to achieving, or contributing to the achievement of, the fisheries objectives in a manner that contributes towards achieving and maintaining GES. (A 'precautionary approach means one in which "the absence of sufficient scientific information is not used to justify postponing or failing to take management measures to conserve target species, associated or dependent species, non-target species or their environment".) There are currently no known alternative management interventions that could produce the same potential beneficial effect as closing the sandeel fishery.

Likely stakeholder reactions

17. The decision to close English waters of the North Sea will be fully supported by environmental NGOs who are likely to view it as a move towards ecosystem-based approach fisheries management (EBFM), and the development of a forage fish management strategy. Birdlife International, which is a multinational body of eNGOs which includes the RSPB, has said that given the current poor status of seabirds in the face of mounting threats like avian flu and offshore wind, "there is an urgent need to build resilience in these populations and therefore, a clear imperative to take immediate action on tractable pressures like sandeel fishing". An early decision whether to close the fishery in English waters will be valuable as it will give industry notice of the measure as far ahead of the 2024 season as possible and will mean that benefits to the ecosystem can begin to accrue from the next sandeel fishing season.

18. The impact on UK vessels, in particular MV Sunbeam has been considered. The conclusion is that UK vessels will not be impacted any further by the recommended prohibition than they have already been by current Government policy not to apportion UK sandeel quota for the past three seasons (2021-2023). Depending on the mechanism of implementation, closing the fishery may seem more permanent than the decision not to apportion quota every year, but there is currently no intention to apportion UK sandeel quota in future years, consistent with the recommendation to close the fishery. The only UK vessel recently recording catches of sandeel (MV Sunbeam) brought unsuccessful Judicial Reviews in 2022 and 2023 challenging the refusal to apportion sandeel quota (both prior to the consultation was published) and responded to the consultation. The legal challenge found the decision not to apportion sandeel to be proportionate and the proposed measure is also considered to be proportionate having regard to the impact considered in that challenge.

EU Considerations

19. The EU fishing industry, principally Danish vessels, will be most affected by a prohibition. EU vessels landed 240,000 tonnes of sandeels from English waters on average between 2015 and 2019, worth £41.2 million a year in revenue at 2021 prices. Over the same period, UK vessels landed an annual average of just 1,000 tonnes, worth £0.2M a year from English waters.

20. A prohibition may negatively impact European fishmeal and fish oil factories who use sandeels as one of their inputs. Danish fishmeal and fish oil businesses responded to our previous Call for Evidence suggesting they directly employ about 500 workers and derive additional economic activity in the local communities. The Danish Ministry of Food Agriculture and Fisheries have also shared the same evidence with the British Embassy in Copenhagen. This employment and economic activity will likely be reduced if fish processing businesses do not find alternative sources.

21. Jacob Jensen, Minister for Food Agriculture and Fisheries in Denmark, has written to you expressing his concern about the proposals suggesting that a prohibition for sandeel fisheries in English waters is disproportionate and discriminatory for the Danish fleet. He will raise this with you in the meeting you are due to have with him next week too. In their response the Danish Government has cited that their scientists from DTU Aqua find “the core advice to be based on insufficient or outdated scientific evidence providing incorrect estimated outcomes”. The Danish industry and European trade associations have also been critical of our interpretation of the science and gains a closure would bring to the marine ecosystem, arguing that instead, it is more effective to focus on refining and enhancing the existing management approach to ensure the long-term sustainability of the sandeel fishery while minimizing environmental impacts.
22. We commissioned Cefas, JNCC, NE, to review these concerns. This review sets out how the evidence provided to Defra to support the proposed management measure has either acknowledged and accounted for the concerns that Denmark has raised. The review by the ALBs has therefore considered the concerns raised which do not detract or undermine the scientific basis for the proposed closure. The ALBs also viewed that no conflicting evidence was submitted from either Denmark or the EU. This review by Cefas, JNCC, NE is attached in Annex A.
23. The European Commission also questioned the UK’s evidence and suggested that wider ecological needs are already considered in ICES catch advice and that ICES has not raised any specific concerns regarding the exploitation of sandeels. The ICES single species catch advice does not consider the wider ecological needs or benefits in the same way that the ALB report published alongside the consultation does. While the ICES advice has been taken into account it is narrowly focused on just the sandeel stock, whereas the ALB advice provides a broader evidence base and analysis relating to the wider ecosystem which the proposed closure is intended to support.
24. The response from the EU also questioned whether a full closure could lead to a large negative impact on industry compared to the possible proposed benefits outlined in the report. We have considered these comments and remain in our position that a full closure would be the best available option in order to support delivery on our aims. Our evidence suggests that the benefit of the closure would be greater where there is greater predator dependence and overlap. Moreover, a full closure reduces the risk of displacement of sandeel fishing within UK waters. Finally it considers the high interannual variation in offshore foraging dispersion, and so a more extensive closure would have a higher chance of success when prioritising the need for seabird recovery. With these in mind, our view remains that a closure would be a proportional measure in terms of the effectiveness of this measure and delivery of Good Environmental Status for Seabirds and Marine food webs.
25. The impact on EU industry is difficult to quantify and limited information has been provided by respondents to the call for evidence and consultation. Our analysis suggests around 10 – 25 EU vessels could be impacted, which are primarily from Denmark, but include Swedish and German vessels too. The STECF 2022 annual economic report (produced by the EU Commission) suggested that the portion of the Danish fleet that targets sandeels, also targets pelagic species for consumption (mackerel and herring) as well as other industrial species such as sprat and blue whiting. Therefore, it is likely these vessels currently fish other pelagic and industrial stocks and would continue to be able to do this. European vessels will also continue to be able to fish their sandeel quota in EU waters.
26. The MMO has also highlighted that of the six Swedish sandeel fishing vessels, sandeels landings made up 35% of their total landings from UK waters between 2021 and 2023 (herring 50%,

mackerel 10% and sprat 5%). This would suggest that while there will be an impact on Danish and other EU vessels if English waters are closed to sandeel fishing for vessels >10m, those vessels do not rely solely on English waters or solely on sandeel for their fishing activity or revenues . Based on the subset of data we have from relevant vessels, we would expect the EU sandeel fleet to primarily target herring when outside the sandeel season – and some vessels may target other pelagic stocks such as mackerel.

27. The European Commission’s response to the consultation also alleges that the measure could be in breach of obligations relating to discrimination and access in the EU-UK Trade and Co-operation Agreement (TCA) and that implementation of a spatial closure could entitle the EU to take compensatory measures for the economic and social impact of the change in the level and condition of access to UK waters. We consider that the proposed measures are not discriminatory towards the EU as these measures will apply equally to all vessels operating in English waters of the North Sea nor contravene any access or other obligations in the TCA.

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Next steps

31. If you agree with our recommendation we will write to the MMO, requesting their consideration of implementing this decision by way of licensing variations. Once the MMO have given their consideration, we will submit a formal Government response to be published, alongside a

communications handling plan, including letters for you to send to the Danish Minister and European Commissioner. The Economic and Domestic Affairs Secretariat has advised we do not need a Cabinet Committee write round for the formal Government response, though we must seek Private Office to Private Office clearance with No.10 and DESNZ. Following a discussion with the Minister of State we also suggest writing to the Europe Minister in FCDO enlisting their help via posts and UKMIS in the handling of the announcement with both the Danish, other interested coastal EU Member States and the European Commission respectively.

32. In the following submission we will advise on best timing for both publishing the announcement as well as implementation timelines. Ultimately we want the protection in place before the start of the 2024 sandeel fishing season which begins on 1 April 2024.

Legal Considerations

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Devolution Implications

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Annexes

Legal Considerations Annex

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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 been seen and approved for the submission.

<u>Finance</u>	Does this involve any spending or affect existing budgets?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Legal</u>	Does this include legal risk, a court case or decisions that can be challenged in court?	<input checked="" type="checkbox"/> If yes, [REDACTED] <input type="checkbox"/> No Confidential
<u>Communications</u>	Could this generate media coverage, or a response from our sectors?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Analysis and fact-checking</u>	Does this include complex data, statistics or analysis? Have data annexes been signed off by the lead analyst?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Science</u>	Does this include or require scientific evidence? Has this been signed off by a Lead Scientist or CSA Office?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Devolved Administrations and the Union</u>	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 type="checkbox"/> No
<u>Trade and International Obligations</u>	Does this include options that will impact trade or our international obligations?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Legislation</u>	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 type="checkbox"/> No
<u>Parliamentary Handling</u>	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 type="checkbox"/> No
<u>Fraud</u>	Have you considered fraud risks?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Commercial</u>	Does this include commercial or contractual implications?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No
<u>Technology, digital & data</u>	Does this rely on or have crossover with a tech/digital/data solution?	<input type="checkbox"/> If yes, named official: <input type="checkbox"/> No