

From: [REDACTED]
Head of Sea Fisheries
Marine Directorate

Confidential

Date: 27 April 2023

Cabinet Secretary for Rural Affairs, Land Reform and the Islands
Cabinet Secretary for Net Zero and Just Transition

CLOSURE OF THE COMMERCIAL SANDEEL FISHERY IN SCOTTISH WATERS

Priority and Purpose

1. To:

a) brief you on the decision taken by Scottish Ministers in February 2023 to consult on potential closure of the commercial sandeel fishery in Scottish waters for the purpose of providing wider ecosystem benefits to the marine environment, which could also deliver potential benefits to seabirds impacted by Highly Pathogenic Avian Influenza (HPAI);

b) provide handling advice (see Annex E) concerning the public confirmation of this decision.

2. This is a longstanding issue but resolution has become more urgent as a result of both the HPAI outbreak and a UK Government consultation on possible closure of the sandeel fishery in English waters which launched on 7 March 2023.

Context and Issues

3. In December 2022 advice was provided to the Cabinet Secretary for Rural Affairs and Islands on the impacts of HPAI across seabird species and whether early closure of the sandeel fishery could mitigate these impacts. This advice concluded that HPAI had resulted in substantial mortality in some seabird species during 2022 (on the basis of the available evidence) and that closure of the sandeel fishery had the potential to bring benefits to seabirds more generally, as well as some of those species impacted by HPAI. Closure would also deliver benefits to the wider marine ecosystem.

4. Following this advice, on 7 March 2023 the UK Government launched their consultation on potential closures of the sandeel fishery within English waters on the grounds of the wider ecosystem benefits that a closure would bring. RSPB Scotland has asked Scottish Ministers to follow suit with regard to the sandeel fishery in Scottish waters and Willie Rennie MSP has recently written to the Cabinet Secretary for Rural Affairs and Islands seeking an update on whether the Scottish Government will be consulting on closure of the sandeel fishery in Scottish waters and the timings of any such consultation. Depending on the outcome of the UK Government consultation, our understanding is that any spatial closures in English

waters would not come into effect until the 2024 fishing season, which operates between May and July in UK waters.

The commercial sandeel fishery in Scottish waters

5. Sandeel is a jointly managed stock between the UK and the EU. Under the Trade and Cooperation Agreement (TCA), and during a transition period lasting until 30 June 2026, the UK and the EU have full mutual access to their respective Exclusive Economic Zones (i.e., 12 – 200 nautical miles), as well as access to specific English, Welsh and Channel Island waters in the 6-12 nautical mile area. Sandeel is an important fishery to some EU member states, in particular Denmark, who regularly fish the stock in UK waters between May and July. In the case of UK vessels, historically, the stock has been targeted primarily by one Scottish vessel, although no quota has been allocated to UK vessels for sandeels since 2021 and a major sandeel fishing area in the North Sea has been closed to UK and EU vessels, except for a limited monitoring fishery in some years, since 2000 (see

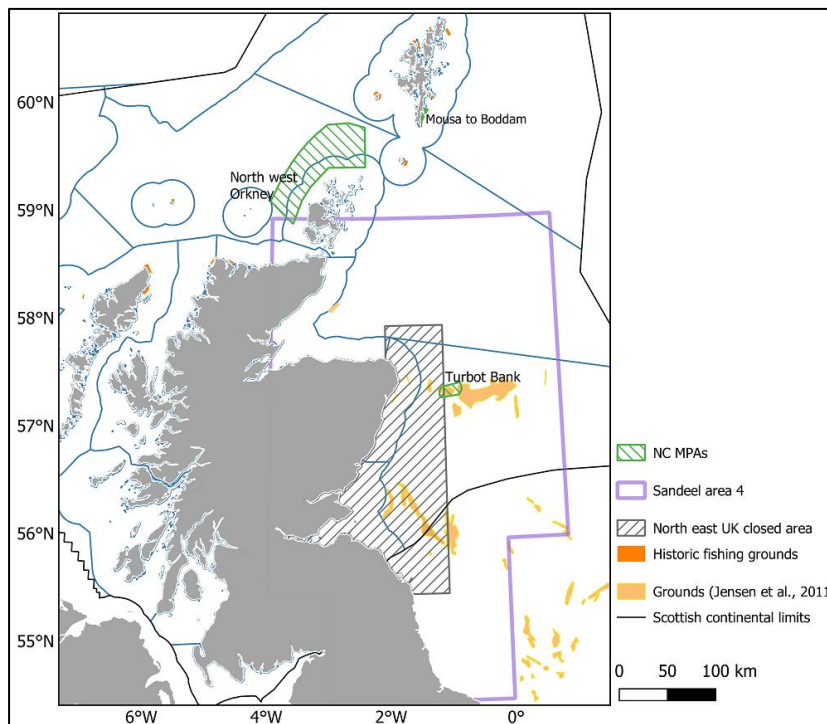


Figure 1).

Figure 1. The existing north east UK area closed to sandeel fisheries and the various spatial management measures for sandeel within Scottish waters. (Reproduced from a Case Study: Sandeels in Scottish Waters)

6. The UK Government's decision¹ not to allocate sandeel quota to UK vessels (in the context of EU vessels continuing to do so) was subject to a Judicial Review (JR) brought forward in February 2023 by a Scottish vessel against the Secretary of State (SoS). The petitioner (i.e. the Scottish Vessel) lost, with the non-allocation of sandeel quota found to be lawful for environmental reasons.

¹ Following agreement at December Council on the level of TACs, Defra allocates shares of the UK's quotas to each of the UK's four Fisheries Administrations. The Fisheries Act 2020 [Fisheries Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Seabirds and Highly Pathogenic Avian Influenza

7. Scotland is home to nationally and internationally important seabird populations, holding almost 100% of the GB breeding population (and around 60% of the world population) of great skua and around 80% of the GB breeding population (and nearly 50% of the world population) of northern gannet. However, in recent decades, many seabird species have shown large declines (except for gannets and some colonies of great skua), with an assessment carried out as part of the UK Marine Strategy concluding in 2019 that breeding seabird populations had not achieved Good Environment Status (GES) in UK waters. The outbreak of HPAI therefore comes at a particularly challenging time for Scottish seabird populations.
8. RSPB Scotland has made a clear call for the sandeel fishery to be closed urgently to mitigate for the impacts of HPAI. This follows the publication of a detailed paper in June 2021 (prior to the HPAI outbreak) in which RSPB Scotland set out its case in support of a closure of the sandeel fishery in UK waters for the benefit of the marine eco-system and the seabirds that rely on it. Between 4 April and 11 September 2022, approximately 20,500 dead seabirds across 160 locations in Scotland were reported to NatureScot. Whilst only a very small proportion were tested for HPAI, the cause of death was assumed to be attributed to HPAI. These numbers are likely to represent only a small proportion of the total number of seabirds that died during 2022 and are significantly greater than levels of mortality seen during 2021. The reported HPAI adult mortality rate for some species (e.g. Great Skua during 2022) was as high as 70%, suggesting a seven-fold increase in adult mortality. Due to seabirds' low reproductive rate it is likely to take many years for these seabird populations to recover from such impacts (NatureScot's provisional HPAI impact assessment is attached at Annex A).
9. Targeted counts will take place at key seabird colonies around Scotland in the 2023 breeding season, which will help to quantify any population level impacts of HPAI. However, they will not alter the current general conclusion, based on the evidence gathered during 2022, that HPAI has resulted in substantial mortality of some seabird species.
10. Scotland's seabird populations continue to face a range of pressures including climate change, onshore/offshore developments, bycatch/entanglement, reduced prey availability, pollution, predation by invasive terrestrial mammals and disturbance, meaning that multiple variables are acting on those populations. Any potential mitigating action should therefore be considered in the broader context of the need to act across these wide-ranging pressures and build resilience in Scotland's seabird populations. Reducing fishing mortality on seabird prey species, specifically sandeels, is considered one of a limited number of mitigating actions that could potentially deliver benefits to seabirds as well as the wider marine ecosystem.

Rationale for closing the sandeel fishery in Scottish waters and Ministerial decision in February 2023

11. The rationale for closure of the sandeel fishery in Scottish waters is on the grounds of the wider environmental and ecosystem benefits that sandeels bring,

acknowledging the potential benefits that this in turn could bring to seabirds impacted by HPAI.

12. Given the importance of sandeels to the wider ecosystem and the subsequent benefit provided by the species in aiding long-term sustainability and resilience of the marine environment, the Scottish Government maintains a long-held position not to support fishing for sandeel in Scottish waters, which is reflected in Scotland's Fisheries Management Strategy. This position was emphasised in June 2021 when the Cabinet Secretary for Rural Affairs and Islands committed in Parliament to considering as a matter of urgency what management measures could be put in place to better manage the North Sea sandeel fisheries in Scottish waters.
13. In 2021 Scottish Government officials worked closely with UK counterparts on a public call for evidence to better inform considerations on the future management of sandeels in UK waters. A wide range of stakeholders responded to the call for evidence including eNGOs, representatives of UK fishers, representatives of Norwegian and Danish fishers, academics, the Joint Nature Conservation Committee (a statutory nature conservation body) and renewable energy companies. These responses acknowledged that sandeels have a high ecological value to the entire marine ecosystem and the majority of responses were in favour of implementing new management measures for sandeel stocks.
14. Any closure of the sandeel fishery in Scottish waters would involve extending the current closed area in the North Sea by way of a general prohibition on fishing for sandeels by all vessels, including EU vessels. As noted previously, UK vessels are not allocated quota from the UK for this fishery, so the primary impact of any closure would be on Danish vessels, which hold 96% of the EU sandeel quota (on average 128,546 tonnes from 2020 to 2022), with 35% of this being allocated to areas almost entirely within UK (and primarily Scottish) waters.
15. Sandeels play an important role in the North Sea food web as a key resource for marine mammals, seabirds and predatory fish. Declines in sandeel abundance has the potential to negatively impact the survival and reproduction of ecologically important species, therefore closure of the sandeel fishery might bring about wider ecosystem benefits to a range of species as well as improving resilience to changes in the marine environment. For example, restricting sandeel fishing (and therefore limiting this source of mortality) may lead to an increase in sandeel abundance, survival and potentially availability, thereby providing benefits to other North Sea top predators, including key whitefish species, seabirds and marine mammals. Closure of the sandeel fishery could also reduce unwanted bycatch of valuable fish stocks such as whiting, haddock and mackerel.
16. With regard to HPAI, seabirds feed on a wide range of fish and sandeels are a key prey for several seabird species, especially during the breeding season. Extending the closure of the sandeel fishery therefore has the potential to bring benefits to seabirds impacted by HPAI, and to provide greater resilience to seabird populations. For example, studies have shown how breeding success in kittiwakes, common guillemots and puffins can be influenced by the abundance of sandeels, with an increase of sandeels in their diet being shown to improve breeding success in some species. However, the extent to which these benefits could be realised for

seabirds, including those impacted by HPAI is unpredictable due to variation in sandeel availability driven, to a large extent, by prevailing environmental conditions including climate change. Any benefits, if realised, would not be immediate and would vary with location and species.

17. While more data can always be gathered and add to our store of knowledge concerning the environmental benefits of sandeels, this is a topic which has already been examined for decades and further research is unlikely to change the overarching case that a sandeel closure could provide benefits to the wider marine environment through increasing ecosystem resilience and as a food source for a wide range of sandeel predators. Thus, while the evidence base is not definitive (as is rarely the case in the marine environment) we do not believe that it will materially improve in the short to medium term in a way which would substantively change the basis for decision-making.
18. On this basis, Scottish Ministers took the view in February 2023 that we should follow the UK Government consultation with a Scottish Government consultation (in summer 2023) on potential closure of the sandeel fishery in Scottish waters, on the grounds of wider marine ecosystem benefits, acknowledging the potential benefits that this could also bring to seabirds impacted by HPAI. This decision has not yet been made public but internally work is underway by officials on preparing the consultation, with a view to publishing it in July.

Consideration in relation to offshore wind developments

19. As the decision to consult on closure may have wider impacts for other sectors, information is given here on those impacts. Closure of the sandeel fishery has been identified by offshore wind developers as a future compensatory measure that would enable development of offshore wind farms by compensating for their adverse impact on seabird habitats. Assessments by Government and offshore wind developers have attempted to quantify the benefits of closing the sandeel fishery - either via direct benefit to seabirds that feed on sandeels or broader benefits to the wider marine ecosystem. In addition, developers have considered the benefits of a range of other seabird colony-based actions that could provide smaller scale compensatory measures.
20. Some developers, including Scottish and Southern Energy Renewables (SSER), take the view that closure of the sandeel fishery remains the most significant and effective action that could be taken as a compensatory measure to address the likely impact on key seabird species such as kittiwake and guillemot of proposed windfarms off the east coast of Scotland. Furthermore, other colony-based measures to improve seabird habitats at the breeding colonies are likely to be most effective if delivered together with the closure of the sandeel fishery.

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21. In an article in the Times on 12 April RSPB Scotland, National Trust for Scotland and the Scottish Seabird Centre at North Berwick recently condemned Berwick Bank as a potential catastrophe for seabirds. Susan Davies from the Scottish Seabird Centre, who is a member of the First Minister's Environmental Council, was quoted as saying that the location of the proposed wind farm was 'one of the most damaging places to site an offshore wind farm in Scotland.'

22. SSER's application for the Berwick Bank (4.1GW) offshore wind farm consent is currently out to consultation with responses from local authorities due at the end of this month. This application includes a case for derogating from the Habitats Regulations on the basis of securing compensation via closure of the sandeel fishery in both Scottish and English waters. Both NatureScot (the statutory nature conservation body) and RSPB Scotland have raised objections to the application at this stage (Annex B provides a technical note from MD-LOT on the consent application.)

23. [REDACTED]
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[REDACTED] The consultation on the closure of the sandeel fishery on environmental grounds is based on the wider environmental and ecosystem benefits that sandeels bring, acknowledging the potential benefits that this in turn could bring to seabirds impacted by HPAI). [REDACTED]
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24. **It should be noted that the recent Ministerial decision on closure of the sandeel fishery for the purpose of wider ecosystem benefits has been taken, [REDACTED], solely on the available evidence for that purpose. Considerations of whether the sandeel fishery closure could be an effective compensatory measure for future wind farm developments [REDACTED] [REDACTED] has not influenced the decision taken by Scottish Ministers.**

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Financial and Legal Considerations

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Reaction from the EU and eNGOs

26. Article 496 of the TCA provides that both the UK and EU may decide on the management measures applicable to their respective waters to achieve relevant objectives and principles (such as the conservation of marine living resources). However, there is the potential risk of a challenge from the EU (in particular Denmark), who fish the stock in UK waters.

27. The UK has taken and/or will take action to mitigate any challenge and minimise any harm to UK-EU relations. As set out in the TCA, we will ensure that the UK

completes the relevant treaty notification and that consultation obligations are met with regard to closing the fishery. This will build on the engagement the UK has already had with the EU in the annual fisheries negotiations, where we have continued to clearly state our position of not supporting the sandeel fishery. Any additional management measures therefore, while not palatable to the EU, should not come as a surprise.

28. Our alignment with the UK Government's position on the sandeel fishery in English waters adds support to the decision to consult on potential closure of the sandeel fishery in Scottish waters. Furthermore, our position is strengthened by the fact that no quota has been issued to UK vessels for sandeels since 2021, and a major sandeel fishing area in the North Sea has been closed since 2000.
29. RSPB Scotland has made clear that in their view closure of the sandeel fishery on a UK-wide basis is an urgent priority and has been public in urging the Scottish Government to align with the UK Government. The BBC *Wild Isles* series is also highlighting the sandeel fishery closure as a measure which should urgently be taken by governments. This increases the risk of reputational damage and potential legal challenge from the RSPB as long as we publicly withhold our intention to consult on closure of the fishery in Scottish waters.

Timings for a Scottish consultation in relation to the sandeel fishery

30. The proposal is to publish a consultation on potential closure of the Scottish fishery in summer 2023 and, following the Ministerial agreement in February preparatory work is already underway. To meet these timescales, we would need to consult statutory consultees (e.g., NatureScot, Scottish Environment Protection Agency and Historic Environment Scotland) on the Screening and Scoping Strategic Environmental Assessment (SEA) no later than 16 May 2023.
31. The consultation would therefore conclude in autumn 2023, meaning that any closure will not be implemented until after the 2023 sandeel fishing season (which occurs between May and July of each year) has concluded. This would mean that any management measures would come into effect for the 2024 fishing season, although noting that the process of EU notification would commence in 2023. We believe any challenge to this timetable from eNGOs (particularly RSPB Scotland) could be managed through dialogue, making clear our intention to take a view on the matter and any subsequent action as soon as due process allows.

Announcement of intention to consult alongside other fisheries management measures

32. There are a number of issues in relation to fisheries management measures for environmental purposes that could be combined through a single announcement - the commitment to a consultation on the potential closure of the sandeel fishery; the launch of a consultation on fisheries management measures for Offshore MPAs; and the delay to the timeline set out in the Bute House Agreement for the implementation of inshore MPA and Priority Marine Features (PMF) fisheries management measures.

33. Subject to Ministerial approval, we would suggest using a Government Initiated Question (GIQ) to confirm the Scottish Government's intention to consult in summer 2023 on potential closure of the sandeel fishery in Scottish waters, alongside these other MPA announcements. Annex E provides more detail on the handling plan for such an announcement.

Expected stakeholder reaction

34. eNGO stakeholders will welcome an announcement by Scottish Government to consult on potential closure of the sandeel fishery in Scottish waters, while some fisheries stakeholders may have the opposite reaction, in particular EU fisheries (specifically Denmark). For UK vessels, sandeel stock has been targeted primarily by one Scottish vessel, however in line with our overarching position no sandeel quota has been allocated to UK vessels since 2021, therefore the consultation will not come as a surprise. There is also firm precedent for the consultation as a major sandeel fishing area in the North Sea has been closed to UK and EU vessels since 2000.

35. There will be a potential impact on the offshore wind sector, which sees the sandeel fishery closure as a key piece of strategic ornithological compensation to unlock significant offshore wind development. This sector will therefore be concerned if the closure of the sandeel fishery for environmental reasons were to make it unavailable for strategic ornithological compensation.

36. The use of the derogation from the Habitats Regulations (which triggers the need for compensation) has been barely tested in Scotland.

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Recommendation

38. That you:

- a. note the contents of this submission, including the decision taken by Scottish Ministers in February to consult on closure of the sandeel fishery in Scottish waters and the rationale for doing so on the grounds of wider environmental and ecosystem benefits;
- b. note that the UK Government is now consulting on possible closures of the sandeel fishery within English waters, and that eNGOs are actively campaigning for a four nations closure, and for Scottish Government to align with the UKG position;
- c. agree to the handling plan at Annex E for making public our position to consult on potential closure of the sandeel fishery in Scottish waters in summer alongside other announcements in relation to Marine Protected Areas (MPAs).

- d. We think it may be helpful to discuss this matter with Ministers and would suggest scheduling a meeting before mid-May.

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Head of Sea Fisheries
Marine Directorate
27 April 2023

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The outcomes of the HPAI risk assessment developed by NatureScot and the associated uncertainties and caveats

An impact assessment of HPAI on breeding seabirds based on a provisional assessment of mortality data reported to a NatureScot mailbox between 4 April and 11 September 2022 was developed by NatureScot. Information on the species that NatureScot consider are dependent on sandeels is also included. *The most impacted species are highlighted in blue.*

Species	Min reported mortality	Impact Assessment for 2022	Significance of Scotland's seas to the species	Dependent on sandeels
Gannet	11190	Highest	High	
Great skua	2591	Highest	High	
Common guillemot	3361	Highest	High	Yes
Kittiwake	760	Highest	Medium	Yes
Terns	643			
• Arctic		Highest	High	Yes
• Common		Highest	Low	Yes
• Sandwich			Low	Yes
Large gulls	627			
• Herring		Highest	Medium	
• Lesser black backed gull		Highest	Low	
• Great black backed gull		Highest	High	
Puffin	139	Moderate	High	Yes
Fulmar	134	Moderate	High	
Razorbill	38	Lowest	High	Yes
Shag	25	Lowest	High	Yes
Manx shearwater	18	Lowest	Medium	
Cormorant	4	Lowest	Medium	
Arctic skua	1	Lowest	High	Yes
European storm petrel	Unknown	Lowest	High	
Leach's storm petrel	Unknown	Lowest	High	
Little gull	Unknown	Lowest	Low	
Black guillemot	Unknown	Lowest	High	

There are several caveats associated with the evidence underpinning the impact assessments, most notably:

- The numbers are only from reports submitted to NatureScot from key colonies and are therefore likely to be only a small proportion of the numbers of seabirds that have likely died.
- Reporting coverage varied across Scotland, with more remote locations often having limited or no data available. Furthermore, it is more difficult to survey

species that nest in burrows (such as Manx shearwater and puffin) so there is lower confidence for these species.

- There is higher confidence in the impact assessments for gannet, great skua and terns. Where confidence is lower, impacts could be significantly greater than assessed.
- There is no estimate of the numbers of seabirds dead at sea; seabirds were only counted if they washed-up on the coast, and these counts were not always undertaken in a systematic manner.

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Wider ecosystem and environmental benefits of closing the sandeel fishery: current evidence base

1. In discussions with Ministers in February 2023, the current evidence base for considering closure of the sandeel fishery was explored. This annex provides further information on the evidence base, including whether more evidence could be gathered to support any potential closure of the fishery, noting that any potential closure would come into effect for the 2024 fishery.
2. Sandeels play an important role in the North Sea food web as a key food resource for marine mammals, seabirds and predatory fish. Declines in sandeel abundance can negatively impact the survival and reproduction of important species, therefore closure of the sandeel fishery has the potential to bring about wider ecosystem benefits to a range of species as well as improving resilience to changes in the marine environment. For example, restricting fishing for sandeel (and therefore limiting this source of mortality) has the potential to lead to an increase in sandeel abundance, survival and potentially availability, thereby providing benefits to other top predators, including key whitefish species, seabirds and marine mammals. Closure of the sandeel fishery could also reduce unwanted bycatch of valuable fish stocks such as whiting, haddock and mackerel.
3. Sandeel distribution in Scottish and North East England waters is well studied, and it is considered that no further work on improving our understanding of the species' distribution is required to inform this decision. A sandeel distribution model recently published by Marine Scotland Science (MSS) has been demonstrated to accurately predict sandeel distribution in Scottish and North East England waters. However, it is widely accepted that sandeel abundance and their availability to predators are impacted by a range of factors including mortality (e.g., fishing, predation) and wide-scale environmental conditions, primarily driven by climate change.
4. Climate change is anticipated to result in an increased mismatch in timing between sandeel hatching and their prey, which would negatively impact sandeel productivity and therefore the abundance of young fish. Work is underway to better understand how these climate change effects might impact the availability of sandeel to seabirds, and the consequences for seabird breeding success. It is anticipated that this work will be published in a peer-reviewed journal towards the end of 2023. However, our current advice is that because of the inherent complexity of the relationships driving these processes and the uncertainty that this results in, this information is not required in advance of a decision on whether or not to close the sandeel fishery for environmental reasons.

Fishing mortality

5. The commercial fishery results in sandeel mortality, but evidence on its impact on sandeel abundance is lacking as fishing mortality is often overwhelmed by other natural causes of mortality (e.g., food availability). It has therefore been suggested that environmental changes may be more important in determining sandeel abundance than fishery mortality. For this reason, identifying the effects of sandeel

management measures on the marine environment or sandeel predators such as seabirds and marine mammals is very challenging. It would be possible, by using newly available survey data, to compare sandeel survival between areas that have and have not been fished for sandeels which could increase our understanding of the potential effects of a fishery closure. It would not improve our current understanding of the wider environmental and ecosystem benefits of a closure. Our advice is therefore that this information is not required for a decision on whether or not to close the sandeel fishery for environmental reasons.

6. Multispecies models of fish stocks in the North Sea are partly dependent on data from international sampling of stomach contents, to determine a) which species prey on which other species, and b) how important such predation is as a component of total mortality. The most recent significant stomach sampling programme was conducted in 1991, and the costs (in terms of staff and resources) of organising a significant repeat programme within the next 12-18 months would be prohibitive. However, an indication of the potential effect on wider fish stocks of the removal of sandeel fishing mortality could be produced by running scenarios in existing North Sea ecosystem models, which could be completed in the next 12-18 months. Our current advice is that such an evaluation will show some benefit for other species, but that the scale of the impact is likely to be small overall (with more benefit for particular species, such as haddock). The analysis would therefore probably not make a material difference to the decision to be taken.
7. Data on seabird distribution, foraging ranges from breeding colonies, and diet already exist. Some studies have demonstrated a positive effect of sandeel abundance on breeding success and survival in some seabird species, and a positive effect of sandeel fishery closure, at least in the short term. While more data would increase confidence in the spatial overlap between seabirds and sandeels, the importance of sandeels in diet, and population impacts for seabirds, because this information would be unlikely to materially change the existing evidence base, our current advice is that this information is not required to make a decision on a sandeel fishery closure for the benefit of seabirds.
8. Several species of marine mammal prey upon sandeels, including both grey and harbour seals and harbour porpoise. Studies have suggested a potential link between harbour seal declines and sandeel stock declines. The data supporting diet studies are more than a decade old, and would benefit from being updated. However, updating the evidence base would take several years and is unlikely to change the position that sandeels form an important part of seal and porpoise diet. Our current advice is that the information would not be required for a decision on a sandeel fishery closure to be reached.

Conclusion

9. In conclusion, a high degree of uncertainty exists around the relationship between a closure of the sandeel fishery and the subsequent benefits of this closure to the marine environment, or specific components of the marine environment such as seabirds or marine mammals. This uncertainty is not primarily due to a lack of information or data but is **due to the high degree of variability in the system, compounded by multiple interacting large scale environmental processes e.g., climate change**. This complexity and variability mean that predictions of the

benefits of a sandeel fishery closure on the marine environment will have a high degree of uncertainty. Therefore, further data collection would not enable predictions on the benefits to seabirds of a closure to be made with more certainty. Our current advice is therefore that this information is not required for a decision on whether to close the sandeel fishery.

Highly Pathogenic Avian Influenza (HPAI)

10. Subject to available resources, targeted seabird colony counts will be undertaken at priority sites during the 2023 breeding season, with the results available towards the end of 2023. These data will help to quantify impacts of HPAI on seabirds, specifically those species or colonies that appear to have been heavily impacted by HPAI. This information could help to target management measures at specific colonies or species to help aid recovery. However, we already know from the number of dead seabirds reported during 2022 that HPAI has resulted in mortality across multiple seabird species and a wide geographic area, with particular species and colonies (e.g. gannet on the Bass Rock and great skua from Shetland) experiencing significant mortality. The outcomes of the targeted surveys will therefore not alter the current conclusion or overall state of knowledge that HPAI has resulted in substantial mortality of some seabird species, therefore, it is our current view that this information is not required in advance of a decision on whether or not to close the sandeel fishery .
11. The high degree of uncertainty around the relationship between a closure of the sandeel fishery and benefits to seabirds also means that there is a high degree of uncertainty around any predicted benefits of a sandeel closure on seabirds impacted by HPAI. Whilst further data on the role of sandeels in facilitating recovery of seabird populations from HPAI impacts might increase our confidence in predictions around seabird recovery, our current advice is that this evidence is not required for a decision on whether or not to close the sandeel fishery.

Displacement

12. There is a real risk that any spatial closures of the sandeel fishery in English waters that are not accompanied by a similar closure in Scotland could result in displacement of fishing effort into Scottish waters, increasing the risks of local sandeel depletion. When considering closure of the sandeel fishery in Scottish waters, the merits of a coordinated closure in both Scottish and English waters should be explored.

Assessment of Options

13. Considerable research on the potential environmental benefits of sandeel fishery management has been undertaken over several decades. Whilst additional data collection and analyses would help resolve some knowledge gaps it is unlikely to change the overarching case that a sandeel closure will provide benefits to the wider marine environment and marine predators, through increased ecosystem resilience. Thus, while the evidence base is not definitive, our current advice is that further research or data collection will not in the medium term (next 18 months)

materially improve this situation in a way which would substantively change the basis for decision-making.

Handling Plan for GIQ on Fisheries Management Measures for Environmental Purposes

1. There are a number of issues in relation to fisheries management measures for environmental purposes that could be combined through a single announcement:
 - the commitment to a consultation on the potential closure of the sandeel fishery;
 - the launch of a consultation on fisheries management measures for offshore MPAs in summer 2023; and
 - the delay to the timeline set out in the Bute House Agreement for the implementation of inshore MPA and Priority Marine Features (PMF) fisheries management measures to the end of 2024.
2. We would therefore propose using a Government Initiated Question (GIQ) to confirm Scottish Government's intention to consult in summer 2023 on potential closure of the sandeel fishery in Scottish waters, alongside these other MPA announcements. A draft GIQ text for your approval is included at paragraph 10 below.

Sandeel Consultation

3. The UK Government launched their consultation on possible closure of the sandeel fishery in English waters on 7 March 2023. RSPB Scotland issued a tweet at that point calling on the Scottish Government to launch their own consultation on closing the Scottish sandeel fishery. It would be helpful therefore to state the Scottish Government's position on the matter within the next month, as we would expect RSPB Scotland to increase the pressure on Scottish Ministers to clarify their intentions as the UK Government move through their consultation and approach a decision with regard to potential closures of the sandeel fishery in English waters. Closure of the sandeel fishery has already been highlighted in the David Attenborough-fronted BBC series Wild Isles as a key measure which Government can take to help alleviate pressures on seabirds.
4. Launching a consultation in summer 2023 will ensure that any measures will be in place before the summer 2024 fishing season.

[Redacted]

Confidential

[Redacted]

Confidential

39. We will also notify RSPB Scotland of our intentions on the day of the GIQ.

Proposed content of GIQ

40. As noted above, we propose to announce the Scottish Government's intention to consult on the sandeel fishery closure alongside the announcement of our position on the MPA fisheries management measures. The following for the text of the GIQ:

Question

To ask the Scottish Government what progress has been made towards the implementation of fisheries management measures for the protection of the marine environment.

Answer

We recognise that biologically diverse seas and healthy, functioning marine ecosystems are vital to underpin a wide variety of marine industries and interests. It is vital that we manage our marine environment in such a way as to ensure sustainable use, allowing future generations to enjoy and benefit from a healthy resource. Therefore, I am pleased to announce we will be undertaking a key consultation this year with the aim of furthering our environmental protection objectives.

To ensure the longer term sustainability and resilience of our wider marine environment, I have instructed officials to begin the work required to carry out a public consultation later this year on potential measures to manage fishing for sandeel in Scottish waters. Sandeels play an important role in the marine ecosystem and are an important food source for many species, including marine mammals, seabirds and predatory fish.

Highly Pathogenic Avian Influenza has also had an impact on some of our internationally important seabird populations. Measures to restrict fishing for sandeels in Scottish waters could also deliver benefits to seabirds which have been impacted by HPAI as well as providing greater resilience to seabird populations, some of which have faced declines in recent decades.

I am also pleased to announce that we will soon be launching a 12-week public consultation on proposed fisheries management measures for MPAs occurring in the offshore region (outside 12 nautical miles). Launching in summer 2023, This consultation will seek the public's views on draft measures for the 21 offshore sites requiring fisheries management to help achieve the Scottish Government's vision for clean, healthy, safe, productive and diverse seas which are managed to meet the long term needs of nature and people. This consultation will also seek the public's views on a number of key documents including environmental and socioeconomic impact assessments.

For MPAs in the inshore area (within 12 nautical miles), the Scottish Government is working on developing draft fisheries management measures for MPAs and the protection of Priority Marine Features (PMFs) outside MPAs. This is an unprecedented piece of work, considering environmental protection required for

over 160 individual sites and we are making sure that we take the appropriate steps to engage stakeholders.

These actions flow from the [Bute House Agreement](#) which sets out an ambitious timeline to implement fisheries management measures in Marine Protected Areas (MPAs), where these are not already in place, and for the 11 Priority Marine Features most at risk from bottom trawling outside MPAs, providing additional protection to our inshore waters.

Ensuring that we develop evidence-based and effective fisheries management measures for the large number of inshore sites is a complex and challenging process and has resulted in a delay to the ambitious timeline set in 2022. The Scottish Government now intends to carry out public consultation on these sites in early 2024 and implement the measures by the end of 2024.

Lines to take

41. We propose the following as lines to take in the wake of the GIQ:

- Given the importance of sandeel to the wider ecosystem and the subsequent benefit in aiding long-term sustainability and resilience, it remains an overarching Scottish Government position not to support fishing for sandeel in our waters. For this reason, the UK has not allocated sandeel quota since 2021.
- There are several measures already in place for the protection of sandeel stocks in the North Sea, through the network of Marine Protected Areas.
- During the parliamentary session on the 9 June 2021, I [the Cabinet Secretary for Rural Affairs, Land Reform and the Islands] committed to consider what additional measures could be put in place to better manage the North Sea sandeel fisheries in Scottish waters.
- In 2021, Scottish Government officials worked closely with UK counterparts on a call for evidence to gather further evidence to better inform our considerations on future management for sandeel and Norway pout.
- Officials are now in the process of commencing work required to carry out a full consultation on the prohibition of fishing for sandeel in Scottish waters in summer.
- There is evidence suggesting that these measures could provide wider ecosystem benefits to the marine environment, which could also deliver potential benefits to seabirds which have been impacted by Highly Pathogenic Avian Influenza (HPAI).