

From: [REDACTED] and [REDACTED]  
Marine Directorate  
28 June 2023

Confidential

Cabinet Secretary for Rural Affairs, Land Reform and the Islands

## CONSULTATION ON PROPOSALS TO CLOSE FISHING FOR SANDEEL IN ALL SCOTTISH WATERS

### Priority and Purpose

1. **Urgent.** This submission seeks Ministerial approval to launch a public consultation on proposals to close fishing for sandeel in all Scottish waters in the week commencing 10 July 2023.

### Recommendation

2. Recommend that you:
  - a. note the contents of this submission.
  - b. approve the public consultation package (detailed in paragraph 6 below) following the decision taken by Scottish Ministers in February 2023 to proceed with a consultation on proposals to close fishing for sandeel in all Scottish waters;
  - c. agree the developing stakeholder plan (paragraph 19);
  - d. note that the UK Government's consultation on possible closure of the sandeel fishery within English waters has concluded and that consultation responses are being considered, with the aim of reaching a decision ahead of the 2024 fishery (more detail in paragraph 13 and 26);
  - e. agree to the proposed approach set out in paragraph 23 in relation to engagement with the Commission following the launch of the consultation;

[REDACTED]  
[REDACTED]  
Confidential

### Context and Issues

#### Background

3. Given the importance of sandeel to the wider ecosystem and the subsequent benefit provided by the species in aiding long-term sustainability and resilience of the marine environment, it remains an over-arching and long-held Scottish Government position not to support fishing for sandeel in Scottish waters, which is reflected in Scotland's Future Fisheries Management Strategy. This position was emphasised in June 2021 when the Cabinet Secretary for Rural Affairs and Islands committed in Parliament to considering what management measures could be put in place to better manage the North Sea sandeel fishery in Scottish waters.

4. Detailed advice has been provided to Ministers on this matter in recent months (the most recent submissions dated 27 April and 18 May 2023). Following a meeting between the First Minister, Cabinet Secretary for Rural Affairs, Land Reform and Islands, Cabinet Secretary for Net Zero and Just Transition and the Minister for Energy on 15 May 2023, Ministers agreed to proceed with a consultation on proposals to close fishing for sandeel in all Scottish waters. The Scottish Government's intention to consult was announced by the Cabinet Secretary for Rural Affairs, Land Reform and Islands on 19 May 2023 via a Government Initiated Question.
5. The UK Government's consultation on potential closure of the sandeel fishery within English waters (on the grounds of the wider ecosystem benefits that a closure could bring) has now closed and analysis of responses are underway. Dependent on the outcome of this analysis, our understanding is that any measures in English waters would come into effect ahead of the 2024 fishing season which operates between May and July of each year.

#### Consultation documents

6. The following package of documents have been developed to support the Scottish consultation:
  - **Consultation Paper** - sets out the background, proposals, and rationale for the consultation as well as containing a summary of the evidence and consultation questions. The preferred option in the consultation is to extend the current sandeel fishery closure in the North Sea to all Scottish waters.
  - **Evidence document** – provides a review of the available scientific evidence on the potential effects of sandeel fisheries management on the marine environment. It includes information on the drivers of sandeel distribution and abundance and the importance of sandeel to other fish species, seabirds and mammals and, the potential effect of sandeel fisheries management measures upon these species.
  - **Environmental report** – presents the findings of the Strategic Environmental Assessment (SEA), which assesses the environmental impacts of the policy proposals. It has been informed by the SEA screening and scoping report and has taken account of the views of statutory consultees (e.g., NatureScot, Scottish Environment Protection Agency and Historic Environment Scotland).
  - **Partial Business and Regulatory Impact Assessment (BRIA)** - looks at the likely costs, benefits and risks of introducing the closure and their potential impacts on public, private or third sectors.
  - **Data Protection Impact Assessment** - reports on and assess against any potential data protection risks as a result of the processing and publication of responses to the consultation.

7. There are a range of other impact assessments that will be completed following the consultation, drawing on the information gathered through the consultation process.

### **Options Considered and Advice**

8. Officials have provided detailed advice to Ministers (the most recent dated 27 April and 18 May 2023) in relation to potential closure of the sandeel fishery in Scottish waters and the potential wider environmental and ecosystem benefits that such a closure could bring to the marine environment, including marine mammals, seabirds and predatory fish species for which sandeel is a key food resource. Advice was also provided on whether more data could be gathered and add to our knowledge concerning the environmental benefits of sandeel.
9. While the evidence is not definitive, declines in sandeel abundance may negatively impact the survival and reproduction of ecologically important species, therefore closure of the sandeel fishery has the potential to bring about wider ecosystem benefits to a range of species, including improving their resilience to changes in the marine environment. For example, restricting sandeel fishing may lead to an increase in sandeel abundance, survival and potentially availability, thereby providing benefits to North Sea predators. Closure of the sandeel fishery could also reduce unwanted bycatch of valuable fish stocks such as whiting, haddock and mackerel.
10. However, it is important to note that the extent to which these benefits could be realised for predatory fish, seabirds and marine mammals is unpredictable due to variation in sandeel abundance and availability which is driven by fishing mortality and, to a larger extent, by prevailing environmental conditions (with climate change further increasing the unpredictable nature of any relationships) which is likely to have the greatest effect on sandeel. Furthermore, any benefits if realised would not be immediate and would vary with location and species.
11. In the case of seabirds, globally many populations are declining with breeding seabirds in the UK not meeting Good Environmental Status. Some populations have also been substantially impacted by the Highly Pathogenic Avian Influenza (HPAI) outbreak during 2022. Seabirds face a range of pressures including habitat loss, biosecurity, infectious disease, climate change, storm events, human disturbance to breeding birds, invasive species, and predation of both chicks and adult seabirds. The scientific evidence document that will support the consultation, therefore concludes that maximising the abundance and availability of sandeel stock as prey for seabirds (that may be achieved through closure of fishing for sandeel in Scottish waters) remains a key mechanism by which resilience in seabird populations might be achieved.

## Assessment of Options

12. Following an assessment of the advice, including the status of the available evidence base, a decision was taken by Scottish Ministers in May 2023 to consult on potential closure of the sandeel fishery in Scottish waters for the purpose of providing wider ecosystem benefits to the marine environment. To ensure that any potential closure is implemented ahead of the 2024 fishing season, should that be the decision taken by Ministers following the consultation, it was agreed that the consultation would be published in summer 2023. This will enable the consultation to conclude in autumn 2023 and a recommendation made to Ministers in early 2024. The Cabinet Secretary may wish to note that any decision to close the fishery will require a Scottish Statutory Instrument (SSI) to be laid. Officials will therefore work with SGLD and PLU over the coming weeks to get this incorporated into the parliamentary programme should the decision, following completion of the consultation analysis, be to close the fishery in Scottish waters.
13. The UK Government's consultation on measures in English waters has now closed. Initial feedback from UK Government colleagues noted that 29 substantive responses were received on Citizen Space and over 158,000 email responses following separate RSPB and Greenpeace campaigns. In total, 98% of the substantive responses agreed with a full closure of English waters in the North Sea, but there were some high-profile objectors. In particular, the European Commission questioned whether the potential measures were compatible with the UK-EU Trade and Cooperation Agreement (TCA), suggesting that they could be discriminatory against the EU (explored further in paragraph 21). Furthermore, Denmark has disputed the science and evidence presented in the UK consultation. Of relevance to our planned consultation is that the Scottish pelagic sector strongly opposed the proposed closure, suggesting that the decision is being made to favour offshore wind over fishing interests. In terms of next steps, the UK Government will publish a summary of responses, ahead of seeking cross Whitehall agreement on recommendations to be put to Ministers on whether to close fishing for sandeel in English waters. If the recommendation taken by the UK Government is to close the fishery in English waters, the EU will be informed and, any closure implemented by means of a licence variation.

## Bute House Agreement Implications

14. The details set out in this submission align with the Bute House Agreement in terms of environmental protection and sustainable fisheries.

## Financial and Legal Considerations

## **Expected stakeholder views and Communications**

16. Our engagement to date, along with the announcement on 18 May 2023, has raised awareness of the consultation and stakeholders are expecting it. Given the focus of the consultation, we anticipate a mixture of stakeholder views.
17. Environmental NGOs will be supportive of the proposals laid out in the consultation. RSPB Scotland has made clear that in their view closure of the sandeel fishery on a UK-wide basis is an urgent priority and will therefore welcome the consultation on potential closure of the sandeel fishery in Scottish waters which aligns with the UK Government. We would expect RSPB Scotland to publicly state their support for the consultation once it is published and to initiate a response campaign similar to the approach adopted for the consultation in English waters.
18. The measures included in the consultation is not a blanket removal of any fishing grounds, but instead stops fishing for a single species in Scottish waters. Sandeel is an important fishery to some EU members, in particular Denmark, who regularly fish the stock in UK waters. We fully expect the EU to disagree with the proposals (refer to paragraph 13) but will go through the official treaty notification process to ensure that our obligations are met. In the case of UK vessels, the stock has historically been targeted primarily by one Scottish vessel, although no quota has been allocated to UK vessels for sandeel since 2021. However, considering the initial observations from the UK consultation, it is likely that the Scottish fishing sector will object to the proposals.
19. Bearing this in mind, immediately following the launch of the consultation we will share information on the consultation and its proposals through the usual routes, including with FMAC. We also intend to present the proposals as an agenda item at the next FMAC meeting in August 2023 to provide the opportunity for participants to provide feedback and/or answer questions, as well as offering any follow up meetings as necessary.
20. The offshore wind sector (particularly SSER) also have an interest in the closure of the sandeel fishery as they view it as a potential compensatory measure which could enable the construction of the Berwick Bank development and other wind farms. They have therefore reacted positively to the potential closure, although the degree to which the closure could be used as compensation for offshore wind is contested (see section on sensitivities below.)

## **Sensitivities**

21. Article 496 of the TCA provides that both the UK and the 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, sandeel is an important fishery to Denmark so there is the potential risk of a challenge from the EU (and in particular Denmark). Indeed, as noted in

paragraph 13, the Commission has responded to the UK consultation questioning whether the potential measures were compatible with TCA, suggesting that they could be discriminatory against EU. Whilst the EU might argue that a closure would have a disproportionate impact on EU vessels given that EU holds a large majority of the share of sandeel quota, there is a discrimination clause in the TCA at Article 496. It states that the parties to the agreement shall not apply measures to the vessels of the other party in its waters unless it also applies the same measures to its own vessels. In this case, the UK could argue that a decision to close the sandeel fishery in UK waters is not discriminatory as it applies to UK and EU vessels alike and therefore is in line with this provision of the TCA.

22. The UK will take action to mitigate any challenge and minimise any harm to UK-EU relations from such issues as flagged up in this submission. 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 potential fishery closure. 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. Furthermore, on the day that the consultation is launched, we would propose to issue a letter to the Commission to follow up on a recent meeting between the Commission and Ms Gougeon where sandeel (including newly commissioned research on sandeel in the North Sea) was discussed, alerting them to the consultation and providing a link should they wish to comment or provide any outputs from the research (should it be available).

23. 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 sandeel since 2021, and a major sandeel fishing area in the North Sea has been closed since 2000.

24. As noted at paragraph 20, the offshore wind sector sees the closure of the sandeel fishery as a major piece of strategic environmental compensation to enable wind farm developments in Scottish waters. [REDACTED]

[REDACTED]

LEGAL PRIVILEGE

[REDACTED]

Confidential

[REDACTED]

Confidential

**Quality Assurance**

26. This submission has been approved by [REDACTED], Deputy Director for Corporate, Strategy and Marine Planning. Confidential

**Conclusions and next Steps**

27. You are invited to:

- a. note the contents of this submission;
- b. approve the public consultation package (detailed in paragraph 6 below) following the decision taken by Scottish Ministers in February 2023 to proceed with a consultation on proposals to close fishing for sandeel in all Scottish waters;
- c. agree the developing stakeholder plan (paragraph 19);
- d. note that the UK Government’s consultation on possible closure of the sandeel fishery within English waters has concluded and that consultation responses are being considered, with the aim of reaching a decision ahead of the 2024 fishery (more detail in paragraph 13).
- e. agree to the proposed approach set out in paragraph 23 in relation to engagement with the Commission following the launch of the consultation;

[REDACTED]

Confidential

28. Subject to Ministerial approval, we would seek to commence the consultation at the earliest opportunity (week beginning 10 July). This will ensure that any closure of the sandeel fishery (if determined to be the course of action following the consultation) is in place ahead of the start of the 2024 fishery in May 2024.

29. We are liaising with Comms colleagues regarding communications surrounding the launch of the consultation and will update Ministers accordingly.

[REDACTED] and [REDACTED] Confidential

Marine Directorate  
28 June 2023

Cabinet Secretaries and Ministers Copy List	For Action	For Information Portfolio interest	For Information Constituency interest	For Information General awareness
Cabinet Secretary for Rural Affairs, Land Reform and Islands	X			
Cabinet Secretary for Transport, Net Zero and Just Transition		X		
Minister for Energy and Environment		X		
Minister for Green Skills, Circular Economy and Biodiversity		X		
Cabinet Secretary for Wellbeing Economy, Fair Work and Energy		X		
Lord Advocate		X		

**Officials Copy List**

Solicitor General  
 DG Net Zero  
 Legal Secretariat to the Lord Advocate  
 Director of Marine Directorate  
 Director of Offshore Wind Directorate

- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████ (SGLD)
- ██████████
- ██████████
- ██████████
- ██████████
- ██████████
- ██████████
- ██████████
- ██████████
- ██████████

**Confidential**



**Officials Copy List**

**Confidential**

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Communications RALRI  
Communications NZJT  
Marine Directorate Communications