

From: [REDACTED]
Marine Directorate
26 January 2024

Confidential

Cabinet Secretary for Rural Affairs, Land Reform and the Islands
Minister for Parliamentary Business (in relation to recommendation e)

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

Priority and Purpose

1. **URGENT** - To (1) update you on the results of the recent consultation on proposals to prohibit fishing for sandeel in Scottish waters, (2) seek your agreement to the recommendation to prohibit fishing for sandeel in all Scottish waters ahead of the 2024 fishery, and (3) agree timings and arrangements for an announcement.
2. A decision is required on Monday 29 January to allow the GIQ to be lodged in Parliament on Wednesday 31 January 2024.

Recommendation

3. Recommend that you:
 - a. agree to prohibit fishing for sandeel in all Scottish waters ahead of the 2024 fishing season;
 - b. agree to laying the Order and associated documents (Annex A) in Parliament on 5 February 2024, The Order will be sent to Private Office on 1 February 2024 for signing;
 - c. approve and sign the accompanying Business and Regulatory Impact Assessment (BRIA) and return a scanned copy (Annex B);
 - d. approve publication of the consultation outcome report on the Scottish Government website (Annex C);
 - e. agree to use a Government Initiated Question to announce our intention to close fishing for sandeel in Scottish waters (Annex D)
 - f. agree to notifying the EU of our intention to close the sandeel fishery in Scottish waters through the EU treaty notification process;
 - g. note the position of the European Commission on compliance with the Trade Cooperation Agreement (Annex F) and agree to writing to the Commission and the Danish Fisheries Minister to advise them of our decision;
 - h. note that the UK Government will be closing fishing for sandeel in English waters' and will be making an announcement on 31 January 2024;
 - i. note sensitivities in relation to offshore wind development and the sandeel closure as a compensatory measure, and
 - j. agree to the developing Communications approach, which includes an announcement alongside the UK on 31 January.

Context and Issues

4. 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 a 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 sandeel fishery in Scottish waters.
5. Advice has been provided to Ministers in relation to a potential closure of the commercial sandeel fishery in Scottish waters for the purpose of providing wider ecosystem benefits to the marine environment (the most recent submission dated 23 June 2023). Consequently, 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 for a closure. The UK Government's consultation on potential closure of the sandeel fishery in English waters closed in spring 2023.

Consultation Responses

6. The consultation on proposals to close fishing for sandeel in Scottish waters ran from 21 July to 13 October 2023. An external consultant was contracted to carry out the analysis of the responses. In total there were 494 responses, comprising of 443 individuals and 51 organisations. An overview of these responses can be found in **Annex E**.

Options Considered and Advice

7. The purpose of the consultation was to seek views on the Scottish Government's preferred option to close fishing for sandeel in all Scottish waters which is intended to benefit both sandeel populations and the wider marine ecosystem. While there was overwhelming support for the preferred option (97%) across organisations and individuals, several specific issues were raised. Our considerations on these and other key elements, including the current scientific evidence base, ICES advice and compliance with the Trade Cooperation Agreement (TCA), are set out in full in **Annex F** for Ministers consideration.

Assessment of Options

8. Based on analysis of the feedback received within the consultation and advice from Science, Evidence, Digital and Data (SEDD) colleagues, we would recommend that Ministers agree to close fishing for sandeel in all Scottish waters. This is based on the potential wider ecosystem benefits that such measures could bring to a range of species in the longer term as well as

resilience to the marine environment. However, there are two elements to this which are likely to be controversial. These relate to EU/Denmark relations and compliance with the TCA and offshore wind development in terms of compensatory measures, both of which are set out in this advice.

9. For the first issue, our analysis is that the recommended approach is appropriate and proportionate given the current evidence base and the precautionary principle, which we consider remains aligned with the TCA on the advice [REDACTED] LEGAL PRIVILEGE [REDACTED] (which is detailed below under legal considerations). We are therefore of the view that our approach is justified, and we believe defensible against criticism. It is also aligned with our commitments and obligations under the Joint Fisheries Statement, the Fisheries Act 2020, the UK Marine Strategy and Scotland's National Marine Plan, in addition to the range of other national and international commitments and strategies to which we are bound.
10. In terms of the second, and as noted in **Annex F** of this advice, the closure of the sandeel fishery as a compensatory measure for offshore wind cannot be a material consideration in making this decision, which should be based solely on the grounds for environmental benefit outlined in the consultation.
11. **You are asked to agree to the proposed approach which is to recommend prohibiting all fishing for sandeel in Scottish waters ahead of the 2024 fishing season although acknowledging the sensitivities.**

Implementation of the closure via Scottish Statutory Instrument

12. As noted in the submission of 23 June 2023, closing fishing for sandeel in Scottish waters will require a Scottish Statutory Instrument (SSI) to be laid. Officials have identified Monday 5 February 2024 for laying the draft Order in Parliament, subject to Ministerial agreement. The Order is subject to a negative procedure and if approved and made, will come into force on 26 March 2024 ahead of the 2024 fishing season.
13. In addition to the draft Order, a policy note (Annex A) and Business and Regulatory Impact Assessment (BRIA) (Annex B) are required to be laid in Parliament at the same time. The BRIA requires to be signed and a scanned signed copy laid in Parliament alongside the draft Order which will be sent to Private Office for the Cabinet Secretary to sign on 1 February 2024.
14. There is no requirement to complete an Equality Impact Assessment (EQIA) or a Child Rights and Wellbeing Impact Assessment (CRWIA) therefore these have been screened out of the process (copies available on request). Furthermore, the closure is not likely to have an effect on an island community which is significantly different from its effect on other communities, therefore a full ICIA is not required. However, an assessment has been developed and will be published alongside the outcome report.

15. You are asked to agree to laying the draft Order to implement the closure, and associated documents, in Parliament on 5 February 2024 and approve and sign the accompanying BRIA and return a scanned copy.

UK Government consultation

16. The UK Government consulted in spring 2023 on potential management measures for the sandeel fishery within English waters. Following consideration of the consultation responses, Minister Spencer has agreed to close fishing for sandeel in Area 4 of the North Sea in English waters.

17. Defra officials have advised that the UK Government will be publicly announcing their decision on 31 January 2024. Should the Cabinet Secretary be minded to approve the recommendation, there will be advantages in co-ordinating announcements across the two administrations (refer to paragraph 32).

18. You are invited to note that the UK Government will be closing fishing for sandeel in English waters (sandeel area 4) and that they will be making a public announcement on 31 January 2024.

Notification process

19. Under Article 496(3) of the TCA there is a requirement that the UK and EU notify each other of any new measures that will impact each party's fishing vessels, with a 45-calendar days notification period. This formal notification will build on the engagement that Scotland/UK has already had with the EU regarding management of sandeel in Scottish waters. We have also provided informal notification to the EU of our consultation. The Cabinet Secretary met with the Commission in Brussels on 8 June 2023 and followed up with a letter on 24 July 2023. Also in the annual fisheries negotiations, officials have continued to clearly state our position of not supporting the sandeel fishery.

20. In light of the decision to close fishing for sandeel in English waters, we have agreed with Defra colleagues to submit a single UK return to the EU, subject to the Cabinet Secretary agreeing to the recommendations in this advice. This will be submitted before 9 February to meet the notification timelines.

21. You are asked to agree to officials notifying the EU of our intention to close fishing for sandeel in Scottish waters via the EU treaty notification process.

Bute House Agreement Implications

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

Verity House Agreement Implications

23. There are no Verity House Agreement implications from the recommendation.

Financial and Legal Considerations

LEGAL PRIVILEGE

[REDACTED]

LEGAL PRIVILEGE

[REDACTED]

26. Financial considerations are set out in the BRIA (Annex B). There are no additional impacts on Scottish or UK businesses that have not already been realised through the UK position, supported by the Scottish Government, not to allocate quota to UK vessels since 2021. Enforcement of the closure will be on a risk-based approach in line with current compliance activities.

Sensitivities

Relations with the EU and Denmark

27. 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, as noted earlier in the advice, there is the potential risk of a challenge from the EU, including Denmark, who fish the stock in UK waters should Scottish waters be closed to fishing for sandeel.

28. The UK will continue to 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. 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.

29. Our position is also 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. [REDACTED]

LEGAL PRIVILEGE

30. In further attempts to minimise harm to Scottish–EU relations, and subject to Ministerial agreement, we would advise writing to the European Commission to inform them of our decision. This follows a meeting with the European Commission on 8 June 2023 where management of sandeel in Scottish waters was discussed and a letter from the Cabinet Secretary to the Commission in July 2023 advising them of the launch of the public consultation.

31. You are asked to note the position of the European Commission on compliance with the Trade Cooperation Agreement and agree to writing to the Commission to advise them of our decision;

Handling and Comms Strategy

32. As noted in paragraph 17, the UK Government will be publicly announcing their intentions to close fishing for sandeel (sandeel area 4 of the North Sea) in English waters on 31 January 2024 alongside other announcements. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Confidential

33. Subject to Ministerial approval, we would propose using a Government Initiated Question (GIQ) to announce our intentions to prohibit fishing for sandeel in Scottish waters. This would be lodged in Parliament on Wednesday 31 January by [REDACTED] MSP. The GIQ text can be found at Annex D. Confidential

34. You are asked to agree to 1) the developing Communications approach, which includes an announcement alongside the UK on 31 January, and 2) to use a Government Initiated Question to announce our intention to close fishing for sandeel in Scottish waters (Annex D)

Quality Assurance

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

EU alignment

36. The recommendation is aligned with the EU's overall approach of managing fish stocks in a sustainable manner with catches of stocks at risk of over-exploitation subject to a variety of restrictions. Furthermore, current management measures in place within sandeel management area 4 were included in EU regulations and remain in assimilated law. A prohibition of fishing for sandeel in Scottish waters to protect sensitive marine species aligns with the delivery of Good Environmental Status for biodiversity and commercial fish under the UK Marine Strategy. This is an obligation that stems from the EU's Marine Strategy Framework Directive. It also aligns with EU principles in the Common Fisheries Policy by taking a precautionary approach to supporting the protection of marine ecosystems.

Conclusions and next Steps

37. Subject to your agreement on the recommendations in this submission, Comms advice will follow.

[REDACTED], Marine Directorate. Confidential

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			
Minister for Parliamentary Business	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 Head of MPNR

[REDACTED] (SGLD)
 [REDACTED] (SGLD)
 [REDACTED] (SGLD)
 [REDACTED] (SGLD)
 [REDACTED] (SGLD)
 [REDACTED] (SGLD)
 [REDACTED] (SGLD)
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Confidential

Officials Copy List

Confidential

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

Deputy Director European Relations

Confidential

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

Parliamentary Clerk
Communications RALRI
Communications NZJT
Marine Directorate Communications

ANNEX A - Draft Order and associated documents

Attached separately.

ANNEX B - Business and Regulatory Impact Assessment

Attached separately.

ANNEX C - Consultation outcome report

Attached separately.

ANNEX D - Government Initiated Question

To ask the Scottish Government further to its consultation on proposals to close fishing for sandeel in Scottish waters, will it be implementing management measures for the sandeel fishery in Scottish waters.

Sandeel aid the long-term sustainability and resilience of the marine environment and are an important food source for many species, including marine mammals, seabirds and predatory fish. It is therefore critical that we manage our marine environment in a such a way as to ensure its sustainable use, protecting biodiversity and ensuring healthy functioning ecosystems. I am therefore pleased to announce today that following full consideration of the all the consultation responses, we will be proceeding with prohibiting fishing for sandeel in all Scottish waters.

I would like to thank everyone that responded to the consultation. We received a total of 494 written representations from individuals and organisations including the fishing sector, renewable energy developers and recreational interests covering a range of issues, as well as 9,815 campaign submissions. This emphasises the strong interest from both the public and sectors, for which there was overwhelming support for the option to prohibit fishing for sandeel in Scottish waters with 97% of respondents indicating support.

The Sandeel (Prohibition of fishing) (Scotland) Order 2024 will be laid in Parliament on 5 February 2024 and will come into force on 26 March 3024 ahead of the 2024 fishing season.”

ANNEX E: Summary of Consultation Responses

In total there were 494 responses, comprising of 443 individuals and 51 organisations. Where the respondent identified as responding on behalf of an organisation, this information is presented in Table 1. In addition, 9,815 emails were received which were associated with a RSPB campaign.

Table 1: Breakdown of organisational responses to the consultation

Respondent type	Total
Community	5
Energy Sector	7
Environmental/Conservation	19
Fishing Sector	13
Recreation	1
Other	6
Total	51

The consultation asked six questions covering support for the preferred option, alternative or complementary measures that could be considered, the scientific evidence underpinning the proposals, and questions relating to the statutory impact assessments (Business and Regulatory Impact Assessment, Strategic Environmental Assessment and Island Communities Impact Assessment). Below is a summary of the key themes from the consultation responses.

Support for the preferred option (close fishing for sandeel in Scottish waters)

There was overwhelming support for the preferred option to close fishing for sandeel in Scottish waters, with 97% of respondents indicating support. While organisational responses showed slightly lower support (84%), individuals overwhelmingly favoured the proposal (99%).

Many respondents expressing support for the preferred option emphasised the need to protect sandeel stocks, particularly emphasising the crucial role of sandeels in marine ecosystems. Concerns were raised about the impact of the sandeel fishery on Scotland's internationally important seabird populations, many of which have faced significant declines in recent decades. Support for the preferred option was also tied to broader environmental goals, such as the Scottish Government's net-zero target by 2045 and the '30 by 30 target' to protect 30% of Scottish waters by 2030. Some respondents believed that achieving these targets necessitates limitations on unsustainable fishing practices, which they considered included the sandeel fishery.

Several responses were received from offshore wind developers. All offered their support for the preferred option, with the caveat that this support was only if the closure qualified as a compensatory measure under the Habitats Regulations Assessment (HRA) derogation process, thereby facilitating consenting and deployment of offshore wind projects at pace and scale. (Note the recommendation in this submission is to close the commercial sandeel fishery in Scottish waters for

the purpose of providing wider ecosystem benefits to the marine environment and not for the purposes of a compensatory measure under the HRA derogation process.) Offshore wind developers consider that there is no other single compensation measure or combination of measures, with sufficient evidence which would benefit seabird populations at the ecological scale and time required to meet the 2030 target for offshore wind capacity.

Those opposing the proposals questioned the need for additional measures, asserting that the current sandeel fishery management, which is informed by annual ICES stock advice, is precautionary and provides the basis for sustainable fishing that is aligned with ecosystem requirements. A small number also raised the potential for adverse economic consequences, particularly for European and Scottish finfish producers who rely on sandeel for fishmeal and fish oil, and on the Danish fisheries sector, who regularly fish for sandeel in Scottish waters.

The Commission has raised questions regarding compliance of these proposals with the Trade Cooperation Agreement (TCA). Their concerns focus on:

- a. compliance with the obligation of non-discrimination (Article 496) noting that the preferred option would exclusively affect the EU fleet and that no similar measures are considered for other forage fish where the UK has an interest;
- b. the potential for the EU to take compensatory measures in the event of change in the level and conditions of access to UK waters to fish stocks (Article 500),
- c. that ICES has not raised any specific concerns regarding the exploitation of sandeel in the North Sea, therefore they question compliance with the obligation to base measures on the best available scientific advice.

Alternative or complementary measures to closure

Of those that responded, the overwhelming message was that alternative or complementary measures, such as those presented in the Strategic Environmental Assessment (SEA) would not provide the required long-term protection for sandeel in Scottish waters that would come from a full closure. Furthermore, several respondents argued that a holistic approach to forage fisheries management, through closure of all UK waters to sandeel fishing was essential to avoid spatial displacement of fishing effort.

A small number of respondents argued that additional measures are not required as the existing management practices already adhered to through the Total Allowable Catch process and informed by the annual ICES catch advice, takes account of the needs of the ecosystem and ensures sustainable fishing practices. They also questioned the consideration of alternative measures in the SEA.

Scientific evidence underpinning the preferred option

A small number of respondents had opposing views regarding the evidence base underpinning the proposals. Like their response to the UK Government consultation on sandeel management in English waters, Denmark has disputed the science and evidence presented in the consultation, stating that the proposals are not scientifically justified, unnecessary and disproportionate. Specifically, they state that

there is no evidence of long-term decline in sandeel in management area 4 to indicate that current exploitation is unsustainable, and that there is a lack of scientific evidence to suggest that the preferred option would have a positive impact on sandeel and the wider ecosystem. They also referred to the need to await the publication of ICES advice on forage fish before reaching a decision on the proposals; a view supported by the response from the EU.

In contrast, responses from several offshore developers, including a substantive response from SSE Renewables, conclude that while the scientific evidence (as presented in the consultation documents) makes clear the benefits to the marine environment that could be expected from the preferred option, in their opinion the review of evidence is partial. Specifically, they do not consider that it goes far enough in terms of what they consider is robust evidence of a link between sandeel fishing and seabird demography and, which provides overwhelming support for closure of fishing for sandeel in Scottish waters.

ANNEX F: Key Considerations in Assessing Options

Scientific evidence for the preferred option to close fishing for sandeel

Officials have considered all responses to the recent consultation, including those from the Danish Ministry, European Commission and SSE Renewables. Taking account of advice from Science, Evidence, Digital and Data (SEDD) colleagues within the Marine Directorate, we do not consider that these responses change the conclusions of the scientific evidence base which supports the preferred option to close fishing for sandeel in Scottish waters.

Sandeel play an important role in the marine food web as a key food resource for some marine mammal, seabird and predatory fish species. Declines in sandeel abundance can negatively impact the survival and reproduction of important predator 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, evidence shows that restricting fishing for sandeel has the potential to lead to an increase in sandeel abundance, survival and potentially availability, thereby providing benefits to predators, including whitefish, seabirds and marine mammal species.

We note the view from Denmark that the evidence base demonstrating the effect of the sandeel fishery on sandeel abundance is not definitive (as rarely is the case in the marine environment), and therefore that the subsequent benefits to the marine environment, or specific components of the marine environment such as seabirds or marine mammals is uncertain. We acknowledge this; however, it should be noted that this is not 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 such as climate change. This complexity and variability mean that predictions of the benefits of closing fishing for sandeel on the wider marine environment will have a high degree of uncertainty, although it should be noted that a likely benefit of the preferred option is an increased resilience of predators to other (environmental) causes of variation in sandeel abundance. Furthermore, there is a high likelihood that additional data collection would not enable our predictions on the benefits of a closure to be made with more certainty. Therefore, our assessment is that the precautionary approach adopted in our scientific evidence base which takes account of this uncertainty remains valid. In conclusion, while we recognise the views put forward by Denmark and the Commission, we do not agree that there is no basis for additional management measures.

In terms of the response from SSE Renewables, SEDD have considered the additional information presented in their consultation response and agree that closing fishing for sandeel could result in an increase in sandeel abundance, which in turn could increase seabird population size through increased productivity and survival rates. However, we do not consider that the additional information presented by SSE Renewables regarding the link between sandeel fishing and seabird

demography changes the overall conclusions of the scientific evidence base or the SEA which already emphasises the potential environmental benefits that could be realised as a result of closure, including potential benefits to seabirds.

ICES advice on forage fish

In light on the ongoing position of the UK Government not to make quota for sandeel available for allocation to UK vessels due to ecosystem-based concerns, the UK Government supported a request from the EU at the 2023 sandeel negotiations (March 2023) for additional advice from ICES on how ecosystem considerations are captured in ICES annual advice on forage fish species, including sandeel.

Furthermore, in Ministerial correspondence and in their response to the consultation, the European Commission and Danish Government have both cited the importance of waiting for this advice to be published and reviewed ahead of any decision on the future management of sandeel in any UK administration's waters. The ICES advice was published on 28 November 2023; therefore, we have included it as part of our wider considerations. We are aware that the UK Government have taken a similar approach.

SEDD have reviewed the new ICES forage fish advice and are of the view that it is a reasonable and comprehensive overview. Usefully, it provides a response to some of the claims from Denmark and the European Commission in their consultation responses. It confirms that while the annual ICES catch advice is an important part of the management process which recognises the ecological significance of forage fish species such as sandeel, it does not fully account for all ecosystem needs. The advice also acknowledges that the stock assessments cannot account for local concentrations of prey (e.g., sandeel) which are critical for species that are geographically constrained (e.g., nesting seabirds during the breeding season) due to the scale at which assessments are undertaken. On that basis, while the ICES advice framework includes a provision to keep the stocks above a given precautionary level, there is no analysis as to whether this precautionary level is sufficient to provide adequate food levels for predator populations.

Officials are therefore of the view that ICES forage fish advice (published on 28 November) supports the justification for a more precautionary approach to sandeel management at a national level when considering the wider ecosystem and ensuring that food availability is preserved. It does not change, but compliments, the overarching conclusions of the scientific evidence base which supports the preferred option to close fishing for sandeel in Scottish waters.

Compliance of the measures with the Trade and Cooperation Agreement

Sandeel is a jointly managed stock between the UK and the EU. Under the UK/EU TCA, the UK has a 3.11% share and the EU a 96.89% share of the parties' combined sandeel quota in 2024. Additionally, the Total Allowable Catch (TAC) is set during in-year annual consultations, following the publication of ICES advice. Under the 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 (EEZs); as well as access to specific English, Welsh and Channel Island waters in the 6-12 nautical mile area. The TCA Article 496 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).

Sandeel is an important fishery for the EU. As such, closing fishing for sandeel in all Scottish waters carries the potential risk of a challenge from the EU, including from Denmark, who fish the stock in UK waters. Indeed, the European Commission has responded to both the Scottish and UK consultations questioning whether the proposed measures are compatible with the TCA, suggesting that they could be discriminatory against the EU. They also go further to suggest that under Article 500 the EU could seek compensation because of changes in the level and conditions of access to UK waters should the administrations go ahead with closures that are determined not to be compatible with the TCA.

Officials note the view of the Commission, however, Article 496 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, we would argue that our decision to close fishing for sandeel in Scottish waters is not discriminatory as it applies to Scottish, UK and EU vessels alike and therefore is in line with this provision of the TCA. The UK Government is also of the view that the proposed closure in English waters is similarly in line with the provisions of the TCA.

We continue to take action at a Scottish and UK level to mitigate any challenge and minimise any harm to UK-EU relations and risk of challenge.

Offshore wind development and strategic compensation

Officials note the views of offshore wind developers in favour of classifying the closure of fishing for sandeel as a compensatory measure and the potentially significant socio-economic benefits from offshore wind developments that could be realised as a consequence. However, this consultation examines the ecological benefits arising from closing fishing for sandeel in Scottish waters and you should determine the outcome of this consultation on that basis alone; [REDACTED]

LEGAL PRIVILEGE

[REDACTED]
[REDACTED]
[REDACTED] The Scottish Government will assess the suitability and potential benefits of the sandeel fishery closure as a compensatory measure which might assist offshore wind developments if, and when, such a measure may be required in support of a case for derogating from the Habitats Regulations as part of an application to obtain a consent for a wind farm development. [REDACTED]

Confidential

Financial considerations

Officials have noted the views regarding financial considerations, in particular feedback received through the consultation on the partial Business and Regulatory Impact Assessment (BRIA) that was published alongside the consultation document. In preparing the final BRIA (which takes account of feedback provided during the consultation), officials consider that there is no additional impact on the Scottish catching sector from the proposals to close fishing for sandeel, as no sandeel quota has been allocated to Scottish vessels since 2021. Additionally, no sandeel has been landed into Scottish ports since 2020 so minimal impacts are expected on the Scottish onshore sector.

However, it is expected that there will be an impact on EU vessels, primarily the Danish fleet. The estimated net present cost of the closure to these vessels is £32.8 million over a ten-year period. However, this does not account for the likelihood that EU vessels will move their fishing of sandeel to other waters and therefore offset the loss of a closure in Scottish waters.

There is expected to be minimal additional costs to the Scottish Government, as any monitoring of a closure of fishing for sandeel in Scottish waters will be absorbed by regular compliance operations.