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My Lords,

Fisheries Bill: Committee (Days 3 and 4)

I am grateful to noble Lords for their contributions to the debates on the third and fourth days of Committee last week. I said that I would write on several matters raised.

Devolution: provisions applicable to Devolved Administrations

Lords Teverson asked whether the Devolved Legislatures had approved provisions in the Bill. Fisheries management is, and remains, devolved.

We have worked very closely with officials across the Devolved Administrations to agree the contents of the Bill. We have subsequently formally written to ministers from the Welsh and Scottish Governments and the Northern Ireland Executive seeking their agreement to lay a Legislative Consent Memorandum, beginning the legislative consent process. The Welsh Government has since laid a Legislative Consent Memorandum and we hope that the Scottish Government and Northern Ireland Executive will do so soon.

With our departure from the Common Fisheries Policy and the passage of the European Union (Withdrawal) Act 2018, each Fisheries Administration is able to develop its own fisheries management policy. The UK government has been clear that it does not intend to amend the devolution settlements. A collaborative approach is being taken to develop a UK fisheries framework. This will build on the already strong working relationships the Administrations have at working level in fisheries. Where agreed, we will legislate to ensure there is an appropriate degree of commonality.

This includes the establishment within the Bill of a number of fisheries objectives to apply to all four Fisheries Administrations. These are core objectives that we have collectively agreed to set policies to help achieve our ambitions of world class fisheries for the UK. These policies will be published within the Joint Fisheries Statement, which all four administrations will adopt. A joint statement does not however mean that every administration in the UK will have to have exactly the same policies in order to meet the objectives in the Bill. In many cases this would not be appropriate due to different types of fisheries across the UK, and the different fleets in each Administration. The Bill also provides for Fisheries Management Plans which can be undertaken within or between Administrations as appropriate.

The Bill therefore provides a common and transparent legislative framework but with flexibility as to how different administrations contribute to the same goals, respecting the devolution settlements and supporting effective sustainable fisheries management. Amendments that would bind the Devolved Administrations to specific arrangements would therefore impinge on devolved matters.

Where an Administration has asked for powers that the UK government is taking for use in England, we are, wherever possible, extending the provisions as requested. To be clear however, under the devolution settlements, the Administrations have the powers to legislate in these areas anyway. The UK government is acting at the request of the Administrations in order to be collaborative and pragmatic.

In other areas, we do not believe legislation is appropriate, and therefore the Fisheries Administrations will develop a Memorandum of Understanding which sets out how the Administrations will work together on the range of fisheries management issues. This approach, which will be replicated across other EFRA policy areas, will be overseen by the Defra/DA Interministerial Groups which meets regularly and can, as necessary, escalate issues to the Joint Ministerial Committee.

Safety and Employment law

Lord Grantchester asked which parts of the Bill deals with employment issues in the fishing industry. As mentioned during the debate, there are already restrictions in place to prevent access by vessels that do not meet safety standards. It should be noted that safety provisions on board fishing vessels are governed by a number of international treaties and in general competence for assurance of safety standards rests with the Flag State. However, under the Fishing Vessel (Codes of Practice) Regulations 2017, a non-UK fishing vessel must not enter UK waters unless:

- in the case that the boat is 24 metres or over, it has been certified by its flag State as complying with the requirements of the Torremolinos Protocol 1993 on the safety of fishing vessels; or
- in the case that it is less than 24 metres, it has been certified by its flag State as complying with the requirements of that State which apply to vessels of that length.

If a foreign vessel does not meet with these requirements in the future it will not be granted a licence to fish in UK waters under the provisions of this Bill.

Legislation is already in place to prevent the exploitation of fishing vessel workers in the UK. This includes Parts III and V of the Merchant Shipping Act 1995 – overseen in the UK by the Maritime and Coastguard Agency, and the 2015 Modern Slavery Act. The United Kingdom has ratified the International Labour Organisation Work in Fishing Convention 2007 and the MCA oversees its implementation into UK law.

Control and enforcement

Lord Teverson asked for details of the current enforcement budget for England and how this has increased to prepare for the UK's departure from the EU, and whether this increase will be carried forward in the future.

The running costs of the UK's control and enforcement programme are met by Exchequer funding. This means that future funding is a matter for the next Spending Review. However, currently additional funding of £13.2m has been allocated for the purpose of fisheries enforcement in English waters.

Expenditure by the Marine Management Organisation on fisheries enforcement (for 2019/2020) has increased by the following amounts in comparison to the previous financial year (2018/2019):

- surface surveillance: £7.44 million;
- aerial surveillance: £2.23m; and
- training and staff costs for warranted Marine Enforcement Officers: £2.11m.

Penalties for breaches of licence conditions

Lord Grantchester asked why fundamental licence breaches receive only a fine rather than any other sanction. Fines are not the only sanction for breaches of licence conditions. Licences can be suspended or revoked which would prevent the vessel owner from operating in UK waters.

Devolution: role of Devolved Administrations in negotiations

There was some discussion about the role of the Devolved Administrations in international negotiations. International negotiations are a reserved matter and the UK Government leads international fisheries negotiations on behalf of the UK. Defra has worked closely with all Devolved Administrations in developing our approach to annual fisheries negotiations at December Council. DAs have also formed part of the UK delegation in these negotiations. Fisheries management is devolved, and the Devolved Administrations can decide how best to manage their fisheries and how to distribute their share of UK quota. The Department works closely with Devolved Administrations on fisheries issues and will continue to do so in the future.

Fishing opportunities

Setting the UK's overall amount of quota

Before moving to the specifics, I thought it would be helpful to explain first how we set and distribute fishing opportunities now, and what the relevant clauses in the Bill aim to do.

Total Allowable Catches (TACs) for shared stocks are agreed between countries which have an interest in the stock, through international negotiations. These negotiations take into account the available science on sustainable fishing levels, including that from the International Council for the Exploration of the Seas (ICES). Additionally, the UN Convention on the Law of the Sea (UNCLOS) requires coastal states to cooperate on shared stocks and to set fishing opportunities at sustainable levels.

During the debate Peers raised concerns about the links between providing foreign boats access to UK waters and securing additional quota for the UK fleet. Under UNCLOS, the UK will be able to control and manage who has access to fish in UK waters for the first time in 40 years. Any access to our waters to fish by foreign vessels will be a matter for negotiation and will be in the context of adherence to our legislation. It is imperative that we meet our international obligations and encourage others to do so as we strive to set a gold standard for sustainable fishing around the world.

In the EU, the overall TAC and each Member State's share, are agreed or confirmed at the EU Agriculture and Fisheries Council each December then set out in the annual TACs and Quota Regulation. This follows negotiations between the EU and other countries, including Norway. The overall amount of EU quota is shared between Member States using a mechanism known as "relative stability". As an independent Coastal State, the UK will be moving away from relative stability towards a more scientific method such as zonal attachment as a way to set the share of the overall TAC. This approach would provide the UK a fairer share of the quota for stocks in our waters.

The Bill replaces the EU system for determining the quota the UK received as a Member State, specifically, clause 23. Under this clause, the Secretary of State will make a determination in accordance with any obligations resulting from negotiations with other Coastal States and, more generally, under UNCLOS. Such a determination may cover "effort" (the number of days boats can spend fishing) as well as quota (the amount they can catch). For some abundant stocks, or non-targeted stocks, it is possible that no determination will need to be made (i.e. there are no limits on catches for these stocks).

The majority of stocks are managed on a calendar year basis. This aligns with international practice and with scientific advice. However, there are cases when it is better not to determine quota on a calendar year basis, and it is important that the UK retains this flexibility. This could be to reflect the specific seasonality of a fishery and ensure that the most up to date science is used to set the TAC. In these cases, a scientific assessment is made just before the start of the fishery so that the TAC can be set with the most up to date information. For example, North Sea Sprat has a "TAC year" from 1 July to 30 June and scientific advice for deep sea stocks is provided on a biennial basis.

To ensure the interests of the whole of the UK are taken into account when setting the UK's fishing opportunities the Secretary of State will, as set out in clause 24, consult with the Devolved Administrations and the Marine Management Organisation (MMO).

Apportionment between Fisheries Administrations

After the UK quota is set it is then apportioned between the four Fisheries Administrations. Clause 23 does not impact on this process. The Secretary of State already has common law powers to apportion this quota and so we are not legislating for this process in the Bill.

Currently this apportionment of existing quota is predominantly based on Fixed Quota Allocation (FQA) holdings, but there are other considerations. For example, deductions can be applied where overfishing has taken place the previous year.

This process normally takes a few weeks at the beginning of each calendar year to compile and process the necessary data. Devolved Administrations and Producer Organisations are also given opportunity at this point to comment on provisional allocations before these are finalised. This provides a level of quality assurance and allows any disputes to be resolved.

Allocation by each Administration to its industry

After the UK's quota is apportioned between each Fisheries Administration, its management is devolved. That means it is for each administration to determine how to allocate its share to its industry. In England, quota is generally distributed between Producer Organisations and the quota pools managed by the MMO.

Clause 25 of the Bill provides the criteria that the Fisheries Administrations will use to allocate this quota to our industries. This aligns with article 17 of the CFP and requires Fisheries Administrations to use transparent and objective criteria including those of an environmental, social and economic nature. These may include the impact of fishing on the environment, the history of compliance, the contribution to the local economy and historic catch levels. Administrations must also endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage.

FQA allocations

As noted above, the apportionment of quota between the UK Fisheries Administrations and the subsequent allocation of quota to the English fishing industry are primarily based on holdings of FQA units. The exact allocation methods are laid out in the publicly available UK Quota Management Rules and the English Quota Management Rules respectively.

In our 2018 White Paper, Sustainable Fisheries for Future Generations, we made clear that we would continue to use this methodology for our existing share of quota. This provides certainty and stability for the UK fishing industry. Particularly for those who have invested in FQA units. As I noted on 2 March, whilst this system has its detractors, it also has its supporters.

As an independent Coastal State we aim to secure additional quota through the international negotiations. This additional quota will be allocated across the Fisheries Administrations (the exact method for this is still being discussed with the Devolved Administrations). In England, we have committed to allocating the additional quota in different ways. We will work with industry and other stakeholders to develop, trial and evaluate different methods and we will find the one which works best for our fisheries. This will build on Defra's recent call for evidence and will see us learn from quota management systems around the world.

Quota management is complex and actions taken over the years have had unintended consequences. It is right that we move carefully. This Government would not want to consider amending the FQA system unless we had a high degree of confidence that the alternatives were better and that the adverse impacts of change could be appropriately mitigated.

Sale of English quota

Clause 27 provides England with the necessary powers to sell quota to the fishing industry. This clause is designed to help manage the additional quota we receive. . As I have explained above, the UK Government does not intend to alter the method for allocating existing quota. Defra will consult on any scheme, including the allocation criteria, before it is introduced. I can confirm that price is not intended to be the sole criterion in any auctioning or tendering of the right to use quota in England.

Any scheme would only involve the right to use quota, not the sale of the quota. It is the Government's intention that any quota would be fished by those who buy the right to use it. We do not wish to encourage a situation where people can profit by securing quota through auction or tender and leasing it at higher rates for others to fish.

As such, this clause already includes a provision to restrict the transfer of any sold fishing rights. Clause 27(3a) reads: "The regulations may include provision- [...] prohibiting rights sold to a person in accordance with the regulations from being transferred to, or being exercised by, another person;".

However, we do need to consider this carefully. While we wish to avoid rent-seeking in quota, we must also allow flexibility. This is important and allows fishermen to adapt to conditions. For example, our domestic quota exchange market allows fishermen to swap quotas in response to chokes or market conditions or weather patterns. In designing any future scheme, we need to consider how best to achieve all these aims. This would be subject to consultation.

Foreign ownership

Within the UK, quota is only allocated to vessels registered and licensed in the UK. Some UK-registered vessels are foreign-owned, but any decision by British fishermen to sell a vessel and licence is a commercial one, and for fishermen alone to make.

All UK-registered vessels fishing against UK quota, including those that are foreign owned, must meet the requirements of the economic link licence condition that was introduced in 1999 to ensure that the UK derives genuine economic benefit from the fishing of UK quota. Vessels fishing against UK quota are required to:

- land at least 50% of their quota stock catch into UK ports; or
- employ a crew at least 50% of whom are normally UK resident; or
- spend at least 50% of operating expenditure in UK coastal areas; or
- demonstrate an economic link in another way. This is usually through the donation of quota to the under-10m pool.

As we noted in the 2018 White Paper, in England we are keen to review the economic link condition with a view to strengthening it.

New entrants

The Government agrees that helping to safeguard the industry's future by encouraging new entrants is very important. We will be looking at how we can best encourage that as part of our work to reform the fisheries management regime.

As I have already mentioned, the Government is currently looking at how we can best use the additional quota we receive and, while no decisions have been made, a proportion of it could potentially be used to assist new entrants. But supporting new entrants is broader than quota allocations. In England, we are working closely with Seafood 2040, where one of the recommendations highlights the importance of training, skills development and workforce retention to a thriving seafood industry.

Funding of science

Baroness Jones of Whitchurch asked for further information on future funding of science. The Bill provides for a 'scientific evidence objective' within our fisheries objectives which will ensure that policies are set out for scientific data collection and advice to inform our fisheries management. As an independent coastal State, we will be responsible for meeting a wide range of international agreements and commitments, particularly as part of our agreement with the International Council for the Exploration of the Sea (ICES) which will take effect after the Transition Period.

Currently some of these data collection and advice activities are partially funded through the European Maritime and Fisheries Fund (EMFF) under the Data Collection Framework. Decisions on replacement domestic arrangements will be taken during the Spending Review alongside decisions on all other domestic spending priorities.

The EMFF also provides funding for scientific research through the grant scheme. We expect that the new grant scheme which is under development will continue to support science and innovation.

Support for under 10 metre vessels

There were a number of points raised about supporting the under 10 metre fleet. I can assure noble Lords that the Government recognises the importance of the under 10m fleet, and will continue to consider the best methods for providing support.

There has been progress. Since 2012, we have realigned Fixed Quota Allocation units from over 10 metre vessels in a Producer Organisation (the sector) to provide a 13% increase to the under 10m quota pool. We have set aside an English reserve quota which provides an uplift and increased quota for the over 10m and under 10m pools to facilitate the landing obligation. In 2018 this generated 675 tonnes of extra quota. In 2018 the under 10m fleet was allocated an extra 1,281 tonnes of quota uplift equating to an additional £3 million for the industry. These combined actions have helped the UK's under 10m fleet to land 36,000 tonnes of fish in 2018.

Whilst under 10 metre vessels may only receive a small percentage of the total UK quota, they do receive a greater share of the stocks that are important to them. For example, in Area 7 (the English Channel and Celtic sea), the English under 10 metre pool received 13% of the English quota allocation for 2019. This includes high value stock such as sole and cod where they have a significant share. We have also capped licences of a number of largely-inactive fishermen to bring greater certainty to those who rely predominantly on fishing for quota stocks.

The under 10m fleet is also able to catch non-quota species, particularly shellfish found around the UK coast. As I mentioned in Committee, in 2018 around 77% of the weight and 78% of the value of landings of the inshore fleet were from non-quota species, such as brown crabs and lobster.

What this means overall, as I mentioned in the Committee, is that the under 10m fleet had a fishing income of around £110m in 2018, an increase of £17m in real terms from a decade ago. This means that since 2009, the average under 10m vessel has had a profit margin of 16%. In comparison, the profit margin for the average over 10m vessel over the same period was slightly lower at 15%.

The Government is keen to support inshore fishers to fish more sustainably, improve our collective understanding of stock health, and adapt to technological innovation. We recognise that a one size management approach does not fit all, and we want to collaborate more closely with fishers and local stakeholders on inshore fisheries management. That is why the Government is fully supportive of last October's Future of Our Inshore Fisheries conference organised by Seafish. Themes discussed by fishers and stakeholders included how to define inshore fishing, greater collaboration and devolution of decision-making responsibility, and enabling industry-led science.

We are now working collaboratively on developing an implementation plan, and we are also supporting industry initiatives to help manage shellfish more sustainably. We look forward to continuing to work with fishermen and stakeholders to develop a toolkit of measures to develop a world class fisheries management approach.

MCCIP

I thought it would be helpful to provide more information on the Marine Climate Change Impacts Partnership (MCCIP) that I mentioned in response to Baroness McIntosh's questions about global warming. MCCIP is an independent group that brings together scientists, government, its agencies and NGOs to provide co-ordinated advice on climate change impacts and adaptation in the UK. MCCIP collate the latest scientific research into accessible and summarised report card formats. MCCIP is supported by Defra and Marine Science Coordination Committee.

The 2020 report card, released in January, provides a comprehensive, updated synthesis of the current and future impacts of climate change on UK coasts and seas. More than 150 scientists from over 50 leading research organisations have contributed to this report which covers 26 topics regarding physical, ecological and societal impacts of marine climate change.

Retained EU law

I would like to clarify something that Baroness Bloomfield said in connection with amendment 128. Baroness Bloomfield said that the Bill will replace the Common Fisheries Policy (CFP). While the Bill removes or amends some parts of the CFP Basic Regulations (e.g. Schedule 10 removes the rights of EU vessels to fish in our waters and revokes the principle of relative stability as a way of allocating quota), it does not immediately replace the majority of the CFP regulations which will become part of retained EU law, made operable in UK law under the European Union (Withdrawal) Act 2018.

I hope noble Lords find this additional information helpful. I am copying this letter to all noble Lords who took part in the debates and I shall arrange for copies of this letter to be placed into the libraries of both Houses.

*Yours ever
John*