

## Executive summary

1. Greener UK and Wales Environment Link (WEL) welcome the introduction of the Fisheries Bill, recognising that it is a piece of framework legislation, providing tools for fisheries management, rather than setting out detailed policies once the UK leaves the EU.
2. The inclusion of fisheries objectives on the face of the Fisheries Bill is a good start and the increased powers the Fisheries Bill extends to the Marine and Coastal Access Act 2009 (MCAA), which will allow the UK to take control of managing Marine Protected Areas (MPAs) and our wider seas in the UK's offshore environment, are welcome.
3. However, the Fisheries Bill repeals crucial sustainability requirements set out in the Common Fisheries Policy (CFP). A significant omission is the lack of a duty placed on authorities, including Welsh Ministers, to achieve the sustainability objectives. This risks undermining the aim held by all UK governments to deliver truly sustainable fisheries management and with it thriving, healthy stocks, and consumer confidence that UK seafood is sustainably produced.
4. In addition, the Fisheries Bill repeals the requirement set out in Article 2(2) of the CFP to set fishing mortality at sustainable levels by 2020. It is critical for the health of our oceans that there is a duty to set fishing mortality at or below maximum sustainable yield (MSY) to prevent overfishing.
5. Schedules 6 and 7 of the Fisheries Bill introduce new powers for Welsh Ministers to bring forward policy in relation to Welsh fisheries. Given the wide-ranging powers afforded to Welsh Ministers, we are of the view that a formal consultation procedure should be established with wide stakeholder engagement prior to new policies and legislation being introduced.
6. The Fisheries Bill must be amended to ensure that domestic legislation delivers truly sustainable and accountable fisheries management that

minimises impacts on the marine environment and supports dependent coastal communities.

## Background

7. WEL's Marine Working Group is a coalition of environmental organisations campaigning for healthy, productive seas. WEL contributes to various Welsh Government stakeholder groups, including the Welsh Government's Seas and Coasts EU-exit roundtable group and the Welsh Marine Fisheries Advisory Group.
8. WEL works closely with Greener UK, a group of environmental organisations (some of which are also WEL member organisations) with a combined public membership of over eight million. WEL and Greener UK are united in the belief that as the UK leaves the EU, it must take the opportunity to restore and enhance the UK's marine environment. Both groups are working together to consider the new UK Fisheries Bill and its implications for Wales.
9. This is an opportunity to establish Wales and the rest of the UK as world leaders in sustainable fisheries management. This is an aspiration which many stakeholders – including the fisheries sector – support, as healthy fisheries benefit coastal communities.

## What are your views on the legislative framework for the UK after Brexit as set out in the UK Fisheries Bill?

10. Greener UK and WEL welcome the introduction of the Fisheries Bill to provide a framework for fisheries management after the UK leaves the EU. The inclusion of broad fisheries objectives to, *inter alia*, implement an ecosystems-based approach, and new powers to further safeguard marine species and habitats both inside and beyond the network of MPAs, is welcomed.
11. However, Greener UK and WEL have identified the following areas where the Fisheries Bill must be improved if the UK is to deliver sustainable fisheries that are truly 'world leading':

**A duty on all relevant public authorities to achieve the fisheries objectives and a requirement for annual updates on progress against objectives.**

12. The fisheries objectives are not currently framed with a clear legal duty on the relevant authorities to achieve them. As drafted, national fisheries policy authorities, including Welsh Ministers, must exercise their functions in accordance with a joint policy statement which sets out how they will achieve the objectives.
13. There are three legal concerns with this approach:
  - a. There is little guidance or restriction on how strongly the policy statements will deal with the objectives and this leaves a lot of discretion to the policy makers. Consequently, there is no guarantee that the policy statements will contain effective policies that will actually achieve the objectives.
  - b. Only national authorities must act in accordance with the policy statements. Other public authorities that make fisheries decisions (including Natural Resources Wales) would not be bound by this duty.
  - c. National authorities are, in certain circumstances, entitled to act against the policy statement. There is no detail in the Fisheries Bill on what these circumstances would be and there is therefore a significant risk that authorities will disregard the policy statement, and therefore the fisheries objectives.
14. The Fisheries Bill must therefore include a specific duty to achieve the fisheries objectives. In addition, the scope of the duties relating to the current measures is too limited. To be fully effective, the duty to achieve the fishing objectives should apply to any relevant public authority having any function relating to fishing activities or fisheries management, including Natural Resources Wales.
15. Lastly, there should be a requirement on each national authority to publish an annual update on progress against objectives to ensure adequate accountability.

**A commitment to ensure that fishing limits cannot be set above MSY (the scientifically recommended levels that would deliver the objective to restore fish stocks to a healthy biomass).**

16. There must be a target for fishing limits to be set at sustainable levels by 2020 and an immediate duty to deliver on restoring stocks to healthy biomass levels. The setting of fishing limits is within our direct control and the 2020 target is certainly achievable and already represents the latest date by which exploitation rates must be set at sustainable levels (the date was previously set at 2015 and 2020 represented the ultimate

backstop). The target is set out in the CFP and the United Nations Sustainable Development Goal (SDG) 14 to end overfishing by 2020. Its absence therefore represents a regression of environmental standards. This target should apply to both stocks subject to fishing limits and non-quota stocks, for example shellfish. Where the rate of fishing mortality cannot be determined according to the best available science, there must be a suitable proxy to ensure that fishing mortality will still be set at sustainable limits.

17. This is vital to protect against short-term political pressure to set catch limits higher than scientific advice, which would lead to overfishing and damage the health of our oceans.

### **An approach which seeks to ensure shared stocks are managed sustainably.**

18. The Fisheries Bill does not make any firm commitment on how shared stocks will be managed. This is extremely concerning as setting clear sustainability criteria in relation to negotiations with other countries would help avoid, for example, another 'mackerel wars' scenario, particularly in areas where the British Fisheries Limit Extent is not defined, such as between Northern Ireland and the Republic of Ireland.
19. The UK will need to negotiate with the EU, Norway, and other states to agree an overall total allowable catch and allocations for each state of many commercially important shared stocks. Unlike most existing negotiations with third countries which involve just a handful of fish stocks, the UK shares over 100 stocks with the EU, which means it is critical that a clear and robust process is developed. In approaching these negotiations, the UK must be required to adhere to scientific advice and take all reasonable steps to avoid any agreement, or lack thereof, that results in overfishing.

### **A clear objective in the Fisheries Bill that fisheries management should be coherent with UK (including the devolved administrations) and international environmental legislation.**

20. Fisheries management does not take place in isolation and the impacts of fishing activity can have significant implications for the health of the wider marine environment.
21. One of the key achievements of the 2013 CFP reforms was to make the need for environmental integration explicit in the objectives to ensure

that fisheries policy is coherent with EU environmental legislation, in particular the objective of achieving a good environmental status by 2020.

22. Although the Fisheries Bill provides that the Secretary of State makes a fisheries statement for England, which should include policies for “contributing to the achievement by 2020 of a good environmental status as defined in the Marine Strategy Framework Directive”, there is no such obligation to include this in the Joint Fisheries Statement applicable to all fisheries policy authorities, including Welsh Ministers.
23. Further, Part 6 of the Environment (Wales) Act 2016 sets out a duty on public authorities, including Welsh Government Ministers and Departments, to seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems.
24. An amendment to the “ecosystem objective” in the Fisheries Bill to include a requirement to contribute to the achievement by 2020 of ‘good environmental status’ would therefore be in the spirit of Welsh environmental legislation.

**A mandate to allocate all fishing opportunities – existing and new – on the basis of transparent and objective environmental and social criteria, and to incentivise the most sustainable fishing practices.**

25. Article 17 of the CFP is amended by clause 20 of the Fisheries Bill and maintains the existing requirement for the Secretary of State and the Marine Management Organisation to use transparent and objective criteria including those of an environmental, social and economic nature when allocating fishing opportunities.
26. However, under the existing regime there is still a significant lack of transparency in how fishing opportunities are distributed. Article 17 does not mandate what the criteria for distribution shall be, or how environmental, social and economic criteria should be defined.
27. This issue can be addressed through strengthening the provision of Article 17 and requiring that all fishing opportunities - both in existing areas around UK shores and any potential new areas in waters beyond - are allocated on the basis of transparent and objective environmental and social criteria, thereby recognising the fishery as public property held

in trust for the people. This amendment, by giving explicit priority to environmental and social criteria, would be likely to lead to an increase in quota available to local fishing fleets using passive gear and providing local employment.

28. Clause 20 of the Fisheries Bill does not apply to Welsh Ministers (at their request). It is our view that the above principles should apply to all UK fisheries authorities involved in the allocation of fishing opportunities. Given the often small-scale, coastal nature of Welsh fisheries, we believe a move to allocation of quota according to environmental and social criteria would further Welsh Government's contributions under the Wellbeing of Future Generations Act 2015 and benefit Welsh coastal communities.

### A commitment to full documentation of catches.

29. There are no provisions in the Fisheries Bill on ensuring full documentation of catches. If we fail to achieve full documentation of UK fisheries, we will not have a true picture of what is being removed from the seas and therefore will not have accurate scientific data to ensure effective management of the shared stocks in UK waters.

### A commitment to robust monitoring and enforcement mechanisms.

30. There are no provisions in the Fisheries Bill to deal with monitoring and enforcement, a fundamental part of effective fisheries management.

31. EU legislation – specifically Regulation 1224/2009/EC of 20 November 2009 (the Control Regulation) and Regulation 1005/2008/EC of 29 September 2008 (the IUU Regulation) – creates a framework for the enforcement of the rules of the CFP and combating illegal, unreported and unregulated fishing. The enforcement system in the UK does not fulfil many of the criteria set out in the Control Regulation and IUU Regulation and is based on lengthy and expensive criminal proceedings.

32. The Fisheries Bill should therefore strengthen existing mechanisms. Vessel monitoring systems should be carried by all vessels, regardless of size, transmitting position data at least every 20 minutes and sharing such data with the relevant fisheries policy authorities. In addition, remote electronic monitoring with CCTV should be required for all large vessels (over ten metres) and for select smaller vessels to ensure accountability, assist with data on removal rates catch and bycatch of all marine life, and improve enforcement. The Fisheries Bill should also

ensure that an appropriate sanctioning system can be put in place to ensure that the provisions of the Fisheries Bill are effectively enforced.

### Access of foreign vessels to UK waters should be contingent on compliance with the same environmental standards applicable to UK boats.

33. There is no provision in the Fisheries Bill that foreign boats must comply with the same standards as UK boats, which is essential to ensure a level playing field and a high level of environmental protection.
34. The provisions on access are set out in clauses 7 and 8 of the Fisheries Bill and provide that foreign boats must only fish in UK waters in accordance with the terms of their licence. The licence can limit the area in which fishing is authorised, the period, the types of fish that can be caught and the method of fishing. However, there must be an explicit requirement in the Fisheries Bill that access of foreign vessels to UK waters should be contingent on compliance with the same environmental standards applicable to UK boats to ensure that both the environment and the UK fishing industry are not undercut by foreign vessels.

### A formal consultation procedure to scrutinise secondary legislation.

35. There are a number of provisions in the Fisheries Bill that give powers to the Secretary of State and ministers of the devolved administrations to create legislation, including on discards and provisions for 'conservation purposes' and 'fish industry purposes'. The use of these powers could result in major changes to fisheries management measures and therefore any powers provided by the Fisheries Bill to create secondary legislation should be subject to appropriate wider scrutiny, including by stakeholders.

### What are your views on the provisions in the UK Fisheries Bill that will enable the Welsh Ministers to bring forward policy in relation to Welsh fisheries after Brexit?

36. Clause 28 introduces Schedule 4 which confers powers on Welsh Ministers in relation to the creation of financial assistance schemes. It is our view that any financial assistance scheme developed should be aligned with the sustainability objectives in the Fisheries Bill and

maximise the contribution to the Wellbeing of Future Generations 2015 and Environment 2016 Acts e.g. by achieving environmental best practice above and beyond what is required by regulation.

37. Further to paragraph 35 above, constraints on the powers set out in Schedule 6 are simply procedural e.g. that the Welsh Ministers must consult the national authorities 'and any other persons likely to be affected by the regulations as the Welsh Ministers consider appropriate'. Given the wide-ranging nature of these powers, they should be subject to a formal consultation procedure with wide stakeholder engagement.
38. Clause 38 introduces Schedule 7 which contains powers for the Welsh Ministers in relation to the exploitation of sea fisheries resources. Schedule 7 provides powers relating to the exploitation of sea fisheries resources by inserting new sections 134A to 134C into the MCAA.
39. The new Section 134A enables Welsh Ministers to make orders in relation to Wales for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats. This section is similar to that already set out in the MCAA (section 189 which refers to section 155). Section 156 states provisions which may be made under section 155 (heads 1-6). Interestingly, the UK Fisheries Bill section 134C references only heads 1-3. We are of the view that heads 4-6 should also be included.
40. Section 134B enables the Welsh Ministers to make orders in relation to the Welsh offshore region (i.e. the area of the Welsh zone which lies beyond Wales) for the purposes of conserving marine flora and fauna or marine habitats or types of marine habitats or features or geological or geomorphological interest. We welcome this section in recognition that Welsh Ministers have executive competence for fisheries management and the marine environment, subject to reservations within Schedule 7A to the Government of Wales Act 2006 for Wales, the Welsh zone, and Welsh fishing boats beyond that zone.
41. Section 134 does not appear to be amended directly. This covers orders to protect Marine Conservation Zones in general (and the habitat regulations provide for this to cover European Marine Sites as well). We question whether this section should also be amended to extend its application to the wider Welsh zone.

42. Paragraph 14 of Schedule 7 inserts a new sub-section 136(1A) into the MCAA which extends the section 136 power to make interim orders to the Welsh offshore region. It is not clear whether these interim orders also apply to European Marine Sites but there may be merit in them doing so.

**Do you wish to raise any other matters in relation to the provisions in the UK Fisheries Bill as they relate to Wales?**

43. We are concerned that to date there has been limited consideration given to the impact of the UK's departure from the EU on funding for fisheries and marine environmental management in Wales. For example, LIFE and European Maritime & Fisheries Fund (EMFF) funding schemes have funded a significant number of Welsh Government's and Natural Resources Wales's MPA management activities. We would urge Welsh Government to determine, in the context of Schedule 4 of the Fisheries Bill, the figure spent to date on fisheries and marine management from European funding to enable the Marine and Fisheries Division to be able to contribute effectively to discussions on replacement funding.

Greener UK is a coalition of 14 major environmental organisations united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment.

Wales Environment Link and Greener UK are working in partnership:



## GREENER UK

