



# EXPLANATORY NOTES

---

## Fisheries Act 2020

### Chapter 22

£11.50



# FISHERIES ACT 2020

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Fisheries Act 2020 (c. 22) which received Royal Assent on 23 November 2020.

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Act</b>	<b>5</b>
<b>Policy background</b>	<b>7</b>
Exiting the EU	7
The Common Fisheries Policy (CFP)	7
Access	7
The management of fishing opportunities	8
Coastal State negotiations	8
December Fisheries Council	8
National quotas	8
Management regime	9
European Maritime and Fisheries Fund	9
Fisheries management in the UK	9
Quota distribution	9
Producer Organisations	10
Fisheries Management in England	10
Devolution	10
Sustainable fisheries for future generations	10
<b>Legal background</b>	<b>11</b>
Legal background to the Common Fisheries Policy	11
London Fisheries Convention	11
UK law relating to fisheries	12
Legal background to the devolution of fisheries	13
International law: the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement and Regional Fishery Management Organisations	14
UNCLOS	14
UNFSA	15
Regional Fishery Management Organisations (RFMOs)	16
Retained EU law	16
<b>Territorial extent and application</b>	<b>16</b>
<b>Commentary on provisions of Act</b>	<b>16</b>
Fisheries objectives, fisheries statements, and fisheries management plans	16
Section 1: Fisheries objectives	16
Section 2: Joint fisheries statement	17
Section 3: Joint fisheries statement: procedure	18
Section 4: Secretary of State fisheries statement	18
Section 5: Secretary of State fisheries statement: procedure	18
Section 6: Fisheries management plans	19
Section 7: Fisheries management plans: power to depart from proposals in the JFS	19
Section 8: Fisheries management plans: amendment, review etc.	20
Section 9: Fisheries management plans: transitional provision	20

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

Section 10: Effect of fisheries statements and fisheries management plans	20
Section 11: Reports on fisheries statements and fisheries management plans	20
Access to British fisheries and regulation of foreign fishing boats	21
Section 12: Access to British fisheries by foreign fishing boats	21
Section 13: Regulation of foreign fishing boats	21
Licensing of fishing boats	21
Section 14: British fishing boats required to be licensed	21
Section 15: Power to grant licences in respect of British fishing boats.	22
Section 16: Foreign fishing boats required to be licensed if within British fishery limits	22
Section 17: Power to grant licences in respect of foreign fishing boats	23
Section 18: further provision about licences	23
Access and licensing: offences and consequential amendments	23
Section 19: Penalties for offences	23
Section 20: Offences by bodies corporate etc.	24
Section 21: Jurisdiction of court to try offences	24
Section 22: Minor and consequential amendments	24
Fishing opportunities	24
Section 23: Power of Secretary of State to determine fishing opportunities	24
Section 24: Duties relating to a determination of fishing opportunities	25
Section 25: Distribution of fishing opportunities	25
Section 26: Duties to ensure fishing opportunities not exceeded	26
Section 27: Sale of English fishing opportunities	26
Discard prevention charging schemes	27
Section 28: Discard prevention charging schemes	27
Section 29: Meaning of “chargeable person” and “unauthorised catch of sea fish”	27
Section 30: Catches subject to a charge ignored for certain regulatory purposes	27
Section 31: Charge collectors	28
Section 32: Discard prevention charging schemes: supplementary provision	28
Grants and charges	28
Section 33: Financial assistance: powers of the Secretary of State	28
Section 34: Charges: Powers of Marine Management Organisation	29
Section 35: Sea Fish Industry Authority: fees for services provided for industry in EU	30
Power to make further provision	30
Section 36: Power to make provision about fisheries, aquaculture etc.	30
Section 37: Section 36: Interpretation	31
Section 38: Power to make provision about aquatic animal diseases	31
Section 39: Scope of regulations under section 36 or 38	31
Section 40: Scope of regulations under section 36 or 38 where consent obtained	32
Section 41: Procedural requirements for regulations under section 36 and 38	32
Section 42: Powers of Scottish Ministers, Welsh Ministers and Northern Ireland department	32
Miscellaneous	33
Section 43: Agency arrangements between sea fish licensing authorities	33
Section 44: Foreign fishing boats that are exclusively Faroe Islands-regulated	33
Section 45: Legislative competence of Senedd Cymru	33
Section 46: Interpretation of Welsh legislation	33
Section 47: Conservation of seals	33
Section 48: Amendments of the Marine and Coastal Access Act 2009	34
Section 49: Retained direct EU legislation: minor and consequential amendments	34
Final provisions	34
Section 50: Amendments that could have been made under existing powers	34
Section 51: Regulations	34
Section 52: Interpretation	34
Section 53: Extent	34

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020  
(c. 22)*

Section 54: Commencement	35
Section 55: Short title	35
Schedule 1: Fisheries statements and management plans: preparation and publication	35
Part 1: Joint fisheries statement	35
Part 2: Secretary of State fisheries statement	36
Part 3: Fisheries management plans	36
Schedule 2: Regulation of foreign fishing boats	36
Schedule 3: Sea fishing licences: Further provision	36
Power to attach conditions to sea fishing licence	36
Power to vary, suspend or revoke sea fishing licences	36
Power to obtain information	36
Duty to comply with request of another sea fish licensing authority	37
Use of licensing functions to limit fishing activity	37
Power to arrange for licensing functions to be exercised by others	37
Regulations about the licensing of fishing boats	37
Power of Secretary of State under paragraph 7 where consent obtained	38
Interpretation	38
Schedule 4: Access and licensing: minor and consequential amendments	38
Part 1: Access to British fisheries by foreign fishing boats	38
Part 2: Licensing of fishing boats	38
Part 3: Transitional provision	38
Schedule 5: Sale of Welsh fishing opportunities	38
Schedule 6: Financial Assistance: powers of devolved authorities	38
Schedule 7: Imposition of charges: powers of devolved authorities	39
Schedule 8: Powers to make further provisions: devolved authorities	39
Schedule 9: Conservation of seals	39
Schedule 10: Amendments of the Marine and Coastal Access Act 2009	39
Schedule 11: Retained direct EU legislation: minor and consequential amendments	41
<b>Commencement</b>	<b>41</b>
<b>Related documents</b>	<b>41</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>42</b>
<b>Annex B – Hansard References</b>	<b>45</b>
<b>Annex C – Progress of Bill Table</b>	<b>46</b>
<b>Glossary</b>	<b>48</b>

## Overview of the Act

- 1 The Fisheries Act (the Act) provides the legal framework for the United Kingdom to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the Common Fisheries Policy (the CFP) at the end of the Transition Period at 11pm on 31 December 2020. The Act creates common approaches to fisheries management between the Secretary of State for Environment, Food and Rural Affairs (the “Secretary of State”) and the Devolved Administrations, known collectively as the Fisheries Administrations, and makes reforms to fisheries management across the UK. It also confers additional powers on the Marine Management Organisation (“the MMO”) to improve the regulation of fishing and the marine environment in the UK and beyond.
- 2 The Act contains the following provisions:
  - Fisheries objectives, fisheries statements and fisheries management plans: the Act replaces the objectives currently in Article 2 of the Basic Regulation of the Common Fisheries Policy (Regulation (EU) 1380/2013), with a new set of objectives for the Fisheries Administrations. These set out the priorities for the Fisheries Administrations once the UK leaves the CFP. The Fisheries Administrations are required to publish a joint fisheries statement setting out the policies which would achieve or contribute to the achievement of those objectives. The Secretary of State may publish a separate statement setting out policies on non-devolved matters if these are not included in the joint fisheries statement. The Fisheries Administrations must include a statement on fisheries management plans in the joint fisheries statement and must publish fisheries management plans setting out policies for restoring fish stocks to, or maintaining them at, levels capable of producing maximum sustainable yield where that is the appropriate measure. The Fisheries Administrations are required to pursue the policies contained in the statements and plans unless there is a relevant change in circumstances which would indicate a different approach is necessary.
  - Access: when the UK leaves the EU, any access for EU and other foreign boats to UK waters will be a matter for negotiation. The Act revokes the EU legislation which currently provides for automatic rights for boats registered in the EU to access UK waters. By revoking provisions in the Fishery Limits Act 1976, it removes the need to designate which countries’ boats are able to fish in UK waters and introduces a new requirement that foreign fishing in UK waters must be licensed by the MMO or one of the Fisheries Administrations to fish in UK waters or be for a purpose recognised under international law (for example, freedom of navigation).
  - Fishing boat licensing: the Act revokes, replaces existing powers for licensing authorities to license fishing in UK waters. For the most part, this is a consolidation of existing powers, but the Act makes several significant changes. It provides for equal access for UK boats in UK waters by clarifying that licences issued by one of the licensing authorities are effective throughout UK waters. It also prohibits foreign boats from fishing in UK waters unless they have a licence issued by a UK licensing authority.

- Fishing opportunities: the Act revokes EU legislation which currently sets UK fishing opportunities and provides for the Secretary of State to determine the UK's fishing opportunities. Before doing so they must consult the Devolved Administrations and the MMO. The Secretary of State must also make certain notifications, including a notification to Parliament. The Act also introduces powers to enable annual fishing opportunities to be sold to those in the English and Welsh fishing industries by the Secretary of State and the Welsh Ministers respectively.
- Discard prevention charging scheme: The Act contains a regulation-making power to set up a scheme for charging English fishing licence holders that land fish in excess of their authorised quota. This will support compliance with the landing obligation (which requires all species under quota to be landed) by encouraging the uptake of more sustainable fishing practices.
- Marine environment: the Act extends marine conservation powers to regulate fishing for the purposes of protecting the marine environment. The MMO, Scottish Ministers and Welsh Ministers will be able to regulate fishing outside territorial waters and outside marine protected areas. It extends the MMO's existing byelaw making powers and confers equivalent order making powers on the Scottish Ministers and Welsh Ministers. The Act also enables the MMO to exercise certain research, training and advisory functions outside UK waters (e.g. to support the development of marine protected areas in the waters of an Overseas Territory as part of the "Blue Belt" programme).
- Financial assistance: the Act provides powers for the Fisheries Administrations to introduce schemes of financial assistance for the fish and aquaculture industries, to improve the marine and aquatic environment, to develop areas in which fish or aquaculture activities are carried out, to promote the health and safety of fishers and to promote recreational fishing. The powers replace and broaden existing domestic funding powers and will allow new funding schemes to match the breadth of what is currently funded under the European Maritime and Fisheries Fund (EMFF).
- Cost recovery: the Act extends the cost recovery powers of the MMO and the Devolved Administrations to enable them to charge for services they provide to the fishing industry.
- Power to amend UK law (including primary legislation and retained EU law) related to fisheries and aquaculture: the Act provides a power, by regulations, to make provision in relation to listed fisheries matters and for listed purposes. The power is exercisable by the Secretary of State and the Devolved Administrations. The Secretary of State could also introduce UK-wide measures with the consent of the Devolved Administrations.
- Power to amend UK law (including primary legislation and retained EU law) related to aquatic animal health: the Act provides a power, by regulations, to make provision in relation to listed matters related to the control of aquatic animal diseases and for listed purposes. The power is exercisable by the Secretary



of State and equivalent powers are provided for the Devolved Administrations. The Secretary of State could also introduce UK-wide measures with the consent of the Devolved Administrations.

- Extension of the legislative competence of the Senedd Cymru: this enables the Senedd to make primary legislation on fishing, fisheries and fish health matters in the Welsh zone.

## Policy background

### Exiting the EU

- 3 On 1 January 1973 the UK joined the European Economic Community, which has since evolved to become today's European Union. As part of its membership, the UK joined the CFP, which has underpinned UK fisheries management policy for the 45 years since.
- 4 On 29 March 2017, the then Prime Minister gave notification of withdrawal of the UK from the EU under Article 50(2) of the Treaty on European Union (TEU).
- 5 The European Union (Withdrawal Agreement) Act 2020 received Royal Assent on 23 January 2020. This means that the UK will no longer be bound by the CFP's regulations from the end of the Transition Period on 31 December 2020. The Fisheries Act establishes a domestic system of fisheries management.

### The Common Fisheries Policy (CFP)

- 6 The CFP has been reformed several times during the course of the UK's membership of the EU, but the principal matters which the CFP has covered are as follows:
  - Shared access for EU fishing boats to EU Member States' waters;
  - Total Allowable Catch (TAC) and fishing opportunities for key fish stocks for each Member State are agreed annually in December between EU Member States;
  - The representation of EU Member States by the European Commission in negotiations with third countries and in international fisheries agreements; and,
  - Directly applicable fisheries management legislation, including on detailed technical measures and control and enforcement.

### Access

- 7 In relation to access arrangements, under the CFP, EU Member States share access to each other's Exclusive Economic Zones (EEZs) and territorial (inshore) waters in the following way:
  - 0 to 6 nautical miles: national boats only, and subject to a specific arrangement between the Republic of Ireland and Northern Ireland - the voisinage arrangement. There are mutual access arrangements between France and Jersey under the Granville Bay Agreement;

- 6 to 12 nautical miles: national boats, and foreign boats operating under historic access arrangements. Boats from Belgium, France, Germany, Netherlands and the Republic of Ireland have had access to the UK 6 to 12 mile zone under the London Fisheries Convention (LFC), which is also reflected in the CFP Regulation. UK boats also have some access to the zones of those countries;
- 12 to 200 nautical miles: EU waters, shared access between all Member States.

### The management of fishing opportunities

- 8 In the management of fishing opportunities, the explicit objectives of the CFP are to ensure that fishing is environmentally, economically and socially sustainable. Under the CFP, most fish stocks in the North East Atlantic (which includes the waters around the UK) are managed using TACs, which are shared between Member States as quotas. TACs cover more than 50 species split into over 200 stocks. Currently the UK has interests in 123 of those stocks. TACs are agreed following scientific advice provided by the International Council for the Exploration of the Sea (ICES). EU Member States and other countries that fish in the North East Atlantic, such as Norway, Iceland, the Faroe Islands and Russia, contribute to this advice by providing stock assessments produced by their national scientific bodies and by submitting catch data.
- 9 Although ICES make recommendations on the level of TAC which reflect different management scenarios consistent with sustainable management of the stock, the TAC level set is negotiated and agreed between the parties fishing the stock.

### Coastal State negotiations

- 10 International law, including the UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (UNFSA), provides that coastal States control fisheries in their territorial waters and EEZ, and must co-operate with one another to manage shared fish stocks.
- 11 Under the CFP, TACs and quota shares are agreed between the EU Commission (acting on behalf of Member States) and other parties. Agreements are reached, for example, bilaterally with Norway and the Faroe Islands and within Regional Fisheries Management Organisations (RFMOs). RFMOs are international organisations formed by countries with fishing interests in an area (and driven by obligations under UNCLOS and UNFSA). Some of them manage all the fish stocks found in a specific area, while others focus on particular highly-migratory species, notably tuna.
- 12 The EU Commission leads on all external fisheries negotiations on behalf of Member States. It holds co-ordination meetings with interested Member States prior to and during negotiations.

### December Fisheries Council

- 13 The TAC for each stock for the following year is agreed annually at the December Fisheries Council. This involves complex negotiations between Member States and the EU Commission. The EU Commission and the Presidency secure agreement by a Qualified Majority in the Council to reach a deal. The TACs and Quota Regulation is a directly applicable Council Regulation.

### National quotas

- 14 Once EU TACs have been set, they are divided between Member States into national quotas. Quota is allocated to Member States in accordance with a method known as 'relative stability' – this grants EU countries a fixed percentage of quota for each fish stock covered by TACs. Relative stability shares (which vary by stock) were agreed in 1983 and based on Member States' historical fishing patterns dating back to the 1970s.

## Management regime

- 15 The CFP has undergone a number of reforms since it was introduced. The most recent reform took place in 2013 and introduced a range of measures designed to conserve fisheries resources. These include a commitment to fish at maximum sustainable yield, a ban on discarding fish, and increased regionalisation of fisheries governance. Examples of the management reforms introduced in 2013 are:
  - The landing obligation: one of the problems with the quota system is the incentive it provides for fishers to throw over-quota fish back into the sea. To end this wasteful practice, the latest CFP reform introduced a phased landing obligation in 2015, which now requires all catches to be landed.
  - Regionalisation: enables only those Member States that share fisheries at a sea basin level to agree and enact regional decisions in EU or national law.

## European Maritime and Fisheries Fund

- 16 Funding for the fisheries industry in the EU is derived from the European Maritime and Fisheries Fund (EMFF). The UK was allocated €243m from the EMFF over 2014 to 2020, divided between England, Wales Scotland, and Northern Ireland.

## Fisheries management in the UK

### Quota distribution

- 17 Following agreement at December Council on the level of TACs, Defra allocates shares of the UK's quotas to each of the UK's four Fisheries Administrations. Allocations have been based on Fixed Quota Allocation (FQA) units and arrangements for allocating and transferring quota are set out in the Concordat between the Fisheries Administrations (*Concordat on management arrangements for fishing quotas and licensing in the UK* and in the Quota Management Rules (*Rules for the management of the UK's fisheries quotas in areas I, II, IV, VI and VI (and associated areas) and in Faroese waters (Vb)*). Each unit entitles the FQA holder to a specific percentage share of UK quota for a given stock. FQAs were allocated to vessel owners in 1999 based on historical fishing track records.
- 18 The fishing industry is divided into two categories for the purposes of distributing fishing opportunities:
  - the "sector", which is comprised of boats over 10 metres in length that are members of Producer Organisations (POs) (see below). POs manage the quota received on behalf of their members. Most over 10 metre boats are members of POs in the UK; and
  - the "non-sector", which is comprised of over 10 metre and under-10 metre boats that are not members of POs. Their quota is managed by each fisheries administration using a shared pool system. For England, these pools are managed by the MMO, who issue monthly allocations of quota and, based on the level of catches recorded, the MMO will make decisions on whether the levels of quota allocated each month need to be changed.
- 19 Some quota is allocated outside of the FQA system to support certain policy objectives. For example, in England the under-10 metre fleet's allocation is adjusted to guarantee a minimum share in certain stocks.

## Producer Organisations

- 20 POs were established under the EU Regulation on the common organisation of the markets in fishery and aquaculture products (No. 1379/2013 - the 'CMO Regulation'). POs are made up of fishery or aquaculture producers and their main objectives are promoting sustainable fishing, reducing unwanted catches, contributing to the traceability of fishery products, and the elimination of illegal, unreported and unregulated (IUU) fishing. They also play a role in marketing the products of their members and building a relationship with the supply chain (fish markets, processors, other purchasers, retailers and consumers) in order to promote market stability.
- 21 In addition to their responsibilities under the CMO Regulation, POs in the UK are responsible for managing quota on behalf of their members. PO staff also provide an administrative function to ensure accurate catch records for their members are maintained.

## Fisheries Management in England

- 22 The enforcement and management of fisheries is generally carried out by the MMO and the Inshore Fisheries Conservation Authorities (IFCAs).
- 23 The MMO's functions are set out in the Marine and Coastal Access Act 2009 (MCAA) and in general terms are to license, regulate and plan marine activities in the seas around England.
- 24 The IFCAs' functions are also set out in the MCAA. They are committees or joint committees formed from relevant local authorities within 10 areas across England. Their duties relate to the management of fisheries resources and the conservation of the marine environment within the inshore sea (0 to 6 nautical miles). Their powers include byelaw making powers.

## Devolution

- 25 Fisheries is generally a devolved matter: the Devolved Administrations regulate fisheries in their waters and in the case of Scotland and Northern Ireland, can regulate their boats wherever they fish. The current UK-wide approach to fisheries is achieved because all the Fisheries Administrations are required to comply with EU law – including the CFP.
- 26 Also, as UK boats fish throughout UK waters, the Fisheries Administrations work together to ensure a common or consistent approach to fisheries management where necessary or appropriate. This is currently provided for through the Concordat.

## Sustainable fisheries for future generations

- 27 On 4 July 2018, the Department for Environment, Food and Rural Affairs (Defra) published a White Paper for consultation ('Sustainable fisheries for future generation'). This set out the Government's vision for future fisheries management after leaving the EU and the CFP. The White Paper sets out the Government's aim to build a vibrant and sustainable UK fishing industry by taking responsibility for managing fisheries resources within UK waters, while continuing to protect and improve the marine environment, in line with the 25 Year Environment Plan which was published in January 2018. The purpose of the consultation was to seek views on the Government's proposals for all aspects of its emerging approach which were set out in the White Paper.
- 28 The consultation closed on 12 September 2018. In total, 34,667 responses to the consultation were received from a wide range of stakeholders including fishermen, POs, public bodies, local councils, non-governmental organisations, members of Parliament, IFCAs, academia, other industries and local groups.

## Legal background

### Legal background to the Common Fisheries Policy

29 Article 2(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the EU has exclusive competence in several areas. These are set out in Article 3(1) TFEU and include: -

“(d) the conservation of marine biological resources under the common fisheries policy”.

As an EU Member State, the UK therefore does not have competence to act in relation to the conservation of marine biological resources under the CFP. This means that the EU has made most of the law applicable in the UK in relation to fishing and the need for marine conservation in connection with fishing activities. The CFP does, however, provide for Member States to manage their territorial waters (provided they do so consistently with any CFP rules).

30 Under Article 3(2) of the TFEU, the EU generally has exclusive competence in relation to international matters where it has exclusive internal competence. The EU has entered into a large number of fisheries agreements with third countries and is a member of several RFMOs.

31 Article 2(2) TFEU provides that in areas of shared competence the Member States may exercise their competence to the extent that the EU has not exercised its competence. The areas of shared competence are set out in Article 4(2) TFEU and include

“(d) agriculture and fisheries, excluding the conservation of marine biological resources;

(e) environment”

32 There is therefore shared competence in relation to those aspects of fisheries which do not concern the conservation of marine biological resources, for example, in relation to freshwater fish.

33 In some areas, the CFP does allow Member States more autonomy. The CFP allows Member States to restrict access to their 0 to 12 nautical mile area to their own boats and the boats of other Member States which have historic fishing rights in that area and to supplement EU measures in their territorial waters, provided they are non-discriminatory and at least as stringent as measures under EU rules. Member States may also enact measures which apply to their own boats fishing outside territorial waters, provided those measures are consistent with the objectives of the CFP, and are at least as stringent as measures under EU law. This allows the UK to apply technical measures to its own boats, regardless of where they are fishing. In emergencies, Member States can also take temporary measures which apply to all boats, not just their own, in waters within their jurisdiction. Such measures have a time limit of three months.

34 Member States have various other powers. These include stipulating which boats may have their nationality and thus fly their flag; licensing their own boats, allocating quota amongst their own boats; administering aspects of the EMFF, and carrying out various tasks in relation to the common organisation of the market in fisheries products. In addition, Member States play a significant role in the enforcement of the CFP.

### London Fisheries Convention

35 The LFC provides certain EU Member States a right of access for their boats to fish for certain species in certain areas of UK and Crown Dependency territorial waters within 6 to 12 nautical miles from the coast.

- 36 It was concluded in 1964, before the UK joined the EU, and before subsequent international agreements (in particular, UNCLOS) established definitively which rights coastal States could exercise in their territorial seas and Exclusive Economic Zones.
- 37 The Netherlands, Germany, Belgium, France and Ireland can fish for certain species in certain areas of UK and Crown Dependency territorial waters under the agreement, whilst UK boats have access to certain areas and for certain species 6 to 12 nautical miles from the coast of the Netherlands, Germany, France and Ireland.
- 38 The Fishery Limits Act 1964 provided a power for Ministers to give effect to other states' rights (such as rights under the LFC) of access to fish within British fishery limits (at that time extending to 12 nautical miles from the coast) by making orders designating which countries could fish within these waters. The 1964 Act was repealed and replaced by the Fishery Limits Act 1976, which extended British fishery limits to 200 nautical miles and contained a similar power for Ministers to designate which countries could fish within these new limits. This power was used to provide for access to fish in accordance with the provisions of the LFC. Rights of access under the LFC are also included in Annex 1 to the Basic CFP Regulation (1380/2013), except those rights that relate to the Crown Dependencies.
- 39 Article 15 of the LFC permits parties to withdraw from the LFC by giving two years' notice. On 3 July 2017, as part of the wider process of becoming an independent Coastal State, the UK formally gave notice of its intention to withdraw from the LFC as soon as it ceased to be a Member State. The UK's participation in the LFC therefore formally ends on 31 January 2020. It will continue to comply with the access arrangements set out in the CFP Regulation until the end of the transition period on 31 December 2020.

## UK law relating to fisheries

- 40 In addition to EU law derived from the CFP, there are a number of principal pieces of UK primary legislation that relate to fisheries. These are summarised below.

- **The Sea Fish (Conservation) Act 1967 (SF(C)A 1967)** contains a number of important provisions which allow the Secretary of State and Devolved Administrations to:
  - prescribe the size limits for sea fish and minimum net sizes;
  - license fishing boats;
  - regulate the trans-shipment of fish from vessel to vessel; and
  - restrict fishing in certain areas and the landing of foreign-caught fish.

The main licensing orders made under this Act are the Sea Fish Licensing Order 1992 and the Sea Fish Licensing (England) Order 2015. The 2015 Order is a consolidation and applies in relation to England. The 1992 Order continues to apply in relation to Scotland, Wales and Northern Ireland. The orders prohibit unlicensed fishing anywhere by UK fishing boats (subject to certain exceptions).

- **The Sea Fisheries Act 1968** adds to the framework of domestic UK fisheries legislation. In particular it provides that Ministers may make orders regulating the conduct of fishing and makes provision for British sea-fishery officers.
- **The Fishery Limits Act 1976** and designation orders made under it prescribe the fishery limits of the British Islands and the rights of the fishing boats of other countries to fish within those limits. British fishery limits are now, for the

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*



purposes of section 1 of the Fishery Limits Act, those limits as designated by the Exclusive Economic Zone Order 2013 which declares the area of the UK's Exclusive Economic Zone (in effect, the United Kingdom's 12 to 200 nautical mile area of sea).

- **The Fisheries Act 1981** created the Sea Fish Industry Authority, setting out its duties and powers (including a power to impose a levy on persons engaged in the sea fish industry). It also contains provisions on financial assistance to the sea fish and fish farming industry. It contains a provision making a breach of EU sea fisheries legislation an offence under the Act.
- **The Sea Fisheries (Wildlife Conservation) Act 1992** contains an overarching duty for the Fisheries Administrations and the MMO to have regard to the conservation of marine flora and fauna when carrying out their sea fisheries functions.
- **The Marine and Coastal Access Act 2009** established the MMO. The Act makes the MMO the licensing authority for English boats. It also allows Ministers to delegate functions to the MMO and makes provision for the management of inshore fisheries by IFCA's. The Act sets out the regime for marine planning in the UK marine area and provides for the designation and protection of Marine Conservation Zones. The Act also makes provision for the enforcement of fisheries legislation by Marine Enforcement Officers.

## Legal background to the devolution of fisheries

- 41 Foreign affairs (including relations with the EU, other countries and other international organisations) is a reserved matter. Observing and implementing international obligations is not a reserved matter.
- 42 Subject to very few exceptions, the devolved legislatures and administrations have legislative and executive competence in relation to fisheries and marine conservation in their territorial waters.
  - The regulation of sea fishing in the Scottish zone and the regulation of Scottish fishing boats anywhere are devolved matters.
  - The regulation of sea fishing in the Northern Ireland zone and the regulation of Northern Ireland fishing boats anywhere are devolved matters. In Northern Ireland, the foreshore and seabed are excepted matters.
  - The regulation of sea fishing is devolved in the Welsh inshore area, but Senedd Cymru does not currently have legislative competence in relation to fisheries in the Welsh offshore area. Fisheries is not reserved under Schedule 7A to the Government of Wales Act 2006, so is devolved where provisions can be said to relate to Wales (which includes the inshore area). Welsh Ministers do have executive competence in relation to fisheries in the offshore region.
- 43 Subject to certain exceptions, the Devolved Administrations have devolved competence in relation to marine licensing in their inshore area and the Scottish Ministers and the Welsh Ministers have executive competence in relation to marine licensing in respect of their offshore area.

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

- 44 The Devolved Administrations have executive competence in relation to marine planning in their offshore area as well as competence over marine planning in their inshore area.

## **International law: the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement and Regional Fishery Management Organisations**

### **UNCLOS**

- 45 UNCLOS is the main international agreement governing the World's oceans and seas. The UK is a party to UNCLOS in its own right. UNCLOS covers a number of significant issues including setting limits for territorial waters and EEZs, navigation, archipelagic status and transit regimes, continental shelf jurisdiction, deep seabed mining, the exploitation regime for fish stocks, protection of the marine environment, scientific research, and settlement of disputes. In relation to fisheries, UNCLOS recognises a coastal State's rights and obligations with respect to fishing in its territorial sea, its EEZ and on the high seas.
- 46 The territorial sea is a zone extending up to 12 nautical miles from a coastal State's baselines (generally the low-water line along the coast). The coastal State's sovereignty extends to its territorial sea. The coastal State's sovereignty over its territorial sea is to be exercised in accordance with its international obligations, including obligations under UNCLOS (for example, to provide innocent passage to boats from third States).
- 47 The EEZ is a zone extending from the outer limit of the coastal State's territorial sea to up to 200 nautical miles from its baselines or to the median line with another coastal State's EEZ. Within the EEZ, the coastal State enjoys exclusive rights in relation to natural resources and related jurisdictional rights.
- 48 Within the EEZ, the coastal State has "sovereign rights for the purpose of exploring and exploiting, conserving and managing" the fish stocks of the zone (UNCLOS, Article 56(1)). These rights are subject to a number of duties under UNCLOS, including the need to:
- determine the total allowable catch of the living resources in the EEZ – Article 61(1);
  - maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield – Article 61(3);
  - optimise utilisation of the living resources within its EEZ, without prejudice to Article 61 – Article 62(1);
  - determine the coastal State's own capacity to harvest those living resources – Article 62(2);
  - provide other States with access to any surplus if the allowable catch exceeds the coastal State's own capacity to harvest the living resources – Article 62(2);
  - provide due notice of conservation and management laws and regulations relating to living resources of its EEZ – Article 62(5); and,
  - cooperate with other Coastal States upon measures necessary to coordinate and ensure the conservation and development of shared stocks - Article 63.



- 49 Where coastal States allow access for fishing boats from other States to their EEZ, the coastal State can prescribe conditions to govern such fishing. Article 62(4) of UNCLOS provides that these conditions may, for example, require foreign fishers to have licences, to observe the coastal State's conservation measures, to provide information including catch and effort statistics and vessel position reports, to carry out research programmes, to land part or all of their catches in the coastal State, to carry on-board observers, to train coastal State personnel, and to comply with enforcement procedures.
- 50 The rights and duties of other States in the coastal State's EEZ are set out in Article 58 of UNCLOS. Other States' rights include (i) the freedom of navigation, (ii) the freedom of overflight, and (iii) the freedom to lay submarine cables and pipelines. Other States must have due regard to the rights and duties of the coastal State and comply with the laws and regulations adopted by the coastal State adopted in accordance with UNCLOS and other rules of international law.
- 51 Whilst the overwhelming proportion of commercial fishing takes place within 200 miles of land, UNCLOS also contains provisions governing fishing on the high seas (i.e. beyond 200 miles) where many fish stocks spend part or the whole of their life cycle. UNCLOS provides that fishing is, in principle, open to all States on the high seas, subject to a number of general obligations relating to the conservation and management of high seas living resources (set out in Articles 117 to 120). These include the obligation to cooperate to establish RFMOs to this end.
- 52 UNCLOS includes a bespoke dispute settlement mechanism. When a dispute arises, parties to UNCLOS are under a general obligation to settle the dispute by peaceful means (Art 279). Parties must proceed expeditiously to an exchange of views regarding settlement by negotiation or other peaceful means (Art 283). If parties fail to reach a settlement through agreed procedures, one may invite the other to submit to the conciliation procedure laid out in Article 285 and Annex V. There are compulsory dispute resolution mechanisms provided by section 2 of Part XV of UNCLOS, which are engaged where settlement of a dispute is not possible by a means freely chosen by the parties, but there are exceptions to this compulsory procedure for fisheries disputes relating to a coastal State's sovereign rights relating to the living resources in its EEZ, including its determination of the TAC and harvesting capacity, its allocation of surpluses to other States and its conservation and management laws.

## UNFSA

- 53 UNFSA is a multilateral treaty intended to ensure the long-term conservation and sustainable use of straddling fish stocks (stocks which migrate between, or occur in both, the EEZ of one or more States and the high seas such as mackerel, herring and whiting) and highly migratory fish stocks (stocks listed in Annex 1 of UNCLOS which are capable of migrating long distances and which generally occur in both EEZs and the high seas) through effective implementation of the relevant provisions of UNCLOS (UNFSA, Article 2). In order to achieve this objective, UNFSA sets out various principles for the conservation and management of these stocks by the coastal state within its EEZ, and by the coastal State and other states on the high seas. The UK is currently a party to UNFSA in its own right.
- 54 Part III of UNFSA contains detailed provisions on the implementation of Articles 117 to 120 of UNCLOS. This includes provision on the establishment and functions of RFMOs and duties of States to cooperate with them (Articles 8-17). In particular, States fishing for stocks managed by a particular RFMO on the high seas and the relevant coastal States must either join that RFMO or agree to apply the conservation and management measures adopted by the RMFO (Article 8(3)). UNFSA also imposes duties on States to implement and enforce conservation and management measures adopted by RFMOs.

## Regional Fishery Management Organisations (RFMOs)

- 55 As envisaged by UNCLOS and UNFSA, a large number of RFMOs have been established by coastal States and States fishing on the high seas. RFMOs are established by multilateral treaties and are intended to strengthen regional cooperation in order to promote conservation and sustainable exploitation of fish resources on the high seas, straddling stocks and highly migratory species. While some RFMOs have a purely advisory role, most have management powers to set catch and fishing effort limits, technical measures, and control obligations in order to establish measures for the control and monitoring of fishing activities. The EU is a member of 17 of these organisations. The EU's exclusive competence in this area means that the UK is currently a member of only two RFMOs on behalf of a number of its overseas territories.
- 56 From 1<sup>st</sup> January 2021, the UK will join a number of RFMOs in its own right and will be bound directly by the conservation and management measures adopted by these RFMOs as a result.

## Retained EU law

- 57 The directly applicable EU regulations of which the CFP is comprised will be retained in UK law under the European Union (Withdrawal) Act 2018. The Department has made a number of statutory instruments to correct retained EU law relating to fisheries to make it operable in UK law.
- 58 Schedule 11 also makes a number of policy changes to retained EU law that are consequential on provisions in the Act.

## Territorial extent and application

- 59 Section 52 sets out the territorial extent of the Act. This determines the legal systems of which the Act will form part. The extent of an Act is different from its application. Territorial application is about where an Act produces a practical effect rather than where it forms part of the law. The Act largely extends and applies to the whole of the UK and, where appropriate, to the Channel Island and Isle of Man. Repeals and amendments made by the Act have the same territorial extent as the legislation that they are repealing or amending.
- 60 The UK Parliament will not normally legislate for areas within the competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the consent of the legislature concerned. The Government will therefore seek legislative consent for provisions where this is the case. See the table in Annex A for a summary of the position regarding territorial extent and application. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

## Commentary on provisions of Act

### Fisheries objectives, fisheries statements, and fisheries management plans

#### Section 1: Fisheries objectives

- 61 This section lists and defines the UK fisheries objectives. The objectives are the subject of the Joint Fisheries Statement which is provided for in section 2. In this section, as in the rest of the Act, fishing includes recreational as well as commercial fishing unless otherwise specified. Where specified, objectives and other provisions in the Act also relate to aquaculture.

- 62 Subsection (1) lists the fisheries objectives. These are (a) the sustainability objective, (b) the precautionary objective, (c) the ecosystem objective, (d) the scientific evidence objective, (e) the bycatch objective (f) the equal access objective, (g) the national benefit objective and (h) the climate change objective. Objectives (a) to (d) replace equivalent objectives in Article 2 of the Common Fisheries Policy Basic Regulation while (e) to (h) reflect other priorities for the UK after it leaves the CFP.
- 63 Subsection (2) provides the meaning given to the “sustainability objective” which is to ensure that fishing and aquaculture activities are environmentally sustainable in the long term, and managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. It also seeks to ensure that the fishing capacity of fleets is managed to ensure economic viability without over-exploitation of stocks.
- 64 Subsection (3) provides the meaning given to the “precautionary objective” which is to apply the precautionary approach to fisheries management, and to ensure that exploitation of marine stocks restores and maintains populations of harvested species above biomass levels capable of producing maximum sustainable yield.
- 65 Subsection (4) provides the meaning given to the “ecosystem objective” which is to implement an ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and to ensure that incidental catches (e.g. of cetaceans) are minimised and eliminated where possible.
- 66 Subsection (5) provides the meaning given to the “scientific evidence objective” which is to contribute to the collection of scientific data, to work between the fisheries administrations where appropriate and share data, and to base fisheries management policy on the best available scientific advice.
- 67 Subsection (6) provides the meaning given to the “bycatch objective” which is, where appropriate, to avoid or reduce catches of unwanted bycatch, including undersized fish, to record and account for all catches, to ensure catches of fish are landed (rather than discarded at sea) but without incentivising the catching of undersized fish.
- 68 Subsection (7) provides the meaning given to the “equal access objective” which is to ensure that the access of UK fishing boats to any area within British fishery limits is not affected by the location of the fishing boat’s home port, or any other connection of the fishing boat, or any of its owners, to any place in the UK.
- 69 Subsection (8) provides the meaning given to the “national benefit objective” which is to ensure that the activities of British fishing boats bring social or economic benefits to the UK or a part of the UK (e.g. by requiring at least some catches to be landed in UK ports, etc).
- 70 Subsection (9) provides the meaning given to the “climate change objective” which is that the adverse effect of fish and aquaculture activities on climate change is minimised, and that fish and aquaculture activities adapt to climate change.
- 71 Subsection (10) provides definitions for the terms “ecosystem-based approach” and “precautionary approach” to fisheries management for the purposes of section 1.

## Section 2: Joint fisheries statement

- 72 Subsection (1) of this section introduces a duty on the Secretary of State and Devolved Administrations (the fisheries policy authorities) to set out their policies for achieving the fisheries objectives in section 1, as well as to set out what use they plan to make of fisheries management plans in relation to the achievement of the fisheries objectives. The purpose of the statement is to recognise that, although fisheries is devolved, none of those authorities acting alone could achieve the fisheries objectives. The intended effect of the joint fisheries statement (JFS) would be to set out and coordinate fisheries policies after the UK has left the CFP.

- 73 Subsection (2) provides that the policies to be included in a JFS may in particular include policies relating to the distribution of catch quotas and effort quotas under section 26 (distribution of fishing opportunities),
- 74 Subsection (3) provides that a JFS must include a list of fisheries management plans in force and another list outlining the fisheries management plans that the fisheries policy authorities propose to prepare and publish in the future. The JFS should also set out the rationale for deciding which stocks, types of fishing, and fisheries should be subject to fisheries management plans and which should not.
- 75 Subsection (4) provides that a document is not a JFS unless it contains a statement confirming it has been prepared for the purposes of this section.
- 76 Subsection (5) requires a JFS to be prepared and published within two years of the Act coming into force.
- 77 Subsection (6) defines a “fisheries management plan” for the purposes of the Act.
- 78 Subsection (7) provides that certain policies of the Secretary of State that would otherwise be included in a JFS may be set out in a separate document (a Secretary of State fisheries statement).

### Section 3: Joint fisheries statement: procedure

- 79 Subsection (1) to this section provides that the fisheries policy authorities may at any time prepare and publish a replacement JFS or make amendments to an existing JFS.
- 80 Subsection (2) refers to Part 1 of Schedule 1 which outlines the mechanism for bringing the JFS into effect. Subsection (3) provides that the JFS only comes into effect when it has been published in accordance with that Part of that Schedule.
- 81 Subsections (4) to (6) provide that the JFS must be reviewed whenever it is appropriate, but no later than six years following its initial publication or within six years following any review. This is to align with a six-year review period for marine plans made under the Marine and Coastal Access Act 2009. A revised JFS or any amendments made to it must be published following a review. A review ends under this section when the fisheries policy authorities conclude that no changes to the JFS are required or when a replacement JFS or amendments are published.

### Section 4: Secretary of State fisheries statement

- 82 Subsections (1) and (2) of this section provide that a JFS, or an amendment to a JFS, may omit a relevant Secretary of State policy that could otherwise be included in it.
- 83 Subsections (3) to (5) provide that the Secretary of State may publish a Secretary of State’s Fisheries Statement (SSFS) that sets out policies not included in the JFS under subsections (1) and (2). Subsection (6) ensures that an SSFS must contain a statement that it has been prepared for the purposes of this section, and subsection (7) ensures that if the requirements in subsections (1) and (2) have been met, the SSFS should be published no more than 6 months after a JFS, or an amendment to a JFS, has been published.
- 84 Subsection (8) defines a “relevant Secretary of State policy” for the purposes of this section. This could include a “UK quota function” which is non-devolved, as well as reserved matters.

### Section 5: Secretary of State fisheries statement: procedure

- 85 Subsection (1) to this section provides that the Secretary of State may at any time prepare and publish a replacement SSFS or make amendments to a published SSFS.
- 86 Subsection (2) refers to Part 2 of Schedule 1 which outlines the mechanism for bringing the SSFS into effect. Subsection (3) provides that the SSFS only comes into effect when it has been published in accordance with that Part of that Schedule.

- 87 Subsections (4) to (6) provide that an SSFS must be reviewed whenever it is appropriate, but no later than six years following the publication of the first SSFS or within six years of the publication of any replacement SSFS. A revised SSFS, or any amendments made to a SSFS, must be published following a review. A review ends under this section when the Secretary of State concludes that no changes to the SSFS are required or when a replacement SSFS or amendments are published.
- 88 Subsections (7) and (8) provide that where a review of a JFS concludes that no policies that could otherwise be in an SSFS should be omitted from the JFS, the Secretary of State may revoke an SSFS setting out those policies and, should this happen, publish a statement that the SSFS has been revoked. Subsection (9) confirms that the revocation of the SSFS comes into effect when that statement is published.

## Section 6: Fisheries management plans

- 89 Subsection (1) imposes a duty on a relevant fisheries authority or authorities to prepare and publish the fisheries management plans proposed in the list in the JFS, as required by section 2(3)(b).
- 90 Subsection (2) requires that a fisheries management plan must specify the relevant authority or authorities that published it and specify each stock, fishing activity and geographical area to which it relates. A plan must also specify any indicators used for monitoring the effectiveness of the plan. The plan must comply with subsection (3) which requires the plan to state whether available scientific advice is sufficient to make an assessment of the stock's maximum sustainable yield and, if it is, specify the policies for restoring or maintaining the stock at sustainable levels.
- 91 If such scientific advice is not available for a stock (e.g. if catch data is not collected), the plan must specify policies for maintaining or increasing the level of that stock. If the plan does not include such policies for that stock, the plan must specify the reasons for that. Subsection (4) requires the authority or authorities to adopt the precautionary approach (as per section 1), when specifying policies for stocks where there is insufficient scientific evidence.
- 92 Subsection (5) requires a fisheries management plan to include a statement that it has been prepared and published for the purposes of this section. Subsection (6) requires the relevant authority or authorities to comply with the timetables for producing plans set out in the JFS.
- 93 Subsection (7) defines terms used in this section.

## Section 7: Fisheries management plans: power to depart from proposals in the JFS

- 94 Subsections (1) to (4) of this section set out the requirements for preparing and publishing replacement fisheries management plans, or amendments to existing plans, where there has been a relevant change in circumstances (set out in subsection (7)).
- 95 Subsection (5) requires the authority or authorities preparing a new plan to explain how and why it is different from the plan contemplated in the JFS.
- 96 Subsection (6) sets out that the information that must be included in a new plan should still meet the requirements in section 6(2) to (5).
- 97 Subsection (7) sets out what is meant by a relevant change in circumstances. These include changes relating to the international obligations of the UK, things done or not done by other countries that affect the marine and aquatic environment, available scientific evidence and evidence relating to the social, economic or environmental elements of sustainable development.



## Section 8: Fisheries management plans: amendment, review etc.

98 This section provides for amendments to and replacements of fisheries management plans where the changes are to the same stock or stocks, type of fishing and geographical area.

## Section 9: Fisheries management plans: transitional provision

99 This section allows one or more fisheries policy authority to prepare and publish a fisheries management plan before a JFS has been agreed and published. Section 2(2)(a) provides for the JFS to list plans already in force.

## Section 10: Effect of fisheries statements and fisheries management plans

100 This section requires the national fisheries authorities to pursue the policies outlined in the relevant fisheries statements or fisheries management plans that are applicable to them unless a relevant change in circumstances indicates otherwise. The purpose of this exception is to allow for flexibility in decision-making: it may occasionally be necessary to diverge from the policies in the statements. The national fisheries authorities are defined in subsection (5) as all the Fisheries Administrations and the MMO.

101 Subsection (1) requires the national fisheries authorities, which are all those listed in subsection (5), to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the JFS, SSFS, or fisheries management plans unless a relevant change in circumstances indicates otherwise. Subsection (2) requires a relevant national authority to describe the decision and the relevant change of circumstances, and explain how the relevant change in circumstances affected the decision.

102 Subsection (3) provides that policies in a JFS are applicable to a national fisheries authority in subsection (5) unless the JFS states that it is not applicable. Similarly, policies in the SSFS are applicable to the Secretary of State and the MMO. This subsection also sets out how a policy in a fisheries management plan can be applicable to a national fisheries authority.

103 Subsection (5) provides a non-exhaustive list of what might be considered a “relevant” change of circumstances in relation to this section. These include changes resulting from new international obligations or the availability of new evidence that would suggest a different approach to one set out in the relevant document.

## Section 11: Reports on fisheries statements and fisheries management plans

104 This section requires the relevant fisheries policy authorities to prepare reports on the extent to which policies outlined in the JFS, fisheries management plans and SSFS have been implemented and how these policies have achieved the fisheries objectives set out in section 1 (in the case of the JFS and SSFS) and the impact on stocks (in the case of fisheries management plans).

105 Subsections (1) to (3) require the fisheries policy authorities to prepare reports on the JFS and fisheries management plans and to lay them before Parliament and the devolved legislatures, Subsection (4) outlines the reporting periods for these reports, which are three years following publication of the first JFS and every three years thereafter. This means that the reports will be published between the six yearly reviews required under section 3, which is also consistent with the voluntary reporting arrangements for marine plans made under the Marine and Coastal Access Act 2009. Copies of the report must be laid before Parliament and the devolved legislatures.

106 Subsections (4) to (8) place requirements on the Secretary of State to publish equivalent reports for the SSFS. When preparing an SSFS report the Secretary of State must consult the Devolved Administrations.

107 Subsection (9) provides a definition of a “period” for the purposes of this section.

## Access to British fisheries and regulation of foreign fishing boats

### Section 12: Access to British fisheries by foreign fishing boats

- 108 This section sets out when foreign fishing boats may enter British fishery limits (which equates to the UK's EEZ). The section replaces section 2 of the Fishery Limits Act 1976 (the 1976 Act). Currently section 2 of the 1976 Act, as amended by the devolution Acts (e.g. the Scotland Act 1998), enables the Secretary of State and the Devolved Administrations to designate, by order, the foreign countries whose boats may enter British fishery limits. The Act sets out this process, replacing this order-making procedure.
- 109 Subsection (1) provides that a foreign fishing boat may only enter British fishery limits if it has a sea fishing licence or for a purpose recognised by international law or by any international agreement or arrangement.
- 110 Subsection (2) requires that foreign fishing boats must leave British fishery limits as soon as their purposes under subsection (1) have been fulfilled.
- 111 Subsection (3) makes it an offence for the master, owner and the charterer of a foreign fishing boat to breach these requirements. Subsection (4) notes that further provisions on offences may be found in the Act and in the Sea Fisheries Act 1968.

### Section 13: Regulation of foreign fishing boats

- 112 This section introduces Schedule 2 which contains amendments to subordinate legislation, ensuring that foreign fishing boats are subject to the same regulations as British fishing boats when fishing in UK waters.

## Licensing of fishing boats

### Section 14: British fishing boats required to be licensed

- 113 This section deals with the circumstances in which a licence is required for British fishing boats. The prohibition and subsequent exemptions under this section will apply UK wide and ensure that the basic licensing requirement is consistent throughout UK waters. The effect of this change will be to replicate the effective status quo; that a licence issued by the Devolved Administrations or the MMO will be effective throughout UK waters.
- 114 Subsection (1) requires that fishing anywhere by a British fishing boat is prohibited unless that boat has been authorised under a licence.
- 115 Subsection (2) sets out the exceptions to the requirement to have a licence. These exceptions are the same as those set out in existing licensing orders. Generally, these exceptions are in place as the relevant fishing activity is regulated under another regime or because it would not be appropriate to license the activity. The fishing activities exempted are fishing:
- for salmon or migratory trout;
  - for common eels (*Anguilla anguilla*) by a boat whose length is 10 metres or less;
  - by a boat whose length is 10 metres or less and which does not have an engine to power the boat;
  - by a boat used wholly for the purpose of conveying persons wishing to fish for pleasure;
  - in the waters of the Isle of Man and the Channel Islands respectively.

- 116 Subsection (3) provides a power for the Secretary of State, by regulations, to amend the exceptions to the licensing requirement in subsection (2). This will provide the flexibility to require in the future that further fishing activities are licensed if, for example, the activity is judged to risk the health of fish stocks. It replicates the ability to vary the exceptions by order under section 4 of the Sea Fish (Conservation) Act 1967.
- 117 Subsection (4) requires that the Scottish Ministers, the Welsh Ministers and the Northern Ireland department give their consent to any changes to the exceptions from the requirement under subsection (1). Given that fisheries policy is generally a devolved matter, the requirement for the Devolved Administrations' consent to regulations under subsection (3) respects the devolution settlements but at the same time ensures that the requirements are consistent across the UK.
- 118 Subsection (5) provides that regulations under subsection (3) are subject to the affirmative resolution procedure.
- 119 Subsection (6) makes it an offence to fish in contravention of subsection (1). The master, owner and charterer of a fishing boat would be guilty of the offence. Subsection (7) refers to further provisions on penalties, offences by bodies corporate, in sections 20 to 22.
- 120 Subsection (8) defines the terms "length" and "licence" for the purposes of this section.

### Section 15: Power to grant licences in respect of British fishing boats.

- 121 This section provides a power for the Devolved Administrations and the MMO to grant licences to British fishing boats.
- 122 Subsection (1) sets out which fishing boats are licensed by which administration:
- Scottish fishing boats are licensed by the Scottish Ministers;
  - Welsh fishing boats are licensed by the Welsh Ministers;
  - Northern Ireland fishing boats are licensed by the Northern Ireland department;
  - other British fishing boats (English fishing boats and Crown Dependency fishing boats which need a UK licence) are licensed by the MMO.

- 123 Subsection (2) allows licences granted under this section to be limited by reference to fishing in a particular area; to the periods, times or particular voyages during which fishing is authorised; to the descriptions and quantities of fish which may be caught; and to the method of sea fishing.
- 124 Subsection (3) provides that licences granted under this section must name the fishing boat in respect of which it is granted, and may only be granted to the boat's owner or charterer.

### Section 16: Foreign fishing boats required to be licensed if within British fishery limits

- 125 This section prohibits fishing by foreign fishing boats unless they have a licence issued by a Fisheries Administration. This is a new requirement which reflects the fact that, in future, access for foreign boats to fish in UK waters will be a matter for negotiation, implemented partly through UK licensing.
- 126 Subsection (1) prohibits fishing within British fishery limits (which is the UK EEZ) by foreign boats unless they have a licence. Subsection (2) exempts foreign fishing boats fishing in the waters of the Isle of Man from requiring a licence under subsection (1).
- 127 Subsection (3) gives the Secretary of State a power, by regulation, to amend subsection (2) (e.g. by adding further exemptions). Subsection (4) requires that the Scottish Ministers, the Welsh Ministers and the Northern Ireland department consent to any regulations made under subsection (3).



- 128 Subsection (5) provides that regulations under subsection (3) are subject to the affirmative resolution procedure.
- 129 Subsection (6) makes it an offence for a boat to fish in contravention of the requirement in subsection (1) and makes this an offence of the master, owner and charterer of the boat.
- 130 Subsection (7) refers to further offence provisions on penalties, offences by bodies corporate, etc, in the Act
- 131 Subsection (7) defines “licence” for the purpose of this section.

### Section 17: Power to grant licences in respect of foreign fishing boats

- 132 This section provides powers for the Devolved Administrations and MMO to grant licences to foreign fishing boats.
- 133 Subsection (1) provides that licences may be issued to foreign fishing boats by the Scottish Ministers, the Welsh Ministers, the Northern Ireland department and the MMO.
- 134 Subsection (2) provides that licences issued under subsection (1) may only authorise fishing with respect to the areas of UK waters for which the respective administrations have competence: this is the Scottish Ministers in relation to the Scottish Zone, the Welsh Ministers in relation to the Welsh zone and the Northern Ireland department in relation to the Northern Ireland zone. In relation to the MMO the effect of this provision is that they may only license foreign boats in England or the waters around England.
- 135 Subsection (3) allows licences granted under this section to be limited by reference to certain matters, such as the area in which fishing is authorised, etc.
- 136 Subsection (4) provides that licences granted under this section must name the fishing boat in respect of which it is granted, and may only be granted to the boat’s owner or charterer.

### Section 18: further provision about licences

- 137 This section defines “sea fishing licence” for the purposes of the Act. It also introduces Schedule 3, which makes further provision about sea fishing licences.

## Access and licensing: offences and consequential amendments

### Section 19: Penalties for offences

- 138 This section sets out the penalties for licensing offences. This replicates existing offences under section 4 of the Sea Fish (Conservation) Act 1967.
- 139 Subsection (1) provides the penalties for offences under the access and licensing provisions in the Act.
- 140 Subsection (2) allows the court to disqualify persons convicted of access and licensing offences from holding a sea fishing licence for a specified period and to order the forfeiture of fish, and of nets and fishing gear used when the offence was committed.
- 141 Subsection (3) provides that the fines that must be paid by those found guilty of committing certain licensing offences may not exceed the value of the fish that was fished during the activity for which the person had been found guilty.
- 142 Subsection (4) provides that the court may not order both the forfeiture of the fish fished in the course of the offence under subsection (2) and order that a fine be paid under subsection (3) for the same offence.
- 143 Subsection (5) allows for a fine under subsection (3) to be in addition to any other fine for which a person is liable as a result of the same offence.

## Section 20: Offences by bodies corporate etc.

- 144 This section sets out the circumstances in which the officer of a body corporate as well as the body corporate may be found guilty of committing a relevant offence.
- 145 Subsection (1) provides that an officer of a body corporate, as well as a body corporate, may be guilty of an offence where it is proved that an officer connived or consented to the offence, or that the offence was attributable to the neglect of an officer.
- 146 Subsection (2) gives the meaning of “officer” in subsection (1).
- 147 Subsection (3) provides for members of a body corporate to be treated as if they were directors, who are officers under subsection (2).
- 148 Subsection (4) is a similar provision for subsection (1) but applies to a partner or person purporting to be a partner in a Scottish partnership.
- 149 Subsection (5) defines the relevant offences.

## Section 21: Jurisdiction of court to try offences

- 150 This section provides that the relevant offences may be treated as having been committed in any place in the United Kingdom.

## Section 22: Minor and consequential amendments

- 151 This section introduces Schedule 4, which contains minor and consequential amendments and transitional provision in relation to the licensing provisions.

## Fishing opportunities

### Section 23: Power of Secretary of State to determine fishing opportunities

- 152 This section sets out the Secretary of State’s function of setting the maximum quantity of sea fish that may be caught by British fishing boats and days that British fishing boats may spend at sea during a specified period (e.g. a calendar year or any other such period specified for a specific catch quota or effort quota). “Fishing opportunities” refers to the maximum amount of fish that may be caught and the maximum number of days that may be spent at sea. This section replaces the current provision in EU law that allow the European Council to determine fishing opportunities for EU waters (of which UK waters are a constituent part). The provisions set out the Secretary of State function of determining the UK’s fishing opportunities, in accordance with the UK’s international obligations. These might arise under an agreement with the EU or with another coastal State. They might also arise because of the UK’s obligations under UNCLOS or as a member of an RFMO.
- 153 Subsection (1) provides that the Secretary of State may determine for a specified period the maximum quantity of sea fish that may be caught by British fishing boats and the maximum number of days that British fishing boats may spend at sea.
- 154 Subsection (2) requires that a determination under subsection (1) may only be made for the purpose of complying with an international obligation of the UK to determine the fishing opportunities of the UK. The purpose of this subsection is to ensure that the power to determine fishing opportunities relates to limited matters within the Secretary of State’s reserved competence.
- 155 Subsection (3) allows for the maxima determined under subsection (1) to be determined for, or for fishing boats fishing for: different descriptions of sea fish; for different areas of sea; or for different descriptions of fishing boat.

- 156 Subsection (4) provides that fishing opportunities under this section may not be determined by reference to a boat's home port or connection to a particular part of the UK. The purpose of this is to ensure that the power could only be used to set fishing opportunities for the whole UK.
- 157 Subsection (5) gives the meaning of "catch quota" and "effort quota".
- 158 Subsection (6) allows for determinations under subsection 1 to be zero; to replace a determination that had already been made; or to withdraw a determination that had already been made. This provision would allow for changes to be made to determinations under subsection (1) over the course of a year to respond to environmental changes, depletions of fish stocks or for other purposes.
- 159 Subsection (7) explains that a determination may not be made or withdrawn after the end of the period to which it relates.
- 160 Subsection (8) creates a power for the Secretary of State, by regulations, to determine what is to be regarded as the number of days in a specified period that a boat spends at sea. Regulations under this power will reflect the varying technical conditions that may affect when a boat should be treated as fishing.
- 161 Subsection (9) provides that the regulations made under subsection (8) may make provision by reference to provision made under paragraph 1(2)(c) of Schedule 2. That paragraph provides that licences issued to fishing boats may include conditions restricting the time the fishing boat may spend at sea.
- 162 Subsection (10) provides that regulations made under subsection (6) would be subject to the negative resolution procedure.
- 163 Subsection (11) provides that any reference in retained direct EU legislation to "fishing opportunities" in relation to British fishing boats are to be read as references to catch quotas and effort quotas.

## Section 24: Duties relating to a determination of fishing opportunities

- 164 This section sets out the duties of the Secretary of State when making a determination on fishing opportunities. Subsection (1) requires the Secretary of State to consult with the Devolved Administrations and the MMO before making or withdrawing a determination.
- 165 Subsection (2) requires that, after making or withdrawing a determination, the Secretary of State must publish a notice of the determination, lay a copy of the notice in Parliament, and send a copy to the Devolved Administrations.

## Section 25: Distribution of fishing opportunities

- 166 This section provides the criteria that must be used when national fisheries authorities distribute catch quotas and effort quotas to fishing boats. This section replaces Article 17 of the Basic Regulation in retained EU law, which is revoked by Schedule 10.
- 167 Subsection (1) requires that the criteria used must be transparent and objective and include criteria relating to environmental, social and economic factors.
- 168 Subsection (2) provides that the criteria may in particular relate to other factors such as the environmental impact of fishing. Subsection (3) also provides that those distributing quota should seek to incentivise the use of selective gear and fishing techniques that have a reduced environmental impact.
- 169 Subsection (4) defines "national fisheries authorities" for the purpose of this section.

## Section 26: Duties to ensure fishing opportunities not exceeded

- 170 This section relates to the duty to ensure that a catch quota and effort quota determined by the Secretary of State is not exceeded.
- 171 Subsection (1) places a duty on the national fisheries authorities to exercise their functions in such a way that in any period and so far as possible, no fish are caught, or days at sea spent, by British fishing boats in excess of catch or effort quota for that period.
- 172 Subsection (2) provides that when determining when a catch quota is exceeded, the only sea fish that need to be counted are those caught under Article 15 of the Basic Regulation and any other retained direct EU legislation.
- 173 Subsection (2) is to deal with the possibility that a fishing boat may have received fishing opportunities from another country. It provides that fishing opportunities of a territory outside the UK must be ignored when determining whether a catch quota or effort quota is exceeded.
- 174 Subsection (3) defines the “relevant national authorities” as the Fisheries Administrations and the MMO for the purposes of this section.

## Section 27: Sale of English fishing opportunities

- 175 This section allows the Secretary of State to provide, in regulations, for the sale of rights to use one or more English catch quotas or English effort quotas. The intention is that regulations would provide for the tender or auction of a proportion of the additional fishing opportunities that are gained following the UK’s withdrawal from the EU. The sale of quota would only be used to allocate a portion of UK quota which may be allocated by the MMO or the Secretary of State to English fishing boats. The regulations could include the requirement that certain criteria are met in order to purchase fishing opportunities, for example environmental criteria. The regulations could therefore require fishing opportunities to be allocated on criteria other than price.
- 176 Subsection (1) is a power which provides that the Secretary of State may by regulations make provision for the sale of the right to use one or more English catch quota or English effort quota.
- 177 Subsection (2) allows the regulations made under subsection (1) to provide for sale by reference to such fishing boats, by such persons and subject to such conditions as may be prescribed in the regulations.
- 178 Subsection (3) lists the matters which the regulations may make provision about.
- 179 Subsection (4) requires that the MMO must exercise its function to secure, as far as possible, the sale of quota does not result in breaches of licence requirements.
- 180 Subsection (5) requires the Secretary of State to consult appropriate persons before making regulations under this section.
- 181 Subsection (6) provides that regulations made under this section are subject to the affirmative resolution procedure.
- 182 Subsection (7) defines “English catch quota” and “English effort quota” for the purposes of this section.
- 183 Subsection (8) introduces Schedule 5, which confers equivalent powers on the Welsh Ministers to make regulations to sell Welsh catch quota and Welsh effort quota to the Welsh fishing industry.

## Discard prevention charging schemes

### Section 28: Discard prevention charging schemes

- 184 This section allows the Secretary of State to provide in regulations for a scheme that would require a charge to be paid in respect of unauthorised catches of sea fish (a “charging scheme”). The purpose of the charging scheme is to charge for unauthorised catches at a level which deters overfishing and thereby incentivises fishers to use more sustainable fishing practices and avoid unwanted catches. Previously, fishers have regularly discarded fish when they have an unauthorised catch. The landing obligation requires that all catches of species which are subject to catch limits are landed (subject to limited exceptions). They cannot be discarded.
- 185 Subsection (1) creates a power for the Secretary of State to make regulations to establish a charging scheme.
- 186 Subsection (2) requires that the regulations must provide for how a charge would be calculated and when payments of a charge are due.
- 187 Subsection (3) allows for a charge to be calculated by reference to matters specified in the charging scheme and list examples of those matters.
- 188 The scheme is voluntary and subsections (4) and (5) limit the scope of any charging scheme to those registered under it. The charging scheme may only apply charges to those registered, and only persons eligible according to criteria that may be prescribed in the regulations could register. Subsection (6) allows for further provision to be made about registration or de-registration under the scheme.
- 189 Subsection (7) provides that regulations under this section are subject to the affirmative resolution procedure.

### Section 29: Meaning of “chargeable person” and “unauthorised catch of sea fish”

- 190 This section provides the meaning of “chargeable person” and “unauthorised catch of sea fish”.
- 191 Subsection (1) provides that the chargeable persons under the charging scheme are holders of English sea fishing licences or POs that have at least one member that is an English sea fishing licence holder. POs are included as chargeable persons as they frequently manage quota on behalf of their members and distribute quota between their members.
- 192 Subsection (2) gives the meaning of unauthorised catch of sea fish.
- 193 Subsection (3) provides that a charging scheme may make provision about whether the catching of fish under the scheme is authorised.
- 194 Subsection (4) defines the “charging scheme provisions” for the purposes of the Act.

### Section 30: Catches subject to a charge ignored for certain regulatory purposes

- 195 This section provides that where a charge is payable under the scheme, the charging scheme may provide that the fishing activity that led to the charge may be ignored in determining whether there has been a breach of a licence requirement.
- 196 Subsection (1) sets out that the charging scheme may provide that where a charge is payable and conditions under the scheme have been met, the catch must be ignored for determining whether a relevant regulatory breach has occurred.
- 197 Subsection (2) gives the meaning of “relevant regulatory breach” for the purposes of this section.
- 198 Subsection (3) allows for the conditions referred to under subsection (1) to include conditions contained in an English sea fishing licence.

## Section 31: Charge collectors

- 199 This section makes provision about the collectors of the charges which are payable under charging schemes.
- 200 Subsection (1) provides that the charging scheme may include provision about appointments by the Secretary of State of charge collectors to administer the scheme, about their terms of office, their functions and the termination of their appointment.
- 201 Subsection (2) sets out the functions which may be conferred on the charge collector under subsection (1).
- 202 Subsection (3) sets out the provisions which may be made in connection with the termination of appointments of charge collectors.
- 203 Subsection (4) allows for the scheme to make provision with regard to appeals from decisions made by charge collectors under the scheme.
- 204 Subsection (5) allows for payments to be made to charge collectors to cover expenditure incurred by charge collectors in the exercise of their functions. Subsection (6) allows for payments under subsection (5) to be subject to such conditions as the Secretary of State considers to be appropriate.

## Section 32: Discard prevention charging schemes: supplementary provision

- 205 This section makes further provision with regards to discard prevention charging schemes.
- 206 Subsection (1) provides that a charging scheme may provide that the master of a fishing boat is jointly and severally liable for the payment of the charge where an English sea fishing licence holder is a chargeable person under the scheme.
- 207 Subsection (2) provides for charges under a charging scheme to be recoverable as a debt.
- 208 Subsection (3) provides for a charging scheme to include provision about how the charge collectors must manage receipts of charges. The provision provides flexibility in a charging scheme so that the charge may be paid to the Secretary of State, used to cover the expenditure incurred in carrying out their function, or to permit the charge collectors to use the receipts for a charitable or conservation purpose specified in the scheme. Subsection (5) provides the meaning of “conservation purpose” under this section.
- 209 Subsection (4) allows for the charging scheme to confer functions on the Secretary of State and for those functions to be exercised by a person appointed by the Secretary of State to carry out those functions act on her behalf.

## Grants and charges

### Section 33: Financial assistance: powers of the Secretary of State

- 210 This section creates new powers for the Secretary of State to make grants or loans to the fishing and aquaculture industries. During the UK’s membership of the EU, funding has been provided under the EMFF, in relation to which further background is provided in the policy background in this document. The purpose of this section is to allow for grant and loan schemes to be established for England after the UK’s withdrawal from the EU which can replicate the breadth of what can currently be funded under the EMFF.
- 211 Subsection (1) lists the purposes for which the Secretary of State may give financial assistance.
- 212 Subsection (2) requires that a scheme must be established by regulations.



- 213 Subsection (3) requires that the scheme may only provide for financial assistance in relation to England, or to an area within the UK marine area (but not within the Scottish, Welsh or Northern Ireland zones) in relation to English fishing boats.
- 214 Subsection (4) provides for the scheme to confer functions on a person and require persons exercising those functions: to keep accounts and records; to make them available for inspection; and to publish specified information about financial assistance given in accordance with the scheme. Subsection (5) defines “specified” for the purposes of subsection (4) and subsection (6) provides that the regulations may not require the publication of specified information that contravenes data protection legislation.
- 215 Subsection (7) allows for the scheme to include provision that financial assistance may be given subject to conditions and the circumstances in which the payment must be repaid.
- 216 Subsection (8) requires that regulations made under this section are subject to the affirmative resolution procedure.
- 217 Subsection (9) gives the meaning of “family member”, “financial assistance” and “the UK marine area” for the purposes of this section.
- 218 Subsection (10) introduces Schedule 6, which confers corresponding financial assistance powers on the Devolved Administrations, as well as consequential and transitional provision relating to these provisions.

### Section 34: Charges: Powers of Marine Management Organisation

- 219 This section provides a power for the Secretary of State to make regulations for the MMO to impose charges for carrying out certain marine functions.
- 220 Subsection (1) is a power for the Secretary of State to make regulations regarding the MMO’s power to impose charges.
- 221 Subsection (2) lists the relevant marine functions for which the MMO may impose charges.
- 222 Subsection (3) specifies the types of charges which may be included in the regulations.
- 223 Subsection (4) lists the matters which may be provided for in the regulations.
- 224 Subsection (5) allows for the regulations to confer a discretion on the MMO.
- 225 Subsection (6) clarifies that regulations made under this section would not affect any other power of the MMO to impose charges. The MMO has existing charging powers under sections 27 and 67 of MCAA.
- 226 Subsection (7) requires that the Secretary of State consults appropriate persons before making regulations under this section.
- 227 Subsection (8) provides that regulations made under this section are subject to the negative resolution procedure.
- 228 Subsection (9) gives the meaning of “first-sale fish” and “fishing quota” for the purposes of this section.
- 229 Subsection (10) refers to Schedule 7, which contains provisions conferring corresponding powers on the Devolved Administrations.

## Section 35: Sea Fish Industry Authority: fees for services provided for industry in EU

230 This section amends section 3(5) of the Fisheries Act 1981 to extend a requirement that the Sea Fish Industry Authority (“Seafish”) must recover the full cost of any services it provides to persons in other countries. This is a technical correction which arises as a consequence of withdrawal from the EU.

231 Seafish is required to recover the full costs of services it provides to those in other countries, but may not charge those from EU Member States more than those in the UK. This section will therefore enable Seafish to recover all its costs from persons in the EU, regardless of what it may charge those in the UK.

## Power to make further provision

### Section 36: Power to make provision about fisheries, aquaculture etc.

232 This section provides a power for the Secretary of State, by regulations, to make provision on technical matters currently regulated by the EU under the CFP. The purpose of this power is to allow the UK to meet its international obligations, conserve the marine environment and to adapt fisheries legislation, including approximately 100 regulations of the CFP incorporated into UK law under the EU (Withdrawal) Act 2018.

233 Subsection (1) provides that the Secretary of State may, by regulations, make provision for the purpose of implementing an international agreement or arrangement relating to fisheries, fishing or aquaculture; for a conservation purpose; or for a fish industry purpose.

234 The meaning of “conservation purpose” and “fish industry purpose” are given in subsections (2) and (3) respectively.

235 Subsection (4) lists the matters which the regulations made under subsection (1) must be about. It also provides that the list of matters does not apply in relation to regional fisheries management regulations and regional fisheries management arrangements pursuant to membership of RFMOs and other multilateral and bilateral obligations. These are defined in subsection (5). The matters in the list are:

- the quantity of sea fish that may be caught;
- the amount of time that fishing boats may spend at sea;
- the landing of sea fish;
- bycatch;
- catching, landing or selling sea fish that are below a certain size;
- setting and enforcing targets relating to stocks of sea fish;
- the design of sea fishing equipment;
- the use of sea fishing equipment;
- the retrieval of lost or discarded sea fishing equipment;
- methods of sea fishing;
- the processing of sea fish on fishing boats;



- the use to which the Secretary of State may put information obtained in the exercise of his functions relating to fisheries or aquaculture;
- the functions, objectives or regulation of POs or inter-branch organisations;
- the marketing of fishery products (including labelling);
- keeping, disclosing or publishing accounts, records or other documents or information by persons involved in –
  - commercial fish activities or commercial aquaculture activities,
  - monitoring, or enforcing, compliance with the regulation of commercial fish activities or commercial aquaculture activities;
- the use in aquaculture, or transport, of aquatic organisms that are members of an alien species or a locally absent species;
- monitoring, or enforcing, compliance with the regulation of any of matters mentioned in the preceding paragraphs of this subsection.

236 Subsection (5) gives the meaning of “regional fisheries management regulations”.

237 Subsection (6) provides that regulations under this section may make different provision in relation to different descriptions of sea fish or other animal, different descriptions of fishing boat or to different areas of the sea or inland waters.

### Section 37: Section 36: Interpretation

238 This section gives the meaning of certain terms used in section 36.

### Section 38: Power to make provision about aquatic animal diseases

239 This section provides a power for the Secretary of State to make regulations about aquatic animal diseases. The purpose of this provision is to allow for amendments to be made to retained EU law and other UK law by secondary legislation.

240 Subsection (1) provides a power for the Secretary of State to make provision for the purpose of monitoring, controlling, preventing or eradicating diseases of fish or other aquatic animals.

241 Subsection (2) specifies the matters in relation to which provision may be made under this section. These are the importation, exportation, movement, storage or handling of fish or other aquatic animals; products derived from fish or other aquatic animals; or any other thing that the Secretary of State considers may carry or affect the prevalence of a disease of fish or other aquatic animal.

### Section 39: Scope of regulations under section 36 or 38

242 This section defines and limits the scope of the regulation-making powers in sections 36 and 38.

243 Subsection (1) allows for regulations under sections 36 and 38 to confer a function, including a function that involves a discretion and to impose fees.

244 Subsection (2) allows for regulations under sections 36 and 38 to create criminal offences but not offences that are punishable with imprisonment.

245 Subsection (3) defines the scope of the sections 36 and 38 by reference to devolved competence. Regulations made under sections 38 and 40 could not include provisions that would be within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly unless the provision is merely incidental or consequential provision that would be outside that legislative competence.

246 Subsection (4) explains that the restriction in subsection (3) does not apply to the extent that the provision relates to the regulation of Scottish fishing boats within British fishery limits but outside the Scottish zone, Welsh boats outside the Welsh zone, Northern Ireland fishing boats within British fishery limits but outside the Northern Ireland zone, or British fishing boats that are not Scottish fishing boats, Welsh fishing boats or Northern Ireland fishing boats. This reflects existing concurrent powers of the Secretary of State.

247 Subsection (5) restricts the use of the powers under sections 36 and 38 so that they may not modify the functions of the Fisheries Administrations that relate to the licensing of fishing boats provided under this Act.

248 Subsection (6) clarifies what is meant by “modifying” in this section.

249 Subsection (7) provides that the powers under sections 36 and 38 may be used to modify any enactment apart from sections 38 to 44, Schedule 8 and section 51.

250 Subsection (8) gives the meaning of “modify” and “enactment” in subsection (7).

#### Section 40: Scope of regulations under section 36 or 38 where consent obtained

251 This section provides that regulations under sections 36 and 38 may make provision in areas of devolved competence where the consent of the Scottish Ministers, the Welsh Ministers or the Northern Ireland department has been obtained.

252 Subsection (1) provides that the regulations may extend to matters in the competence of the Scottish Parliament if the consent of the Scottish Ministers has been obtained.

253 Subsection (2) provides that the regulations may extend to matters in the legislative competence of the Senedd if the consent of the Welsh Ministers has been obtained.

254 Subsection (3) provides that the regulations may extend to matters in the competence of the Northern Ireland Assembly if the consent of the Northern Ireland department has been obtained.

255 Subsection (4) provides that the regulations may extend to matters relating to the powers to license fishing boats in this Act if the consent of the Scottish Ministers, the Welsh Ministers and the Northern Ireland department has been obtained.

#### Section 41: Procedural requirements for regulations under section 36 and 38

256 This section deals with procedural requirements that must be followed when exercising powers under sections 36 and 38.

257 Subsection (1) sets out who the Secretary of State must consult before making regulations under sections 36 and 38.

258 Subsection (2) sets out the circumstances in which the regulations made under sections 36 and 38 would be subject to the affirmative resolution procedure.

259 Subsection (3) provides that where regulations do not relate to the matters in subsection (2), they are subject to the negative resolution procedure.

#### Section 42: Powers of Scottish Ministers, Welsh Ministers and Northern Ireland department

260 This section introduces Schedule 8, which confers powers corresponding to powers under sections 36 and 38 on the Devolved Administrations.

## Miscellaneous

### Section 43: Agency arrangements between sea fish licensing authorities

- 261 This section permits the establishment of agency arrangements between the four sea fish licensing authorities in relation to the functions listed under subsection (1), which are their fisheries and product movement functions.
- 262 Subsection (2) confirms that such arrangements do not affect an authority's responsibility for the exercise of the function.
- 263 Subsection (3) provides that an authority may charge another authority a reasonable fee relating to the costs of providing the functions in subsection (1).
- 264 Subsection (4) confirms that the functions under subsection (1) that may be the subject of an agency arrangement do not include the functions of making, confirming or approving subordinate legislation.
- 265 Subsection (5) provides that the power to make agency arrangements does not affect any other powers of an authority to make arrangements with other persons to carry out those functions on its behalf (e.g. contractors or other public bodies).
- 266 Subsection (5) defines "fisheries function" and "product movement function" for the purposes of this section.

### Section 44: Foreign fishing boats that are exclusively Faroe Islands-regulated

- 267 This section ensures compliance with the Faroe Islands Treaty entered into with Denmark in 1999 on maritime delimitation in the "Special Area" between the UK and the Faroe Islands.
- 268 Subsection (1) provides that any prohibition, restriction or obligation in any enactment relating to sea fishing applicable to foreign fishing boats does not apply to exclusively Faroe Island-regulated fishing boats within the Special Area or to the fish caught by those boats within that area.
- 269 Subsection (2) defines "exclusively Faroe Islands-regulated" for the purposes of this section and subsection (3) defines "enactment", "the Special Area" and the "Faroe Islands Treaty" for the same purpose.

### Section 45: Legislative competence of Senedd Cymru

- 270 This section amends the Government of Wales Act 2006 (the 2006 Act) to extend the legislative competence of Senedd Cymru to enable it to make primary legislation on matters relating to fishing, fisheries or fish health in the area of the Welsh zone beyond the seaward limit of the territorial sea (beyond 12 nautical miles from the shore). Section 158 of the 2006 Act defines the "Welsh Zone" as being the sea adjacent to Wales which is within British Fishery Limits or otherwise specified in an order made under that Act.

### Section 46: Interpretation of Welsh legislation

- 271 This section makes changes to primary legislation (including Welsh language versions) consequential on section 45.

### Section 47: Conservation of seals

- 272 This section introduces Schedule 9 which includes amendments to legislation in connection with the conservation of seals.

## Section 48: Amendments of the Marine and Coastal Access Act 2009

273 This section introduces Schedule 10 which amends the MCAA to allow the MMO to carry out certain functions beyond the UK marine area and extends the powers of the MMO and the Devolved Administration to regulate the exploitation of sea fisheries resources for marine conservation purposes. The purpose of the conservation powers is to replace certain EU measures for the protection of the marine environment in Member States' offshore zones.

## Section 49: Retained direct EU legislation: minor and consequential amendments

274 This section introduces Schedule 11, which makes minor and consequential amendments to retained direct EU legislation and Scottish statutory instruments.

## Final provisions

### Section 50: Amendments that could have been made under existing powers

275 The Act amends certain provisions of subordinate legislation (e.g. in Schedule 3). This section provides that such amendments are to be treated as having been made under the existing power to make subordinate legislation. This is to ensure that any such provisions can be further amended by subordinate legislation in future.

### Section 51: Regulations

276 Subsection (1) of this section provides that regulations made under this Act may make consequential, supplementary, incidental, transitional or saving provisions; and that different provision may be made for different purposes or areas.

277 Subsection (2) provides that regulations under this Act are statutory instruments.

278 Subsection (3) provides what is meant by "the negative resolution procedure" in relation to regulations made under this Act.

279 Subsection (4) provides what is meant by "the affirmative resolution procedure" in relation to regulations made under this Act.

280 Subsection (5) provides that regulations made under this Act that are subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure.

281 Subsection (6) provides that this section does not apply to regulations made under section 53, which deals with the commencement of this Act. This means that, as is normally the case, there is no parliamentary procedure to be followed for regulations that commence provisions in the Act.

### Section 52: Interpretation

282 This section sets out definitions of commonly used terms in this Act.

### Section 53: Extent

283 This section sets out the territorial extent of the Act (whether it is part of the law of England and Wales; Scotland and Northern Ireland). The provisions in the Act extend to England and Wales, Scotland and Northern Ireland, with separate provision for the extent of Schedule 8. Part 1 of Schedule 8 extends to Scotland only; Part 2 to England and Wales only; and Part 3 to Northern Ireland only. Amendments, repeals or revocations made by the Act have the same extent as the provisions amended, repealed or revoked.

284 Subsections (4) and (5) sets out the parts of the Act that extend to the Channel Islands and the Isle of Man.

285 Subsection (6) provides that Her Majesty may by Order in Council provide for provisions in the Act to be extended to the Channel Islands or the Isle of Man for the purpose of implementing international obligations using section 36(1)(a) and provisions connected to that power. In practice, these powers would only be used with the consent of the Channel Island and the Isle of Man.

#### Section 54: Commencement

286 This section is a standard provision which explains when the provisions of the Act will come into force (i.e. begin to have an effect).

287 The provisions listed in subsection (1) come into force on Royal Assent; the provisions listed in subsection (2) come into force two months after Royal Assent; the provisions in subsection (3) come into force at the end of the implementation period; the provisions in subsection (4) come into force at the later of the end of the implementation period and two months after Royal Assent; and the provisions in subsection (5) come into force on 1<sup>st</sup> March 2021.

288 Subsection (6) provides that the amendment to the Sea Fish (Conservation) Act 1967 made by paragraph 6(13)(d) of Schedule 4 is to be treated as though it has always been in force. This means that Scottish statutory instruments made before the coming into force of Schedule 4 will be treated as though that amendment had already been in force.

289 Subsection (7) provides a power for the Secretary of State to make transitional or saving provision in connection with the commencement of this Act. This will make sure that things done under existing legislation can be given continuing effect. Subsection (8) provides that this power may make different provisions for different purposes and subsection (9) requires that regulations made under this section must be made by statutory instrument.

#### Section 55: Short title

290 This section contains the short title by which the Act may be cited.

### **Schedule 1: Fisheries statements and management plans: preparation and publication**

291 This Schedule sets out the procedures that would apply to the preparation, adoption and publication of the JFS and any SSFS.

#### Part 1: Joint fisheries statement

292 In relation to the JFS, paragraph 2 requires the fisheries policy authorities to jointly prepare a consultation draft of the statement, publish it and take such steps as they consider appropriate to ensure that it is brought to the attention of “interested persons”, which is defined in sub-paragraph (3) and includes members of the public.

293 Sub-paragraph (2) requires the fisheries policy authorities to have regard to any responses to the consultation.

294 Paragraph (3) requires each fisheries policy authority to specify a period of scrutiny of the draft JFS by their legislature, and to lay a copy of the consultation draft before their legislature on or before the first day of the scrutiny period. If one or more of the legislatures pass a resolution or makes a recommendation on the draft JFS, the fisheries policy authority or authorities in question would then have to lay a statement setting out its response.

295 Paragraph 4 states that once the procedure detailed above has been completed and the fisheries policy authorities have decided on the final text of the JFS, they must publish the document as soon as reasonably practicable.

## Part 2: Secretary of State fisheries statement

296 Paragraphs 5 to 7 provide that the consultation requirements, the requirement to lay the consultation draft before the appropriate legislature, and the publication requirement would apply in the same way to the SSFS as they do to the JFS (the SSFS is laid before UK Parliament). Paragraph 8 requires the Secretary of State to publish the SSFS as soon as reasonably practicable after it has been adopted.

## Part 3: Fisheries management plans

297 This Part sets out the consultation and publication requirements for fisheries management plans, which are similar to those required for the fisheries statements. Fisheries management plans do not need to be laid before the relevant legislatures, however.

## Schedule 2: Regulation of foreign fishing boats

298 This Schedule makes amendments to secondary legislation (including to Welsh language versions of Welsh statutory instruments) that will ensure that foreign boats licensed to fish in UK waters will be subject to the same requirements and restrictions as UK fishing boats operating in those areas. This includes secondary legislation made to address local issues which, because of EU law, could previously only be applied to UK boats.

## Schedule 3: Sea fishing licences: Further provision

### Power to attach conditions to sea fishing licence

299 Sub-paragraph (1) of paragraph 1 confers a power on a sea fish licensing authority to attach such conditions to a licence as appear to it to be necessary or expedient for the regulation of sea fishing. The conditions may include conditions which do not relate directly to sea fishing.

300 Sub-paragraph (2) lists particular conditions which may be attached to a licence, and includes (but is not limited to) conditions as to landing fish, restricting the time fishing boats may spend at sea and conditions aimed at preserving the marine and aquatic environment. Sub-paragraph (3) states that conditions in relation to time spent at sea may include the circumstances in which time is, or is not, to be counted for this purpose.

301 Sub-paragraph (4) would make it an offence to break a condition of a licence, and in these circumstances the master, the owner and the charterer of the fishing boat are each guilty of an offence. Sub-paragraph (5) refers to the offence provisions in sections 19 to 21.

### Power to vary, suspend or revoke sea fishing licences

302 Sub-paragraph (1) of paragraph 2 gives a sea fish licensing authority the power to vary a licence it has granted or to add, remove or vary a licence condition. Sub-paragraph (2) of paragraph 2 provides that it may also suspend or revoke a sea fishing licence if it appears to be necessary or expedient for the regulation of sea fishing, or if it appears to be appropriate where there is a contravention of the requirement to license a British fishing boat or a foreign fishing boat.

303 Sub-paragraph (3) states that if a sea fish licensing authority varies or revokes a licence or a licence condition, it may reimburse part or all of any charge made for the licence, if it considers it appropriate to do so.

### Power to obtain information

304 Paragraph 3(1) provides sea fish licensing authorities with powers to obtain information from the master, owner or charterer named in a licence. Sub-paragraphs (2) to (4) relate to offences around failure to provide the authority with requested information and for providing an authority with false information.



## Duty to comply with request of another sea fish licensing authority

- 305 Paragraphs 4(1) and (2) give a sea fish licensing authority the power to request another sea fishing licensing authority to exercise its licensing functions in such a way that any licences or licence conditions it grants are made subject to the conditions imposed by the requesting sea fish licensing authority, where that authority has imposed limits or conditions in respect of a particular area. The purpose of this provision is that one sea fish licensing authority can ask another authority not to undermine its licensing decisions in respect of an area of water where boats licensed by different authorities may fish.
- 306 Sub-paragraph (3) states that the requested authority must comply with the request unless it considers it unreasonable to do so.
- 307 Sub-paragraph (4) sets out the areas within the jurisdiction of each sea fish licensing authority.

## Use of licensing functions to limit fishing activity

- 308 Paragraph 5 gives a sea fish licensing authority the power to exercise its licensing functions so as to limit the number of fishing boats, or any class of fishing boat, or fishing in any area for any type of fish.

## Power to arrange for licensing functions to be exercised by others

- 309 Paragraph 6 enables a sea fish licensing authority to delegate its licensing functions, although the authority remains responsible for the exercise of any delegated function. Sub-paragraph (3) states that a public authority to which licensing functions are delegated may charge the sea fish licensing authority such fees as it considers reasonable.
- 310 Sub-paragraph (4) confirms that this paragraph does not confer powers for the sea fish licensing authorities to make agency arrangements with each other (see section 43).

## Regulations about the licensing of fishing boats

- 311 Paragraph 7 provides that a relevant national authority (the Devolved Administrations in respect of the boats or zones of their administration, or the Secretary of State) may make regulations as to how a sea fish licensing authority's licensing functions are to be exercised and as to the time when a licence, or various aspects of it, have effect.
- 312 Sub-paragraph (2) lists some of the matters that may be included in the regulations. Sub-paragraph (3) states that any regulations may make provision authorising the making of charges in relation to a sea fishing licence. Sub-paragraph (4) gives examples of the kind of provision which may be made in respect of charges, such as the amount to be charged, different charges for different classes of licence and that no charge may be payable in certain circumstances.
- 313 Sub-paragraph (5) imposes a duty on the relevant national authority to make regulations as to the principles that are to be applied to licence conditions about time spent at sea as described in sub-paragraph (7). However, sub-paragraph (6) states that the regulations may not make provision about such a principle if the regulations include other principles relating to a description of a restrictions on fishing activities (e.g. a restriction on the size of a fishing boat authorised to fish in an area).
- 314 Sub-paragraph (8) requires regulations including principles about time spent at sea to be subject to the affirmative resolution procedure, while sub-paragraph (9) provides that all other regulations made under this paragraph may be made under the negative resolution procedure. Sub-paragraph 10 defines "relevant national authority" for the purposes of this Schedule.

## Power of Secretary of State under paragraph 7 where consent obtained

315 Paragraph 8 provides a power for the Secretary of State to make regulations in areas of devolved competence, with the consent of the relevant Devolved Administration.

## Interpretation

316 Paragraph 9 defines “licensing function” for the purposes of this Schedule.

## Schedule 4: Access and licensing: minor and consequential amendments

### Part 1: Access to British fisheries by foreign fishing boats

317 This part makes minor changes consequential to provisions in section 12 on access to UK waters and licensing.

318 In particular, section 2 of the Fishery Limits Act 1976, which sets out the current law on access by foreign boats, is repealed. Paragraph 4 revokes the subordinate legislation made under section 2 of the above Act, which designates the countries whose boats have access to British fishery limits.

### Part 2: Licensing of fishing boats

319 This part makes changes to legislation consequential to the licensing provision in the Act. In particular, paragraph 6(2) revokes section 4 of the Sea Fish (Conservation) Act 1967, which contains the licensing provisions replaced by the Act

320 This part also amends secondary legislation to provide an expediated process that allows for licences for foreign fishing boats to come into force by communicating them electronically to the European Commission (or in the case of a non-EU fishing boat the relevant regulatory authority) and publishing them on a website. The expediated licence would be temporary and would only be issued where there was insufficient time for each fishing boat to be licensed individually in time for the start of the agreement.

### Part 3: Transitional provision

321 This part provides that there is no break in the continuity of the law where licensing provisions which are repealed by Part 2 of this Schedule are re-enacted.

## Schedule 5: Sale of Welsh fishing opportunities

322 This Schedule provides equivalent powers to the Welsh Ministers that are granted to the Secretary of State under section 27. The Welsh Ministers may make regulations that would provide for the sale or tender of Welsh fishing opportunities to the Welsh fishing industry.

## Schedule 6: Financial Assistance: powers of devolved authorities

323 Section 35 provides the Secretary of State with a power, through regulations, to give financial assistance, or to arrange for such assistance to be given, to any person for certain purposes. Paragraphs 1 to 3 of this Schedule provide equivalent powers for the Devolved Administrations.

324 Paragraph 1(2) in particular provides that financial assistance is given in accordance with a scheme established by regulations made the Scottish Ministers and paragraph 1(3) provides that such a scheme may only provide for financial assistance in relation to Scotland or the Scottish zone, or in relation to Scottish fishing boats. The function of making such a scheme by regulations in those respects is a function which is in or as regards Scotland in terms of the legislative competence tests set out in section 29(2) of the Scotland Act 1998 (provisions outside of the competence of the Scottish Parliament). The giving of financial assistance specifically in relation to Scotland or the Scottish zone, or in relation to Scottish fishing boats defines the scope of the function. This is consistent with the legislative competence of the Scottish Parliament.

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*



325 Paragraph 4 repeals powers for the Fisheries Administrations to provide financial assistance in the Fisheries Act 1981. This paragraph also makes amendments to that Act and other legislation consequential to section 35 and this Schedule.

326 Paragraph 5 makes transitional provision so that existing financial assistance schemes can be treated as though they were made under the financial assistance provisions in the Act. This means that the relevant Fisheries Administrations can continue to provide financial assistance agreed under the terms of those existing schemes.

## **Schedule 7: Imposition of charges: powers of devolved authorities**

327 This Schedule provides the Devolved Administrations with the same regulation making power conferred on the MMO by section 36. This means that the Devolved Administrations will be able to make regulations to impose charges in respect of the exercise of relevant marine functions.

## **Schedule 8: Powers to make further provisions: devolved authorities**

328 This Schedule provides the Devolved Administrations with powers equivalent to those of the Secretary of State under sections 36 and 38. These powers will enable the Devolved Administrations to make changes to amend UK fisheries law (including primary legislation and retained EU law).

## **Schedule 9: Conservation of seals**

329 This Schedule amends legislation in England and Wales and Northern Ireland to greatly restrict the circumstances in which any intentional killing of a wild seal is lawfully permitted (e.g. animal welfare exemptions to euthanise a wild seal if found to suffer from unrecoverable injury, pain or disease).

330 These amendments make the UK compliant with the US Marine Mammal Protection Act which only allows imports of fisheries products from countries which do not allow the deliberate killing, injuring or taking of marine mammals as part of commercial fisheries.

331 Part 1 amends the Conservation of Seals Act 1970, which extends and applies to England and Wales, to prohibit the killing, injuring and taking of seals for the purpose of the protection, promotion or development of commercial fish or aquaculture activities.

332 Part 2 amends the Wildlife (Northern Ireland) Order 1985 to ensure that licences cannot be granted to permit the killing, injuring or taking of seals for the purpose of preventing damage to fisheries.

## **Schedule 10: Amendments of the Marine and Coastal Access Act 2009**

333 Part 1 provides powers and duties for the MMO to carry out or provide research, advice, assistance and training facilities outside the UK marine area. or to persons outside the UK. This is to enable the MMO to support the Government's Blue Belt Programme and the future "Blue Planet Fund" and to provide advice and assistance on sustainable fisheries, marine planning, licensing and conservation to the UK's overseas territories and to other persons outside the UK.

334 Part 2 confers additional powers on the MMO, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) to make byelaws or orders relating to the exploitation of sea fisheries resources for purposes of marine conservation. Prior to Part 2 coming into force, the MMO and Welsh Ministers were only able to make byelaws or orders in connection with Marine Conservation Zones (MCZs) and byelaw and order making powers were only exercisable in the inshore area (0-12 nautical miles).

Part 2 confers powers on the MMO and the Welsh Ministers to make byelaws and orders in England and the English offshore region (12-200 nautical miles) and Wales and the Wales offshore region respectively. It also enables Scottish Ministers and DAERA to make orders in the Scottish offshore region and the Northern Ireland offshore region respectively.

335 Paragraphs 7 to 9 of Part 2 make changes consequential on the new provisions. Paragraph 10 amends section 129 of MCAA to provide that byelaws for the protection of MCZs may be made subject to specified conditions or for a specific period of time.

336 Paragraph 11 inserts a new section 129A into MCAA. This section confers on the MMO the power to make byelaws in England relating to the exploitation of sea fisheries resources for the purpose of conserving marine flora or fauna, or marine habitats or habitat types. "England" includes the 0 -12 nautical miles English inshore region.

337 "Sea fisheries resources" is defined in section 153(10) of MCAA as any plant or animal that habitually lives in the sea (with some exceptions) and "exploitation" is defined in section 153(12) of MCAA and includes fishing activities, selling, buying or introducing to the sea or cultivating sea fisheries resources, and such activities can be carried out for commercial purposes or otherwise. The effect of this is that the marine conservation byelaws must be for the purpose of marine conservation in connection with these activities.

338 Paragraph 11 inserts a new section 129B into MCAA which confers on the MMO a power to make byelaws relating to the English offshore region.. Again, such a byelaw would have to be made for the purposes of marine conservation in connection with the exploitation of sea fisheries resources.

339 New section 129C of MCAA contains further provision on byelaws made under sections 129A and 129B. Paragraphs (2) to (4) of section 129C contain particular examples of matters which byelaws may make provision about, for example prohibiting or restricting exploitation in specific areas or during specific periods, or the use of permits, including the charging of fees for permits.

340 Paragraph 12 amends section 130 of MCAA, which deals with procedural matters for byelaws (such as their publication), so that these provisions also apply to the new byelaws made under section 129A and 129B. Also, subparagraph (4) inserts a provision requiring the MMO to send a draft byelaw relating to the offshore region to the Devolved Administrations if the byelaw might or would affect the exploitation of sea fisheries resources in their respective offshore regions.

341 Paragraph 13 amends section 131 of MCAA, which makes provision for emergency byelaws to protect MCZs. The amendment applies the emergency byelaw provisions to byelaws made under new section 129B in relation to the English offshore region, so that these byelaws can be made without the confirmation of the Secretary of State, where there is an urgent need to protect the English offshore region.

342 Paragraph 14 amends section 132 of MCAA, which makes provision for interim byelaws to protect features in England. The amendments make provision for interim orders to protect features in the English offshore region.

343 Paragraphs 15 and 16 make consequential changes, including the insertion of a subsection (3A) into section 133 of MCAA requiring the MMO to send a copy of a byelaw made under section 129B or section 132(1A) to the Welsh Ministers, Scottish Ministers or DAERA (as appropriate) if it will or may affect the exploitation of sea fisheries in their respective offshore region.

344 Paragraphs 17 to 20 confer on Welsh Ministers the same powers to make provision for Wales (including the Welsh inshore region) and the Welsh offshore region, by order, as is conferred on the MMO in relation to byelaws. The new sections are 134A to 134C and these mirror new sections 129A to 129C.

345 Paragraph 21 inserts new sections 137A to 137H into MCAA. These confer powers on the Scottish Ministers and DAERA to make orders relating to the exploitation of sea fisheries resources in their respective offshore regions for marine conservation purposes. These are substantially similar to the powers in the offshore region that are conferred on the MMO and Welsh Ministers. Urgent orders made by Scottish Ministers and by DAERA are time-limited (see sections 137B(5) and 137F(5) respectively).

346 The remainder of this Schedule makes further minor and consequential amendments to MCAA that relate to the above provisions. These include amendments to provisions on offences and penalties, so that they apply to the contravention of the new byelaws and orders. Provisions on the enforcement of nature conservation legislation are amended to include the new byelaws and orders, so that powers of marine enforcement officers extend to enforcing them.

## Schedule 11: Retained direct EU legislation: minor and consequential amendments

347 This Schedule makes minor and consequential amendments to retained direct EU legislation and Scottish statutory instruments relating to provisions in this Act.

## Commencement

348 The dates for each of the provisions in the Act are set out in section 54. Provisions will come into force at Royal Assent, within two months of Royal Assent, or on IP Completion Day. Some regulation-making powers will come into force the earlier of either IP Completion Date, two months following Royal Assent, or on 1<sup>st</sup> March 2021.

349 “IP Completion Date” is defined in the European Union (Withdrawal Agreement) Act 2020 as 31 December 2020 at 11pm, which is the end of the Implementation Period and when we will no longer be bound by the CFP.

## Related documents

350 The following documents are relevant to the Act and can be read at the stated locations:

- [Fisheries white paper: sustainable fisheries for future generations](#)
- [Beyond the Common Fisheries Policy: Scrutiny of the Fisheries Bill, Environment, Food and Rural Affairs Committee of the House of Commons](#)

## Annex A – Territorial extent and application in the United Kingdom

351 The following provisions extend and apply UK wide:

- Sections 1 to 41, 48 and 49 to 55; Schedules 1 to 4; Part 1 of Schedule 10 and Schedule 11.

352 The following provisions extend UK wide, but applies in Scotland, Wales; and Northern Ireland:

- Section 42. (Schedule 8 extends separately to Scotland, England and Wales, and Northern Ireland).

353 The following provision extends and applies to England and Wales and Northern Ireland:

- Section 47 and Schedule 9 (conservation of seals)

354 The following provisions extend and apply to Wales only:

- Section 45 (legislative competence of Senedd Cymru);
- Section 46 (interpretation of Welsh legislation).

355 The following provisions extend UK wide but apply in England, Scotland, and Wales:

- Section 48 and Part 2 of Schedule 10.

356 The following provision extends UK wide but applies in Wales:

- Schedule 5 (sale of fishing opportunities).

357 The following provisions extend UK wide but apply in England, Scotland, Wales, and Northern Ireland:

- Schedule 6 (financial assistance).
- Schedule 7 (charges).

358 Repeals and amendments made by the Fisheries Act have the same territorial extent and application as the legislation that they are repealing or amending. However, unless expressly stated, repeals and amendments do not automatically extend to the Channel Islands or the Isle of Man. The information provided is the view of the UK Government.<sup>1</sup>

<b>Provision</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Extends and applies to Scotland?</b>	<b>Extends and applies to Northern Ireland?</b>
Sections 1-3 (Fisheries objectives and joint fisheries statements and fisheries management plans)	Yes	Yes	Yes	Yes
Sections 4-5 (Secretary of State fisheries statement)	Yes	Yes	Yes	Yes
Sections (fisheries management plans)	Yes	Yes	Yes	Yes
Sections 10-11 (Effect of statements and plans and reporting)	Yes	Yes	Yes	Yes
Sections 12-13 (Access to British fisheries by foreign boats)	Yes	Yes	Yes	Yes
Sections 14-18 (Licensing of fishing boats)	Yes	Yes	Yes	Yes
Sections 19-22 (Access and licensing: offences and consequential amendments)	Yes	Yes	Yes	Yes
Sections 23-26 (Fishing opportunities)	Yes	Yes	Yes	Yes
Section 27 (Sale of English fishing opportunities)	Yes	Yes	Yes	Yes
Sections 28-32 (Discard prevention charging schemes)	Yes	Yes	Yes	Yes
Section 33 (Financial Assistance)	Yes	Yes	Yes	Yes
Section 34 (Power for MMO to impose charges)	Yes	Yes	Yes	Yes
Section 35 (Sea Fish Industry Authority)	Yes	Yes	Yes	Yes
Sections 38-41 (Power to make provision about fisheries, aquaculture, aquatic animal diseases and scope)	Yes	Yes	Yes	Yes
Sections 42 (Powers of Scottish Ministers, Welsh Ministers and Northern Ireland Department to make provision about fisheries, etc.)	No	Yes	Yes	Yes
Section 43 (Agency arrangements between sea fish licensing authorities)	Yes	Yes	Yes	Yes
Section 44 (Foreign fishing boats that are exclusively Faroe Islands-regulated)	Yes	Yes	Yes	Yes
Sections 45-46 (Legislative competence of Senedd Cymru)	No	Yes	No	No
Section 47 (Conservation of seals)	Yes	Yes	No	Yes
Section 48 (Amendments to the Marine & Coastal Access Act 2009)	Yes	Yes	Yes	No
Section 49 (Retained direct EU legislation: minor consequential amendments):	Yes	Yes	Yes	Yes
Sections 50-55 (Final provisions)	Yes	Yes	Yes	Yes
Schedule 1 (Fisheries statements and management plans)	Yes	Yes	Yes	Yes

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

Schedule 2 (Regulation of foreign fishing boats)	Yes	Yes	Yes	Yes
Schedule 3: (Sea fishing licences: further provision)	Yes	Yes	Yes	Yes
Schedule 4 (Access and licensing: consequential provisions)	Yes	Yes	Yes	Yes
Schedule 5 (Sale of Welsh fishing opportunities)	No	Yes	No	No
Schedule 6 (Financial assistance: devolved authorities)	Yes	Yes	Yes	Yes
Schedule 7 (Imposition of charges: powers of devolved authorities)	No	Yes	Yes	Yes
Schedule 8 (Powers to make further provision: devolved authorities)	No	Yes	Yes	Yes
Schedule 9 (Conservation of seals)	Yes	Yes	No	Yes
Schedule 10 (Amendments to the Marine & Coastal Access Act 2009)	Yes	Yes	Yes	No
Schedule 11 (Retained direct EU legislation: minor and consequential amendments)	Yes	Yes	Yes	Yes

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

## Annex B – Hansard References

359 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	29 January 2020	<a href="#">Vol. 801 Col. 1447</a>
Second Reading	11 February 2020	<a href="#">Vol. 801 Col. 2168</a>
Committee	2 March 2020	<a href="#">Vol. 802 Col. 402</a>
	4 March 2020	<a href="#">Vol. 802 Col. 618</a>
	9 March 2020	<a href="#">Vol. 802 Col. 829</a>
	11 March	<a href="#">Vol. 802 Col. 1033</a>
Report	22 June 2020	<a href="#">Vol. 804 Col. 25</a>
	24 June 2020	<a href="#">Vol. 804 Col. 257</a>
Third Reading	1 July 2020	<a href="#">Vol. 804 Col. 716</a>
<i>House of Commons</i>		
Introduction	2 July 2020	No Hansard Entry
Second Reading	1 September 2020	<a href="#">Vol. 679 Col. 65</a>
Public Bill Committee	8 September 2020	<a href="#">First Sitting Col. 1</a>
	8 September 2020	<a href="#">Second sitting Col. 37</a>
	10 September 2020	<a href="#">Third sitting Col. 53</a>
	10 September 2020	<a href="#">Fourth sitting Col. 85</a>
	15 September 2020	<a href="#">Fifth sitting Col. 131</a>
	15 September 2020	<a href="#">Sixth sitting Col. 171</a>
Report and Third Reading	13 October 2020	<a href="#">Vol. 682 Col. 258</a>
Lords Consideration of Commons Amendments	12 November 2020	<a href="#">Vol. 807 Col. 1154</a>
Royal Assent	23 November 2020	<a href="#">Vol. 808</a>

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*



## Annex C – Progress of Bill Table

360 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

<b>Section in the Act</b>	<b>Bill as Introduced in the Lords</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended at Report in the Commons</b>
Section 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 19	Clause 18
Section 19	Clause 19	Clause 20	Clause 19
Section 20	Clause 20	Clause 21	Clause 20
Section 21	Clause 21	Clause 22	Clause 21
Section 22	Clause 22	Clause 23	Clause 22
Section 23	Clause 23	Clause 24	Clause 23
Section 24	Clause 24	Clause 25	Clause 24
Section 25	Clause 25	Clause 26	Clause 25
Section 26	Clause 26	Clause 28	Clause 26
Section 27	Clause 27	Clause 29	Clause 27
Section 28	Clause 28	Clause 30	Clause 28
Section 29	Clause 29	Clause 31	Clause 29
Section 30	Clause 30	Clause 32	Clause 30
Section 31	Clause 31	Clause 33	Clause 31
Section 32	Clause 32	Clause 34	Clause 32
Section 33	Clause 33	Clause 35	Clause 33

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

<b>Section in the Act</b>	<b>Bill as Introduced in the Lords</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended at Report in the Commons</b>
Section 34	Clause 34	Clause 36	Clause 34
Section 35	Clause 35	Clause 37	Clause 35
Section 36	Clause 36	Clause 38	Clause 36
Section 37	Clause 37	Clause 39	Clause 37
Section 38	Clause 38	Clause 40	Clause 38
Section 39	Clause 39	Clause 41	Clause 39
Section 40	Clause 40	Clause 42	Clause 40
Section 41	Clause 41	Clause 43	Clause 41
Section 42	Clause 42	Clause 44	Clause 42
Section 43	-	-	Clause 43
Section 44	-	-	Clause 44
Section 45	Clause 43	Clause 45	Clause 45
Section 46	-	-	Clause 46
Section 47	-	-	Clause 47
Section 48	Clause 44	Clause 46	Clause 48
Section 49	Clause 45	Clause 47	Clause 49
Section 50	Clause 46	Clause 49	Clause 50
Section 51	Clause 47	Clause 50	Clause 51
Section 52	Clause 48	Clause 51	Clause 52
Section 53	Clause 49	Clause 52	Clause 53
Section 54	Clause 50	Clause 53	Clause 54
Section 55	Clause 51	Clause 54	Clause 55
Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 7	Schedule 7	Schedule 7
Schedule 8	Schedule 8	Schedule 8	Schedule 8
Schedule 9	-	-	Schedule 9
Schedule 10	Schedule 9	Schedule 9	Schedule 10
Schedule 11	Schedule 10	Schedule 10	Schedule 11

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

## Glossary

Definitions are sourced from both [www.parliament.uk](http://www.parliament.uk) and the Guide to making legislation on [www.gov.uk](http://www.gov.uk).

**Affirmative resolution procedure:** a type of parliamentary procedure that applies to statutory instruments (SIs) and describes the form of scrutiny that the SI receives from Parliament. An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament before it can become law.

**British Fishery Limits:** The waters within the UK's exclusive economic zone (EEZ) which extends out to 200 nautical miles or at the median line between other coastal States

**Chapter:** A grouping of clauses under a subheading within a Part of a bill.

**Clause:** The basic unit of a bill, divided into subsections, then paragraphs, then sub-paragraphs. Once the Bill becomes an Act, a clause becomes a section.

**Commencement:** The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

**Devolved Administrations:** the Scottish Ministers, Welsh Ministers and the Northern Ireland Department.

**Devolved authorities:** the legal term for the Devolved Administrations.

**EMFF:** European Maritime and Fisheries Fund.

**Fisheries Administration:** the UK fishing authorities made up of the Secretary of State, Scottish Ministers, the Welsh Ministers and the Northern Ireland Department.

**IFCAs:** Inshore Fisheries Conservation Authorities.

**LFC:** London Fisheries Convention.

**Long title:** The passage at the start of a bill that begins "a Bill to..." and then lists its purposes. The content of the bill must be covered by the long title.

**MCAA:** Marine and Coastal Access Act 2009.

**MMO:** Marine Management Organisation.

**Money resolution:** A Money resolution must be agreed by the House of Commons if a new Government Bill proposes spending public money on something that hasn't previously been authorised by an Act of Parliament. Money resolutions, like Ways and Means resolutions, are normally put to the House for agreement immediately after the Bill has passed its Second reading in the Commons.

**Negative resolution procedure:** An SI laid under the negative procedure becomes law on the day the Minister signs it (when it is made) and remains law unless a motion – or 'prayer' – to reject it is agreed by either House within 40 sitting days.

**Northern Ireland Department:** This is the relevant department of the Northern Ireland Executive dealing with fisheries. In the case of the Bill the relevant department is the Department of Agriculture,

*These Explanatory Notes relate to the Fisheries Act 2020 which received Royal Assent on 23 November 2020 (c. 22)*

Environment and Rural Affairs (DAERA).

Part: A grouping of clauses under a heading in the body of a bill. Also a subdivision of a schedule.

Retained EU legislation: As the UK leaves the EU, the EU (Withdrawal) Act 2018 will convert the body of existing EU law into domestic law and preserve the body of laws we have made in the UK to implement EU obligations. "Retained EU legislation" refers to these bodies of legislation.

Retained direct EU legislation: is defined in section 20 of the European Union (Withdrawal) Act 2018. It is any direct EU legislation which forms part of domestic law by virtue of section 3 of that Act, and includes directly applicable EU regulations, decisions or tertiary legislation. It does not include the body of domestic laws made in the UK to implement EU obligations.

Regulation: secondary legislation made through SIs.

RFMOs: Regional Fisheries Management Organisations.

Schedule: Bills may have a number of Schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the bill are to work in practice. Schedules can be amended by Parliamentarians.

Section: When the bill becomes an Act, "clauses" become "sections" but the names of the other subdivisions stay the same.

Senedd Cymru: The Welsh Parliament, formally the National Assembly for Wales

Short title: The title by which a bill is known during its passage through Parliament; for example "Fisheries Bill", and when it passes the "Fisheries Act 2020".

Statutory instrument: Statutory instruments are the most common form of secondary (or delegated) legislation.

Territorial application: Territorial application refers to the territory where a Bill (or provisions of a bill) has a practical effect.

Territorial extent: The extent of a Bill refers to the legal jurisdiction of which a bill, or provisions of a bill, will become a part. There are three legal jurisdictions in the UK: (1) England and Wales, (2) Scotland and (3) Northern Ireland. The extent of a Bill or provision can be different from its application.

UNCLOS: United Nations Convention on the Law of the Sea, 1982.

UNFSA: United Nations Fish Stocks Agreement, 1995.

---

© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.













a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company,  
and available from:

**Online**

**[www.tsoshop.co.uk](http://www.tsoshop.co.uk)**

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone: 0333 202 5077

**TSO@Blackwell and other Accredited Agents**

ISBN 978-0-10-560226-2



9 780105 602262